

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 26 - Wednesday, 17 April 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

Wednesday, 17 April 2024 (10.30 am)

Cross-examination by MR ROBINS (continued)

MR MICHAEL ANDREW THOMSON (continued)

MR ROBINS: Mr Thomson, yesterday, we covered the fact that there came a point when you became concerned you didn't have anything on file to justify the ever-increasing level of borrowing by the Prime companies. Do you recall those questions?

A. Was that around the letter from the directors that we got? Was that --

Q. That's right. In the period before you got that letter, because you, Mr Hume-Kendall, Mr Barker and Mr Golding were no longer able to take out monies from the Prime companies' facilities, you decided to draw monies under LOG's facility for payment into your personal bank accounts, didn't you?

A. That's incorrect, Mr Robins.

Q. Let's look at an example. <MDR00126617>. Do you see that you emailed Katie Maddock and Katy Eaves asking them to send Elten the available funds figure tomorrow? That would have been the funds available for drawing, wouldn't it?

A. As we discussed before, we provided those figures to our borrowers.

Q. At <MDR00126666>, she tells Mr Barker that there is £1.95 million available to lend. But that's to lend to LOG, isn't it?

A. Mr Barker was -- at that point, he wasn't involved in Prime, I believe. I don't know.

Q. If we look at <MDR00007031>, this is LCF's bank statement. At page 5, do you see, 2 February, a payment of just over £1.5 million to LOG?

A. Yes, I can see that.

Q. Then <MDR00220286>. This is your bank statement. At page 336, do you see, 5 February, £50,000 turns up in your bank account from London Group LLP with the reference "Pref share adv"?

A. I can see that, but, again, that's the same explanation that I gave you yesterday, Mr Robins.

Q. Yesterday, you said:

"Answer: ... I wasn't aware that just because I received a 5 per cent payment, that 95 per cent would go out the door."

Is that what you're referring to?

A. No. I didn't say that, Mr Robins. What you are suggesting here is that I knew every time that we -- again, you suggested it yesterday: every time that there was a borrowing, I received funds. You're going to specifics. There are other borrowings as well. So, what you've shown here is London Group - - sorry, London Oil & Gas have requested a funds figure. They have drawn funds and, yes, I have been paid out. But this is a payment under my buyout, which I have explained to you before. It doesn't follow that I would know that anyone else would get any money. I didn't have control over when I received funds by my buyout. I received them.

Q. In terms of what you said on Monday, you said: "Answer: ... I wasn't aware that just because I received a 5 per cent payment, that 95 per cent would go out the door."

You say that was still the case at this point, in February 2018?

A. I believe so.

Q. You said:

"Answer: ... I wasn't aware ... that 95 per cent was going through the other door."

Is that true?

A. I didn't have any visibility or knowledge of when they would pay themselves through various different means and how much they paid themselves. I had no control or knowledge of that.

Q. If we look at <MDR00220330>, this is the London Group LLP bank statement. If we look at the bottom of page 13 -- it must be the bottom of page 12. We can see some money coming in. Then, on page 13, do you see there is the £50,000 to you, £450,000 to Mrs Hume-Kendall, £450,000 to Mr Golding? There is also £50,000, towards the top of the page, to Mr Barker. Is your evidence that, although you knew you were getting your 5 per cent, you didn't know that the others were taking the other 95 per cent?

A. These aren't my bank statements, Mr Robins. I didn't have access to these bank statements, I didn't see what was going on in these bank accounts. They have borrowed the money. It is for them to answer why they have paid themselves this. I am aware that there was a restructure that was going on at that time -- Mazars were, I believe, advising on that. I know, because I know what's happened in these proceedings, there was issues with it, but I didn't know this at the time. I received funds that I believed were from my buyout. This isn't my bank statement and I didn't have access to it.

Q. You knew the ratios 45:45:5:5, didn't you?

A. We know those ratios in terms of shareholding. What you are trying to say is that, yes, I was aware of those shareholdings. Mine was a beneficial interest that would disappear once I have been paid out of my buyout agreement, but you're inferring that, just because I received my buyout agreement, it would follow that I would absolutely know that these people took -- paid themselves funds. It doesn't follow.

Q. We saw the reference in your bank statement "Pref share adv". You knew that LPC had previously issued preference shares, didn't you?

A. I know they had various different shareholding structures. I can't remember today what they were.

Q. You liaised with Mr Hume-Kendall and Mr Barker about how much was available to pay out and a large proportion of the money paid out was then distributed to you, Mr Hume-Kendall, Mr Barker and Mr Golding, with that reference. That's something you knew at the time, isn't it?

A. It's the same answer. You're asking the question in a different way, Mr Robins. I received the funds, I believed, from my buyout. I believed I rightly received them. I didn't have control over what these others did and paid themselves. I don't have access to their bank accounts. My view is, all of these people had a cash-out far too early and should have kept funds in the company. They didn't. If they

had left the funds in the company and developed all of these things and had a cash-out in years to come, we wouldn't be here today.

Q. So, you wouldn't have approved of this at the time if you had known about it. Is that what you are saying?

A. They had cash-out too early. Looking at London Oil & Gas, you've got other people on the board that I would have hoped would be dealing with this as well. As I have said, I am very aware that they had a restructure that they were being advised on by, I believe, Mazars. They were looking to do various different things in 2018. If the board has said to them, "Yes, you can pay out the share class", the board could have approved this. Companies borrow to pay -- on a leveraged basis to pay out their shareholders. Companies raise money to pay out their shareholders. If this is what they had agreed for what they're receiving, that's between them and the board.

Q. But if you had known about it at the time, you would have disapproved?

A. So, having cash-out too early and not leaving sufficient funds in the company to achieve the company's aims, I would have had a question about it, probably. But this is for the company. They borrowed the money. We believed they had sufficient assets. Once they borrow the funds, it's their funds, and we trust that they are going to use those for their corporate purposes. We don't -- once they have borrowed the money, we don't have control over what they're going to do with the funds.

Q. So you wouldn't have approved or disapproved; you would have been indifferent?

A. I would have possibly had a conversation about it, you know, "Why are you doing this?", but, then, the -- I can't remember what the advice they were getting and the restructuring they were doing with Mazars and what their aims were. I can't remember. It was many years ago. And if the board had approved all of this, and this was in line with the advice they were getting, and it's a leveraged buyout for preference shares that the company was happy with, and they had sufficient assets, which we believed they did, to gear up on to make these payments -- I lent, for these purposes, in the bank -- it's their decision, once they have borrowed the money, it's not the lenders'.

Q. If I was to show you further examples of what we have just seen, where you approve of payments under LOG's facility and then they're paid by LCF and then some money turns up in your bank account, would your answer continue to be, "I believed I was receiving 5 per cent out of my buyout agreement. I wasn't aware that 95 per cent was going through the other door"?

A. I know what's gone on because I have visibility through these proceedings. At the time, did I know they were doing all of this? No, I didn't. If this did come up, the question -- the conversation would be, "Have the board approved it?" But, from my point of view, I received funds from my buyout. What they did with their company after they borrowed the money -- they have a debt to us, they borrowed the money, we trusted them to use it for their corporate purposes, which were varied. As I say, I am aware that they had a restructure, being advised on by Mazars, and, if this is part of that, then that's for the board to answer to.

Q. Can we look at <MDR00147028>, please. Can we look at it in native form? This is a spreadsheet of preference share payments and the column in red is the total amount that was divvied up in each payment round. In D, it is the amount paid to Mr Hume-Kendall. So, are you saying you didn't know that he was getting his share at the time?

A. This is not my spreadsheet, and I have seen this spreadsheet because it's come up in disclosure. I didn't see the spreadsheet at the time.

Q. Can we look at file info, please. Do you see "Author: Katie Maddock"?

A. I do.

Q. She was your assistant at LCF, wasn't she?

A. She was.

Q. She worked at LCF's offices, didn't she?

A. She did. This was created in 2015. She may well have created the spreadsheet, but I would be really surprised and extremely disappointed if she continued to work on this.

Q. You don't think you gave her the figures?

A. No, I don't.

Q. Because you didn't know that Mr Hume-Kendall was getting his percentage?

A. Again, with regard to this, I am aware they were taking advice on a restructure. I am aware they had various different share classes. I am aware that there was some restructuring of those share classes so they ended up with one share class. And, if part of that is to pay out preference shares so everyone has the same class, I am -- I believe, in part of that restructure, there was some shareholders that wanted to be bought out, but I haven't seen the Mazars thing for a fair while now. I can't answer your question why Katie created this. She could have created it, really, before she left. That doesn't mean she continued working on it.

MR JUSTICE MILES: Mr Thomson, quite a lot of that answer was given in the present tense, saying, "I am aware", "I am aware", and so on. I think the questions you are being asked are about what you knew or understood or believed at the time.

A. Sorry, my Lord.

MR JUSTICE MILES: Did you know, at the time, that payments were being made out of these monies to the other shareholders?

A. I wasn't aware, at the time, of the volume that they were being paid out. I was aware that there was a restructure. I was aware that that involved some payment of shares. I wasn't aware of the volume, that it was to this extent. Quite frankly, I hope they -- they should have kept the money in the company and developed it.

MR ROBINS: Were there occasions when Mr Barker submitted a drawdown request and you told him "That's too low. We can share a larger payment between us", and he submitted a revised drawdown request?

A. I don't remember, Mr Robins.

Q. Do you think that's the sort of thing that happened?

A. If we had further funds in the account to lend, part of what we did is we actively told our borrowers how much we had to lend. If there was additional capacity over and above what they needed, I can see we would tell them that.

Q. If we look at <MDR00135954>, there's a drawdown request for £1.1 million signed by Mr Barker, and then <EB0083707>, do you see, at the top, Mr Golding had sent a message to Mr Barker that said:

"Morning, should be about £1m available today. From Andy."

And then, if we go down -- is there a second page? -- he says:

"Just had the actual available figs £1.87m." Were you on the phone to Mr Golding saying, "Look, I have had this drawdown request from Mr Barker for 1.1, but we have actually got 1.87 million available, get him to lodge a revised one, we can share a bigger payment between us"?

A. No. I can -- I'm being asked -- as I have said before, we tell people what we have, and the expected amount may not necessarily be the cleared amount, so we are asked on a regular basis, or we tell, how much we have available to lend. I believe Mr Barker in one of his interviews has said that he drew -- because they paid the cost of funds for the capital they borrowed, it was his methodology that -- to borrow a larger sum because they would have to pay the cost of funds ultimately anyway, so ...

Q. If we look at <MDR00135966>, there's an email: "Revised drawdown request attached as requested." You had requested a drawdown request in a larger amount, had you?

A. I can -- I mean, I don't know the conversation behind this. I can -- if it is, they thought -- we thought we only had a million to lend and that's what we advised them, but then the cleared amount was larger, I could see them producing a revised drawdown request. You're trying to infer something into this that isn't necessarily there.

Q. Then, when a chunk of money turns up in your bank account, you think, "Oh, good, that's larger than it would have been if I hadn't requested a revised drawdown request", did you?

A. We advised them how much we had to lend or had available, and they borrowed it. We were happy with their security. And they borrowed it. Yes, I'm not saying that I didn't receive funds. I believe they're all from my buyout agreement and they were paying me out.

Q. In your witness statement, you mention that you were told at the time that LOG was moving banking from Metro to Barclays.

A. I think it was -- I know they had issues with their bank and they were moving. I think they moved to Metro and then they moved to somewhere else. I think it might have been Barclays. I might be mistaken there.

Q. If we look at <D2D10-00044289>, it is a letter from Metro Bank to Mr Hume-Kendall and Mr Barker saying that they're shutting the London Group account. That's something you were aware of at the time, was it?

A. I became aware, yes.

Q. You became aware at the time?

A. Not necessarily at the time. They obviously told me. I can't remember when I became aware of the Metro issue. I don't know why they closed the account.

Q. Do you think it was possibly when you noticed that the money turning up in your account was coming from London Power Consultants instead of London Group?

A. As I have said in my statement and to you on a number of occasions, I received the money from various different companies in their group of companies.

Q. After this letter, some of them were from London Power Consultants?

A. Yes. I believe that I said in my witness statement that I didn't receive from them. I think that's one of the errors that I mentioned at the beginning of this, which I think you pointed out in your oral opening.

Q. If we look at <MDR00147837>, this page, page 1. At the bottom, Mr Tofts of GCEN emails to say: "Thanks for your call. To confirm, I will set up a new profile on our system for LC&F -- corporate. This will be run through GCEN rather than GCS and you'll be able to handle payments this way.

"If you could just confirm the borrower's company name that you'll be making payments on behalf of initially and how you want the sign-off process to work (ie who are the signatories etc) and if you want callbacks or to process online I'll get everything set up tomorrow."

At the top of the page you reply:

"The company we will be making payments on behalf of is Prime Resort Development Limited."

Do you see that?

A. Yes.

Q. That was untrue, wasn't it?

A. The company GCEN or GCS opened payment accounts for all of their borrowers ultimately. This was --

Q. But, at this point, the account you were asking him to set up was so that LOG could have a work-around and continue to make payments with LCF's money, even though Metro Bank was shutting its account?

A. We did do a work-around for them. I think we did a work-around for a couple of the companies. So, LOG was one of them and I believe Prime was one of them.

Q. Prime wasn't one of them at this stage, was it? You were actually setting up a work-around for LOG?

A. I don't remember the dates of all of these. You have me at a loss, Mr Robins. You've got the information. We set them up for our borrowers. I can't remember in which order we set them up. I can't remember which dates we set them up. You have me at a loss.

Q. If we look at <MDR00147909>, Mr Tofts emails you to set out the process:

"Spreadsheet will be compiled and emailed to GCEN (initially me to me as Leyla isn't in the office ...)
"..."

"We will call you back personally to confirm the payment(s)."

GCEN wouldn't have made any payment of money that's been transferred to them by LCF without your personal approval by telephone. That's correct, isn't it?

A. Let me just read that. I'm not sure that's right. "We will call you back personally", I think is them calling LCF back.

Q. What, LCF is a person, is it? "Call you back personally", they call the company? Is that what you are saying it means?

A. It wasn't just me that approved.

Q. You were the only person with power to approve, Mr Thomson, weren't you?

A. I think on the previous email it recorded other people as well.

Q. But, in terms of the process, you were the only person they would call back personally to confirm the payment?

A. No, it was other people as well. I don't think that was correct. I think they will call us firstly to tell us. I think the previous email had a list of people attached to it. I didn't get a chance to read the whole email. It says:

"Down the line we can add online capabilities and have dual signatories, but for now let's stick to emails."

This is an interim measure, as the facility is being developed.

Q. He says at the bottom:

"The account is ready to use now so just let me know when you want to start using it."

Do you remember him telling you that the account was available to use on 15 May?

A. I remember, generally, this happening. I don't remember specifics like that. I remember setting these facilities up on behalf of our borrowers with GCEN. I don't remember the specific timings of it. I don't remember Mr Thomson saying that. It is a long time ago, Mr Robins.

Q. If we look at the next day, <D1-0007316>. This is the very next day. Mr Barker is emailing you, saying: "Morning. Bank details for GCEN if you need them while I'm away."

He gives the initials. "EB" would have been Elten Barker and you understood that at the time?

A. Yeah, "SG" is Simon Golding and "SHK" is obviously Simon Hume-Kendall.

Q. So you'd had some discussion and agreement before this that you would be using the GCEN facility to make payments to their personal bank accounts?

A. So, we are three months on from the previous payments that you showed me. So the Mazars restructure is happening, and I believe this is in relation to that, and I think it will be, I believe, dealing with payments in accordance with what the Mazars restructure was.

MR JUSTICE MILES: What involvement did you have with Mazars' restructuring?

A. I didn't, my Lord. It was -- I believe it started towards the end of -- they engaged Mazars towards the end of 2017. Mazars provided them, I believe, comprehensive advice on what they wanted to achieve. The -- from memory -- I haven't seen it for a while -- there is, I think, five different share classes. The board wanted just one share class, and that involved paying out various different shareholders and preference shareholders.

MR JUSTICE MILES: Is your evidence in relation to that based on things you have read recently, for the purposes of these proceedings, or did you -- how much did you understand about Mazars' involvement at the time?

A. I understood that they were getting advice from Mazars on the restructure. I didn't have detailed knowledge of it. I sat down -- we met with LOG's board, or LPC's board, on a quarterly basis, so we would have had high-level knowledge of it, my Lord, not detailed knowledge. We had a knowledge that they were being advised and there was a restructure and some shareholders wanted to be paid

out, and there is obviously preference shares, and it was in line with that -- in line with that advice that we believed the board had all agreed to.

Q. In the previous email on the page, you'd sent your bank details to Mr Barker. You understood that the four of you were going to be sharing payments via GCEN?

A. For this purpose, yes, and I also, at that time, reaffirmed to my directors, so it was also, again, noted in our conflicts policy that this was happening --

Q. Your understanding --

A. -- in our conflicts register.

Q. -- at the time was that LCF would pay money to GCEN and it would be split between the four of you?

A. I believed it to be in line with the instructions they were getting and advice they were getting through Mazars.

MR JUSTICE MILES: Sorry, can you just answer that question?

A. Yes, sorry, my Lord, is the question -- I'm just trying to provide context, my Lord, sorry.

MR ROBINS: If we look at <D1-0007361>, Mr Barker emails you the next day to say:

"Meant to send you percentages for the sale of LPC pref shares ..."

Then there are four initials. You would have understood that to be a reference to the four of you?

A. Yes, I think "RT" is a typo. I think that would have been "AT".

Q. So, you would have understood you were getting 7.5 per cent at this point?

A. But, again, that's with -- my buyout is at 5 per cent and I believe this is just them trying to pay me out sooner rather than later.

Q. If the buyout documents, as you call them, had existed and had governed the position, you wouldn't have been getting 7.5 per cent, would you?

A. No, the buyout is -- has a ceiling over a period of time. It's their choice how they wanted to pay that out, if they wanted to pay a larger sum, if they had 50 per cent there, for example, payable to me as a larger sum to pay me out sooner, or they could have paid out 2 per cent. They are choosing to pay out sooner rather than later.

Q. May I suggest what, in fact, happened is at some point you said, "Look, I'm the person who is running LCF on a day-to-day basis. I should be getting more than 5 per cent of what we take"?

A. Mr Robins, on that, what you're suggesting through your cross-examination is, and through the years, I was the one running everything, I was the one dealing with the security, I was the one raising money. If I was the architect behind all of this and empowering it all, I would take the lion's share and be living in a non-extradition country, not the smallest share with a ceiling. So I don't take what you're saying.

Q. So you say that's not a conversation that ever happened?

A. No, it's -- I have a buyout agreement. There is a ceiling on it. I would have had a conversation that, "We need to pay you out sooner because" -- I would have had a conversation. And I mentioned earlier that I reaffirmed to my fellow directors what is happening. They were already aware of my position, of my historic, my buyout. I reaffirmed to them, when all of this was going on again, to re-enter it onto our conflicts register, which I believe it is, and I also think it was discussed with PwC as well in their related-parties disclosure.

Q. The email says nothing about the so-called buyout. It says, clearly, it is for the sale of LPC preference shares. You knew that your percentage entitlement had gone up from 5 per cent to 7.5 per cent, didn't you?

A. What they're doing there -- so, the value of -- my understanding, I'm bought out in 2015. There is a ceiling for that. Yes, they are -- the value of the assets are growing. Yes, they are -- this is a payment instruction for an amount of funds. I couldn't proceed over the figure in my buyout agreement. The 5 per cent related to what I owned at the time or what I was beneficially owed at the time, and this is an instruction for funds to be paid. Once I -- my understanding is, once I reached that ceiling, or I reached the five-year threshold, that would have been it.

Q. That's not true, is it, Mr Thomson?

A. Yes, it is true.

Q. Can we look at <MDR00154613>, please. You emailed Katie Maddock --

MR JUSTICE MILES: Sorry, you said then in your answer "The 5 per cent related to what I owned at the time or what I was beneficially owed at the time".

A. Yes, my Lord.

MR JUSTICE MILES: What do you mean by "at the time"?

A. In 2015 -- so, my buyout agreement was I owned -- I had 5 per cent of all the companies, or the value of 5 per cent of all the companies, up to a ceiling -- and I've not read it for a while, so I may not be explaining it well -- but I had 5 per cent and they were buying that out, and that was 5 per cent in all the associated companies, but it had a ceiling of 5 million and a term of five years.

MR JUSTICE MILES: A number of these companies that we have been looking at weren't any part of the business at that time, were they?

A. No, but the buyout agreement and the MOU, I believe, says that, if any other companies are created that were attached to and the assets moved to those, they would also be captured, and that was a protection for me in case they moved assets elsewhere, so the initial that I was involved with didn't have the assets.

MR JUSTICE MILES: But most of these companies weren't assets which had been moved elsewhere in the company, they were new ventures, weren't they?

A. Back in 2015, they had all started and I had worked with them. Yes, there are companies that were created out of those. So, the idea is that, if I was involved in -- let's call it, if I can, an embryonic stage, that carried through to any associated companies that were linked to that. Perhaps I'm not explaining it well. The idea was that there was 5 per cent across anything connected to any of those embryonic business ventures.

MR ROBINS: So, if you had to put it in your own words, what would you say was the scope of the coverage of the SPA, if I can put it that way?

A. So, if I was involved conceptually in a venture, and that venture grew and other companies were created that were attached to the original venture, the 5 per cent beneficial interest would carry forward and include those entities that were attached to the original venture. So, the oil and gas venture. I was involved in the start of that. The property side of things, I was involved in the start of that. Yes, they grew and other companies were attached on and they developed and the organisations grew, but the original venture, I was involved with. So my 5 per cent beneficial interest in the value of covered that. That is perhaps --

Q. This is actually a problem that emerged in February '19, isn't it, when Mr Sedgwick, drafting the SPA, said, "Look, we have got a problem because some of the companies that we are saying you were bought out from in July 2015 weren't even part of the group at that time, and so we need to have some clause to try to expand the coverage of the SPA to resolve that problem". That's a discussion you had with Mr Sedgwick in February 2019, I suggest?

A. No. I stick with what I believed my buyout agreement to be that we signed in 2015.

Q. What Mr Sedgwick said is, "Well, look, you had some money under the LPE SPA, which covered IT companies, and you have had some money under the LPT SPA, which covers what we might call oil and gas, so let's stick a clause in the SPA to say, in July 2015, when all of that was barely a glimmer in anyone's eye, you had the intention of covering it with the SPA?"

A. Those SPAs, I believe, were internally for them. I wasn't involved in those.

Q. The SPA you signed --

A. Sorry, I'm getting confused. You're talking LPT -- can you just rephrase --

Q. Let's go to what I'm looking at.

MR JUSTICE MILES: Call it the buyout agreement.

MR ROBINS: Let me call it the buyout agreement. Mr Sedgwick said, in February 2019, "We need to stick something in the buyout agreement to cover the fact that you've got payments under agreements relating to companies which didn't exist, or which no-one had an interest in, in July 2015".

A. I stick with what I said, Mr Robins, that that is my understanding of what I signed in 2015, as I explained to you.

Q. If we go to the next document, <MDR00154613>, which is on the screen now, you're emailing Katie to say: "Can you send £5.5m to the below account. I'll give you a call a little later to talk it through but just need to get the funds to GCEN in preparation." You were rubbing your hands at this point, thinking, "Excellent, I'm getting £412,500 of this money"?

A. Was this for the technology buy-in at the time? This could be a specific transaction that the board of LOG were buying in technology companies. Is this what -- I think that may be what that relates to.

Q. What do you say was your understanding at the time?

A. That is my question. It is a good number of years ago now. I'm looking at the figures at the time. Could that -- I don't remember the exact dates. I do remember the board of LPC, they were having a

restructure, dealt with that, and they were also expanding and buying in what they called technology assets, and I believe they agreed -- I think Mr Hudson advised on a 20 million buy-in figure. This could very well relate to that. Which, in that case, it would be London Oil & Gas using its facility with LCF to buy in in accordance with what the board wanted.

Q. So --

A. I'm guessing at the time. I'm looking at the date. I know that happened let's call it summer-ish -- I can't remember the specific date. This could be to do with that or it could be involved with the Mazars restructure.

Q. At the time, did you understand or consider yourself to be a 7.5 per cent owner or 5 per cent owner or any per cent owner of some technology companies?

A. Again, it's a buying in and a growing of the original venture. It is an expansion of the original venture. So, my understanding would be that, as that expands, then I do receive a benefit under my buyout agreement, but there is a ceiling to it.

Q. So you say, under your buyout agreement, if Mr Hume-Kendall and Mr Barker decided to invest some money that had been borrowed from LCF in a technology company, you would immediately own 5 per cent. Is that your evidence?

A. I think the technology discussions happened a good few years before that, and they were developed and they were in association with ...

Q. But just in terms of my question, if Mr Hume-Kendall and Mr Barker decided to invest some money they borrowed from LCF in a technology company, is it your case that you would -- as soon as they did that, you immediately owned 5 per cent of the technology company?

A. The companies and the -- the ventures that we were dealing with, some at an embryonic stage, at the point I was bought out in 2015, yes, there was technology discussions that hadn't progressed. Yes, there was the oil and gas discussions that had started. And they were, as far as I was aware, all linked in the same pool.

Q. But let's say, at 2016 or 2017, some of the money that had been borrowed from LCF was spent on acquiring some shares in a technology company. Is it your evidence that you would have immediately been the beneficial owner of 5 per cent of those shares?

A. They were linked to what the group was doing or the ventures the group had started, discussions, everything else, back in 2015. My --

Q. But is your answer yes or no?

A. I can't remember the terms of my buyout agreement. I'm trying to remember it, Mr Robins. I have not seen it for a while. My understanding is, anything that those guys did that linked to anything that I had an involvement in, yes, I would.

Q. So, the answer to my question is yes?

A. Because of my prior association.

Q. But if the answer is yes, would you say "yes" for the transcript?

A. Yes, I was connected to it, if that's -- I'm just trying to provide context, Mr Robins, that's all.

Q. Well, my question was not, were you connected to it; my question was, if, in 2016 or 2017, some of the money that had been borrowed from LCF was spent on acquiring some shares in a technology company, are you saying that your understanding of your buyout agreement was that you would immediately have 5 per cent beneficial ownership of those shares?

A. Beneficial interest, not ownership, and yes.

Q. When you were asking Katie to send 5.5 million to the below account, you knew that the other 92.5 per cent would "go out through the other door", to use your term, didn't you?

A. If, indeed, this is the purchase that I alluded to earlier, yes, it is a buy-in, so, yes, I would have been aware.

Q. You knew at the time how much LOG had borrowed from LCF?

A. Yes, I would have been able to get that information. I had a general knowledge. If I needed specifics, I could have easily got the information.

Q. If we look at <MDR00159345>, we need to look at it in native form. Do you see row 159, at the bottom, that's the 5.5 in column E?

A. Yes, I can see that.

Q. You would have known at the time that that payment had the effect of increasing LOG's debt to LCF from under £62 million to over £69 million?

A. Yes, that's just that, Mr Robins.

Q. Of course you knew that the borrowing -- well, it is grossed up because the net sum paid had to be increased to account for Surge's fee?

A. Yes, I am aware. We were doing quite a lot with LOG's loan facility at the time.

Q. So you knew that the 5.5 was actually going to cost LOG over 7.5?

A. Yes.

Q. If we look at <MDR00220173>, it is an email to you from Mr Barker, and he sets out the percentages and the bank sort codes and account numbers. You understood that he was asking you to instruct GCEN to distribute the 5.5 million to those people in those percentages?

A. There would have been a drawdown request as well. But, again, is this linked -- and I can't remember the time or the date. But, is this linked to the purchase in of the technology company, which I had sat down with the board, and I am aware that they discussed it and agreed it.

Q. When you got this, you would have understood that he was asking you to instruct GCEN to distribute the 5.5 million to those people in those percentages?

A. Again, it's linked to that, and, yes -- sorry, in answer to your question, simply yes.

Q. You would have understood that you were to instruct GCEN to transfer 7.5 per cent to your own bank account?

A. Yes, because I was part of that, and GCEN was aware I was part of it and so were my fellow directors.

Q. If we go to <MDR00156052>, that's your email to, in the middle of the page, GCEN, to Luke at GCEN just a few hours later:

"Please can you distribute the £5,500,000 held in the LCAF distribution account to the below payers in the amounts highlighted less the agreed payment fee." Mr Barker's email to you was very brief. This is something you had presumably discussed with him at the time?

A. Again, this is the buy-in of the technology, or the Mazars. Yes, we would have discussed it at the time. Yes, there would have been other drawdown requests in relation to this. And I did this believing that this is what the board of LPC/LOG had all agreed to and approved.

Q. At this point, you weren't aware that, when you got your 7.5 per cent, 92.5 per cent was going through the other door?

A. For these transactions, yes, I was aware.

Q. You were aware of that throughout the entirety of the period, weren't you?

A. No. You are inferring from these specific transactions that that was the case for three years. That's not the case.

Q. Presumably, you had to tell Luke at GCEN what these payments were for?

A. I believe there is correspondence on that. I don't remember the specifics of it. Again, is this in relation to the buying in of the technology assets?

Q. Well, let's see at the top of the page, and then you can tell me if this is what you said to Luke. He says: "Leyla will instruct these for you now. "Just to confirm, this payment is on behalf of one of your borrowers, London Power Corporation." Was London Power Corporation a borrower?

A. They were a parent of a borrower.

Q. Is that what you think you told Luke?

A. We had that discussion. I spoke to Luke, we had a very informal relationship. I had got to know him over the three years.

Q. He says:

"LPC are purchasing a company that is owned by the individuals below, hence the payments to personal accounts."

Is that what you told Luke?

A. That's clearly what I discussed with him. Again, I believe this was reaffirmed in our conflicts register, we redid that again.

Q. Was LPC purchasing a company owned by you and the other three?

A. This is what I think we were discussing or I mentioned previously.

Q. Looking at this, is it your evidence that these payments actually related to the LPC preference shares?

A. Sorry, you've just jumped back then. We have got two things going on here. We have got the Mazars restructure, which I believe the board agreed on, and then you've got the buying in of the

technology asset, which I also believe the board agreed on. Some of it had an overlap. I don't remember the dates, Mr Robins, sorry.

Q. Which do you think you had told Luke that it related to?

A. This looks like it is buying in. So, it clearly says there, "purchasing a company that is owned by the individuals", so ...

Q. Were you just trying to come up with something to fob Luke off?

A. I don't believe so. What does the rest of it say? Let me read the rest of the email, sorry. Again, I cover off -- we were clearly discussing conflicts of interest at the time, and I did again with the board in LCF. So there would have been other emails and documentation on this.

Q. Can we look at <MDR00157732>. You're asking Luke to distribute 1.9 million from LCF's account to the below beneficiaries. You're getting £352,000. This was, as it had always been, wasn't it, the more money you could lend to the companies associated with your three associates, the more money you would get back into your personal bank account?

A. Again, I believe this is linked to the buy-in the board of LPC/LOG agreed on. You have jumped, I think, about a week/week and a half. We were discussing in the email before documentation. This is payments under that.

Q. Throughout the period that we have looked at, that was the template, wasn't it: the more you could throw out the door at the companies associated with these three individuals, the more you'd get back into your personal bank account?

A. No, Mr Robins, that is incorrect. I am aware because of these transactions that I was fully aware of how much these people were getting. They were linked to specific activities that were agreed by the board. That isn't the case over the period of LCF proper.

Q. We saw that Luke asked for some documentation. Let's look at what you sent to him. <MDR00160089>. You're forwarding an email from Nicola Wiseman to Luke Tofts, that's been sent to you originally on 3 July?

A. I don't know why I've taken so long to forward it to him. It was sent to me on 3 July. I forwarded it on the 17th.

Q. Let's look at the attachment, <MDR00160692>. It's dated 21 June 2018. When do you say you first saw this agreement?

A. I can't remember when I first saw the agreement.

Q. Do you say you'd seen it before the 5.5 million payment by GCEN or afterwards?

A. I can't remember when I first saw the agreement, but I do know that I was attending -- I had attended several board meetings with LPC where the -- during the year, not just specifically for these things, that they had discussed and approved and progressed Mazars' advice on restructuring and also the buying in of this. I can't remember when I first saw this document.

Q. So, this is a --

A. Sorry, I know it was discussed. I can't remember exactly when I saw it first.

Q. This is a document that, by this point, had justified payments to you of £760,000, over a quarter of a million pounds. What were the names of the technology companies that you owned 5 per cent of?

A. I had a beneficial interest in -- I want to say Asset Maps, Reserec, there was -- I forget the other one. The largest one was run by a chap called Jagadeesh Gashu [as spoken], I think his name was, an Indian gentleman.

Q. When did you get those beneficial interests?

A. It's the same answer as I gave you before, Mr Robins: the beneficial interest stems from my associations that I left in 2015.

Q. So, Luke replied to you at <MDR00161123>. He's read the agreement. He says:

"To confirm the payment was made on behalf of London Power Corporation to purchase shares of: "London Artificial Intelligence Limited. "Intelligent Technology Investments Limited. "Asset Mapping Limited."

He asks you to confirm:

"The payments to yourself were in relation to shares that you owned in the companies mentioned above?" He asked you to confirm the nature and business activities of the companies and if an independent valuation was sought for the companies. Do you remember receiving this email from Luke?

A. I clearly received it. I know Luke and I corresponded on these things.

Q. Do you remember thinking you had to fob him off by trying confuse him with some complicated terminology?

A. I would have responded to him.

Q. But you don't remember thinking that?

A. No.

Q. Were you under a non-disclosure agreement at this time?

A. The artificial intelligence was, I was led to believe, very confidential.

Q. Had you signed a non-disclosure agreement?

A. I can't remember at the time. I may have done, because they were very, very picky, with the AI.

Q. You haven't disclosed any non-disclosure agreement in these proceedings. Do you say that you think you signed one or you can't remember?

A. I may very well have done. I know they were very concerned with confidentiality, and the value of the technology would diminish if it was leaked.

MR JUSTICE MILES: You weren't being asked questions about the nature of the technology, were you, by Mr Tofts?

A. In --

MR JUSTICE MILES: He was asking you some specific questions?

A. Yes, and I don't remember my answers to them, my Lord, but I believe I would have answered him.

MR JUSTICE MILES: Just going back to my question, you weren't being asked questions about the details of the technology, were you?

A. No, that's not ...

MR ROBINS: You weren't under any restriction that would have prevented you from telling him about the nature of the business or the activities of the companies, were you?

A. Again, I don't remember. I know there was a lot of confidentiality around it. There was lots going on at the time. I can't remember the specifics of it. I do remember engaging with Luke.

Q. You hadn't seen any valuation of any of those three companies by Ernst & Young, had you?

A. I had. There was various different documents and figures that the board of LPC had shown me. Mr Hudson, I believe, was dealing with it. I think he came up with a figure of 20 million.

Q. Mr Hudson wasn't from Ernst & Young, was he?

A. No, he wasn't, but I was shown various different figures in various board meetings that I had with LPC.

Q. But you'd never seen any independent valuation of any of those companies by Ernst & Young, had you?

A. Again, I was provided with, at board meetings, various -- I cannot remember what companies they were from.

Q. So, is your answer, "I don't recall seeing one"?

A. I recall there being figures. I cannot remember who produced them. I know Mr Hudson was dealing with it.

Q. You hadn't seen any independent valuation of any of those companies by Mazars, had you?

A. The same answer, Mr Robins: I had been given figures and various different documents that I'd seen at board meetings. I cannot remember who produced them. Again, I know Mr Hudson was dealing with that.

Q. Can we look at <MDR00161195>. You replied to say: "I can confirm the points you make ..." It's about the companies and the reason for the payments, I think:

"... and can confirm the companies are all of a technological nature based around artificial intelligence that compliment LPC's future business mix. I would like to give you more detail but I am under an NDA and it involves market sensitive info that could effect a connected listed company that LPC has convertible options in."

That was all nonsense to fob him off, wasn't it?

A. No, the initial artificial intelligence was aimed at predicting future gas prices. That was why LPC was very interested in acquiring it, and if -- what I was told is, if that was -- if that became public knowledge, that could impact IOG. So "LPC has convertible options" in, that would be in reference to IOG. I would have been told that at the time.

Q. That, itself, makes no sense, does it? If a parent company acquires some shareholdings in other companies, that's not going to affect the value of the shares in a company that that parent company has convertible options in. You were just making something up to fob off Luke Tofts?

A. What I think I was getting at there, artificial intelligence was aimed at initially predicting gas prices and, if I was privy to insider information in IOG, and the idea was to use the artificial intelligence to predict when IOG -- it would be best for IOG to sell the gas that it would have -- when it got to production, and that would be market-sensitive information. So every time I met with IOG on a quarterly basis, and LPC, it was reconfirmed to me that all of this is insider knowledge and I/we -- because Kobus came with me -- weren't to divulge any of that. So the more I look at it, the more recollection I have, so, yeah, I believe there would have been an NDA.

Q. In the final paragraph, you say:

"When the purchase was transacted the board considered various valuation methodologies ..." In the final sentence, you say:

"I can confirm EY and Mazars were involved." They hadn't been involved in valuing these three companies, had they?

A. I sat down with the board and this is what -- as I said, we produced various different bits of documentation. EY were assisting them. They weren't their auditors. I believe they were quasi corporate finance advisors. They used a combination of net present value and Black-Scholes, to future value what could impact. I think the Mazars bit is a reference to restructuring. So I/we were privy to a lot of documentation. Again, it says "sensitive insider information". That was drilled into every director that went and sat down with them.

Q. You'd been drawing on LOG's facility to make payments to the personal accounts of the four of you. You passed on a document to Luke Tofts to justify it. You didn't actually care whether the justification was true or not, you just wanted to ensure that Luke Tofts stopped asking questions?

A. No. Towards the end of July, this had -- I first found out about the Mazars restructure in late '17, although I only had high-level knowledge of it. I met with LPC on a quarterly basis, sometimes more regularly than that, and certainly around this time we did. My fellow directors met with them as well. We met with IOG. So, we had a high-level knowledge of what was going on. I obviously had a more specific -- because I dealt with these bits, and we were given lots of information. It wasn't just EY and Mazars. We were given CPRs -- updates on those CPRs, we were given projections on what could happen if they could predict gas prices going forward. So there was lots of information at the time that we were taken through in board meetings that we couldn't take away with us or we were told we couldn't take away with us.

Q. Just to clarify, you referred to CPR. That stands for "competent persons report", doesn't it?

A. Yes, it does.

Q. That's where a sufficiently qualified gas or oil specialist certifies the volume of fossil fuels contained in a particular geographical location, isn't it?

A. Yes.

Q. That has nothing to do with three technology companies, does it?

A. It does, because, if you have a CPR that takes you through, "This is the amount that is available", and then you can marry that up with predicted technology on when you bring it out of the ground and sell it, that's very valuable information, because, if you store gas outside of the ground, there's a cost to that. If you keep it in the ground, there's no cost to that. That's an extremely simplistic way of looking at it. But if you can predict when to hold and when to sell, then you make more profit.

Q. Asset Mapping was a company that dealt with what's called facilities management, wasn't it?

A. Yes, it turned buildings into intelligent buildings.

Q. Yes, it would use IT to enable people to understand what assets they owned and to monitor those assets?

A. Yes. I believe it had patented technology, and I say -- if I can explain what I believed it was, in terms of turning a building into a smart building, if you had, let's say, Canary Wharf and there was an issue -- a lighting issue in part of the building. You would then need to employ a maintenance person to eventually go out, find what the issue is, find what the part is, go away, source the part, then go back there and deal with it. What Asset Mapping did is, it made the building a smart building and the technology would tell you, in room whatever, "This is the issue. That's the part you're going to need", so you had far less time and cost in looking after that building.

Q. So, when you said to Luke Tofts, "the companies are all of a technological nature based around artificial intelligence that compliment LPC's future business mix" and that you were "under an NDA and it involves market sensitive info that could effect a connected listed company that LPC has convertible options in", you would accept that that explanation is completely inapplicable to Asset Mapping?

A. Okay. I was talking about the artificial intelligence, mainly.

Q. So when you said "all", you were not being accurate in your response to Luke Tofts?

A. No, I can see I should have gone into further detail. I didn't.

Q. You were deliberately being loose with your words to try to fob him off?

A. I don't take that, Mr Robins.

MR JUSTICE MILES: Just before you leave that, I have just one question. One of the questions Mr Tofts asked you was about -- he asked you to confirm that payments to yourself were in relation to shares that you owned in the companies. Do you see that? You can see it in the lower one, although it has gone a bit garbled.

A. Sorry, my Lord, I'm lost.

MR JUSTICE MILES: Do you see it says, about four bullet points down --

A. Yes.

MR JUSTICE MILES: He says at the top:

"Just a couple of questions that I'll need to cover to add details to the system:

"...

"The payments to yourself were in relation to shares that you owned in the companies mentioned above?"

A. Yes.

MR JUSTICE MILES: You don't seem to have answered that question in your email, as far as I can see?

A. Mr Tofts and I had quite an informal relationship, we spoke quite often. I may very well have discussed this with him. But it would have been beneficially owned.

MR JUSTICE MILES: Meaning that the shares, what, were beneficially owned by you, somehow?

A. I don't know. I don't remember having the discussion with him. I believe he would have had the discussion because he's asked me the question. Beneficial ownership relates to my buyout agreement, my Lord, and, again, at the time, I reaffirmed all of this to my directors and it's in our conflicts register. So I believe I would have had the conversation with him about beneficial -- beneficially owned, yes. I don't remember the specifics of it, but we did have quite an informal relationship.

MR ROBINS: If we can look at the whole page, do you see Luke had emailed you at 11.26? It looks like you replied at 11.08. Do you think it was probably 12.08 and that something has gone wrong with the -- it is being pointed out perhaps Luke Tofts was based in Malta. Do you think he was in Malta?

A. He could have been. I did spend quite a lot of time working with Luke in Malta. He did come back. I don't know when.

Q. But do you think it is probably that he emails you at 10.26 and you replied about half an hour later?

A. I don't know. I don't know if he was in Malta at the time. He did go back and forth and he did eventually come back from Malta. I think he was there for 2017, but he did to and fro, so I don't know. Possibly.

Q. One of the points that Luke had made, as my Lord has pointed out, was that you owned shares in the companies that he'd mentioned. When you said:

"I can confirm the points you make", were you confirming that you owned shares in the companies he'd mentioned?

A. I don't remember, Mr Robins. As I say, I had a reasonably informal relationship with Luke and we talked often. So anything that I didn't cover off in the email, I believe would have been covered off in a conversation with him, if it is not contained in there.

Q. Can we look at <MDR00161335>. Luke is emailing you, and he's saying he's had a chat with Andrew. That would have been his colleague Andrew Fundell?

A. Possibly. There was two Andrews but it was usually Andrew Fundell. Andrew, I believe, was Luke's immediate boss.

Q. He says he's discussed:

"... if he thinks we would require any more information and documents on file. We're both in agreement that as you have the NDA it would be difficult for you to supply more documents at this time, so would it be possible for you to share some further documents in future when it would no longer be deemed inside information, please? Ideally an independent valuation or details of the IP

the company owns so we can prove the value is it fair, independent and any conflicts of interest were addressed."

Did you think, when you got this, you'd done a decent job in fobbing him off, but you should have one more go?

A. No.

Q. Was there information that you could have given them in relation to these payments?

A. In relation to the payments or the information, sorry, they're asking for there?

Q. The justification for the payments.

A. So they're asking for further information. I don't know at the time.

Q. Can we look at <MDR00161432>. At the bottom is an email from you. Over on the next page, you replied: "Happy to help where I can. I'm just mindful of the inside/NDA. I really appreciate you guys going above and beyond for me."

On the left, he says:

"We're happy to have docs after the information is no longer classified as inside.

"But if there are any documents regarding the ownership of the IP (happy for specifics to be redacted) by those companies or valuations of the companies by the auditors it would be helpful at this stage." Do you accept you didn't give Mr Tofts any further information at any stage?

A. I don't remember. Reading this, I would have had a conversation with the other parties on what they were -- what, if anything, they would be happy for me to release. I can't remember.

MR ROBINS: My Lord, I see the time. I wonder if that would be a convenient moment?

MR JUSTICE MILES: Yes. Just one question, Mr Robins. You went to that spreadsheet of, I think, redemption payments, the Katie Maddock one.

MR ROBINS: Yes.

MR JUSTICE MILES: It is really a question of what's the provenance of that, ie, where has it come from? I think it was in your clients' disclosure, but whether -- was it part of the records of the company or was it something that they have gathered through their investigations? Perhaps you could just --

MR ROBINS: We can take instructions and find out.

MR JUSTICE MILES: -- take instructions on that? Thank you, we will take five minutes.

(11.50 am)

(A short break)

(11.56 am)

MR ROBINS: Can we look at <MDR00160997, please. 20 July. Katie emails Luke and says:

"I'm about to send over 4.5 million to the same account details as before as per Andy's request." You'd asked her to send another 4.5 million to GCEN?

A. On the back of -- it would have been on the back of a request, if this is a LOG drawing, to draw down on their loan.

Q. To draw down on their loan to make payments to the four of you?

A. If that is, indeed, what this payment is for.

Q. Can we look at <MDR00161073>. It is an email from Mr Barker to you with the names and the percentages. You understood that the payment was to be distributed among the four individuals, including yourself?

A. If this looks like it is indeed linked to the purchase that the board had worked on and agreed, then, yes, I'm absolutely aware. I'm taking his instruction to leave X in their account in GCEN, down the bottom there.

Q. Mr Hume-Kendall's share was to be left in GCEN until he had come up with some paperwork to justify these payments?

A. It's their decision to leave. They drew -- the instructions are to draw the funds to their account in GCEN. We drew the funds to their account in GCEN. We instructed to pay away on their instruction, and they have instructed us to leave that amount in GCEN. They had their reasons for that. The instruction doesn't come across with "We're leaving this because". We would have just left it.

Q. But you would have understood that Mr Hume-Kendall didn't get his share until he sorted out the paperwork?

A. I understood from this that that amount of money is to stay in GCEN.

Q. Can we look at <MDR00161081>, please. You emailed Luke. So you just did what you were told, did you?

A. I did what I was instructed by our borrowers, yes.

Q. Well, you did what Spencer and Simon wanted you to do?

A. I did what we were instructed to by a director of our borrowers, that we were under the impression that -- well, we had attended board meetings and the whole board had discussed this and said, "Yes, this is fine". This is, I believe, the transaction to buy it.

Q. Sorry, what did you just say? "This is, I believe, the transaction ..."?

A. This is the transaction that we were talking to -- about, I believe, before the break, and this is a borrower borrowing funds in line with what their corporate purposes are and paying them out, and the board had agreed to do this.

Q. Can we look at <MDR00163911>, please, at page 2. Leyla emails you, saying:

"We have received [2.5] for your LCAF distribution account."

Were you having regular conversations with Mr Barker, Mr Golding and Mr Hume-Kendall, saying, "We have got a huge amount of money coming into LCF, we can really step up the payments that we're making to ourselves"?

A. Again, we keep our borrowers abreast of what we have available to loan. I have said that throughout this case. They didn't just get the information from me, they also spoke to the office.

Q. On the left, you say:

"Hi Leyla, great the £2.5 will be distributed shortly. It's in connection with preference share purchases.

"Luke I have the paperwork for this as although it involves the same parties the payments and further payments over the coming 12 months will be in connection with the purchasing of preference shares which forms part of an overall corporate restructure which Mazars have advised on."

That was just the latest in a series of cover stories for payments to you and your associates, wasn't it?

A. No, it is what it says it is there. As I have said before, Mazars were engaged with them late 2017. We had, in the earlier part of the year, a higher-level knowledge of that. We had had -- we, as a group of directors, had attended various different board meetings with LPC where this was discussed. All the parties involved in LOG and LPC were on board with the restructuring. They had agreed to move it forward. So, we have a borrower here that is restructuring. They are borrowing on a leveraged basis. They have the assets to borrow against, and they are restructuring in line with the advice they get from Mazars.

Q. When you say it is in connection with preference share purchases in the first line, purchasing of preference shares in the second paragraph, you were saying at the time that you were selling preference shares which you owned?

A. In connection with preference share purchases, it would have been part of my beneficial interest from my buyout agreement. I'm not saying to all of these people, "Yes", tagging onto the end of this email, "Oh, by the way, I've got a buyout agreement that gives me 5 per cent beneficial interest in this and some of it is going to come to me". They already know I'm receiving. It wouldn't be appropriate to put it in connection. But, yes, it is in connection with preference share purchases in line with the Mazars advice because there was, I believe, five different share classes, one of which was preference shares. Other people were bought out of their shareholding as well, and not the four people you're discussing here, and part of the restructure was paying down those preference shares over -- I can't remember the period of time, or if, indeed, there was a period of time, that Mazars had advised on. I've got in the back of my mind 18 months, but that might not be correct.

Q. Can we look at <MDR00164218>, please. You weren't getting 5 per cent, were you? You understood that the ratios had changed to 42.5:42.5:7.5:7.5?

A. Again, my buyout agreement has a ceiling. They are choosing to pay me more to get there sooner is what I take from that.

MR JUSTICE MILES: Can you explain why they would have done that, commercially? If they were only obliged to pay you 5 per cent, why are they now paying you 7.5 per cent?

A. I believe it's their decision, my Lord. I don't know the rationale for it. But, once I got to the 5 million, it would have stopped. I can't remember a conversation about it at the time. It is their decision, my Lord.

MR JUSTICE MILES: Can you explain why someone would do that, that they would pay an extra 50 per cent over what they are obliged to pay?

A. Perhaps they wanted to exit me sooner from the buyout agreement because they could see a clear conflict and they wanted it over and done with. That would be a question I would put to them, my Lord. It is their decision to do this. I didn't have control over it.

MR ROBINS: Can we look at <MDR00166028>. It is a drawdown request for £3.5 million, funds to be distributed via GCEN. When you saw this, you would have thought to yourself, "Excellent, this is another 3.5 to be split between the four of us in the usual ratios".

A. I see it is a drawdown request. If it then is part of the -- if it then is, indeed, part of the restructure or purchase, it would follow that those payments would be made. But, from this, it doesn't -- it is just a drawdown request at the moment.

Q. I suggest that's what you immediately thought when you saw this?

A. No, London Oil & Gas drew with reasonable regularity. You're just taking me to a specific drawing. Their loan profile shows that they regularly drew, as did Prime.

Q. Can we look at <MDR00165978>, please. We need to look at the next page. Do you see -- we can see on the bottom left, 17 August at 10.39. You are emailing Leyla to say:

"You should be receiving £3.5 million into the LCAF distribution account today, please can you pay it to the below accounts."

What you have done is to divide the 3.5 in accordance with the normal ratios, haven't you?

A. We would have got an instruction to do this. This is a borrower borrowing -- drawing down on their loan account and instructing where it is to be paid in accordance with -- this, I believe, would go with the document that we saw before, the purchase of the technology, I'm thinking, looking at the time of this and the date.

Q. You'd jumped the gun and sent an email off to GCEN before you'd heard from Mr Barker, hadn't you?

A. We may very well have had a conversation about it and I may have done it verbally. I don't know.

Q. Can we look at <MDR00166021>, please. It is an email from Mr Barker to you copied to Mr Hume-Kendall about half an hour after the one we just saw. He asked you to make the following payments from GCEN. They are in lower amounts than the amounts set out in your email to GCEN because Mr Barker had included £700,000 for London Power Corporation. Looking at that, do you accept that you saw the drawdown for 3.5 and you thought, "I'll get this sorted out, divide it in the usual ratios", and you emailed GCEN before you had heard anything from Mr Barker?

A. No, I would have done that on a conversation with him. Perhaps I was in a hurry to do something else. I don't know. I would have done it on a conversation. And then he would have said he would have backed it up in an email and he sent me this with the change.

MR JUSTICE MILES: When you say you would have done that, is that something you can remember?

A. I remember having -- at this time, I remember speaking to them on a reasonably regular basis, taking their instructions. I did speak to Mr Barker about these payments, and I can't, with definite accuracy, my Lord, say that absolutely, but I don't believe I would have sent the email to GCEN to make a payment away on behalf of a borrower without having some confirmation from them, and that confirmation could very well have been verbal, and then being told, "I'll put", "I'll" -- "Can you

email me that, Elten?", and he's saying "Yes", and then this arrived afterwards. So I jumped the gun on the back of the conversation. I believe that's what I would have done there.

MR ROBINS: Isn't it more likely that you jumped the gun by thinking that this was just more money to be divvied up and you hadn't spoken to Mr Barker, he hadn't told you that 700 was meant to go elsewhere.

A. I don't take that, Mr Robins.

Q. Can we look at <MDR00171024>, 11 September 2018. You emailed Chloe. Chloe Ongley was one of the administrative staff at LCF, wasn't she?

A. She was one of the people that ran part of the back office, yes.

Q. You say to her:

"Just to confirm LOG will be making a drawing request for £3 million today which is okay to be sent. If we don't have sufficient in the bond account you can temporarily use funds from our company savings account." You were happy for drawdowns to be funded from monies in the company's savings account, provided it was being divvied up between the four of you?

A. No. If you go back through LCF's history, if a borrower wants an amount and there isn't sufficient in the bond account, which is cleared bondholder funds, we would, and have done on a number of occasions, top that up from the company's own savings accounts and then rebalance later. So this isn't a one-off. This has happened before.

Q. You understood that the 3 million was to be divvied up between the four of you?

A. Indeed, this is the -- if this is part of the restructure/buying in, then, yes, it follows that's what it would be for.

Q. The drawdown request is <D2D10-00049530>. This is a drawdown request for £3 million, this time payable to London Power Corporation Limited. You would have understood that that would then be divvied up by London Power Corporation between four of you?

A. Not necessarily. If we got the instruction to do that, that's what we would have done, but just because we have got a drawdown request, it doesn't follow that that's what they are going to do. We need the instruction.

Q. If we look at <MDR00220286>, it is your bank statement, at page 372. At the bottom, we see £225,000 coming into your bank account. You would have understood that was 7.5 per cent of the 3 million and that the rest was being paid out in the percentages 42.5, 42.5 and 7.5?

A. Because that follows what had previously happened, but we would have, again, got an instruction for that, and it is their choice to accelerate the payments to me. That's in their power, not mine. Again, I have a ceiling with my buyout agreement. If they want to pay me out sooner, that's down to them. Yes, this looks like it was linked to the transactions that we have been discussing. So I -- we would have got the instruction and, yes, I would have known.

Q. If we look at another one, <MDR00220286> -- are we in that document? It is page 384. Towards the bottom, there is another 90,000 to you from London Power Corporation. You would have known that 510,000 was going to Mr Golding, 510,000 to Mr Hume-Kendall and 90,000 to Mr Barker?

A. If those were the instructions that we received to make those payments, then, yes --

Q. Well, the payments --

A. -- following what previously happened. But if that hasn't gone through GCEN, then, no, I wouldn't have necessarily known that. If this has gone -- sorry, I should have picked that up. I am slightly getting confused.

Q. The payment has gone from LCF to London Power Corporation and then London Power Corporation has divvied it up between the four individuals in precisely the same pattern as when it was going through GCEN. Is your evidence that you only knew when there's a document that shows precisely that you did know and that, when there's no such document, you say you didn't know?

A. That's down to them to make those payments. I have got no control and no visibility over the other things that they do with the funds that they borrow.

Q. But you knew that the monies were being divvied up in those ratios?

A. If the purchase and the restructure of Mazars hadn't been concluded, then I can see your argument there, absolutely. I'm not denying that. However, just because I received 90,000, I wouldn't know that the others had received. That was their decision. I didn't have any control or visibility over their banking.

Q. You knew precisely what was going on.

A. It was the same as with Elysian and Prime, that we discussed yesterday: I don't have visibility over this.

MR JUSTICE MILES: I don't think you are being asked whether you have visibility over their banking. I think you are being asked whether you knew that payments were also being made to them at the same time as you were receiving payments.

A. No, my Lord, unless -- sorry, unless they told me, I wouldn't know, just because I received the money, that they would also receive money.

MR ROBINS: Can we look at <MDR00191052>. At the bottom of the page, you email Chloe:

"Can we get to a drawing of 1.5 million out to LOG today? How much can we delay in [comms] etc ..."
Is that right, comms to Surge?

A. It would have been.

Q. "... and how much will we need to draw from savings?" You understood that the 1.5 was going to be divvied up between the four of you in those ratios?

A. No, if I had been asked -- or, if LCF had been asked, "Can we draw 1.5 million?", then I'm trying to assist. It doesn't necessarily follow. And they drew more regularly than this. You're just taking me to specific drawings. It doesn't follow that, just because they drew, I knew that it would be divvied up. You're taking me to drawings that it does follow that that happens, but what I'm trying to say is, they drew more often than that and payments weren't made.

Q. Look at <MDR00191598>. You will see that the very next day, 27 November 2018, Katie Maddock emails Luke Tofts to say:

"Further to our telephone conversation this morning we will be sending £1.5 million ... could this then be distributed as follows."

It is the same four individuals in the same ratios. That's information that Katie would have got from you, isn't it?

A. That would have been information she would have -- we would have received from the borrower.

Q. But you would have known that it was to be divvied up in that way?

A. If I'm on copy. So, we are -- we are in November 2018. Most of September I was -- well, a chunk of September, I was in hospital with Rickettsia virus. It took me two months to recover from that. So I wasn't operating a lot. So this may have come in -- I'm not saying it did or didn't -- and Katie actioned it. But a director would have known and approved what's going on. It may very well have been me. It might have been someone else.

Q. What about when GCEN called you personally to confirm?

A. In this instance, or --

Q. Well, in every instance. You would have known about all the payments through GCEN because you either instructed them or confirmed them?

A. No, not necessarily. The ones you have taken me to, yes, I see, and I think you're inferring from the earlier email, which was many months ago, that they said they would personally phone to confirm, but then they also said in that email that they would be setting up an automated process to do this and sign off by email and other bits. So, no, I don't take that. Mr Robins, this may have come in without my interaction. I may have interacted with it. From this, I can't tell you.

Q. Can we look at <MDR00191630>, please. Luke replies to Katie to say:

"Leyla will give Andy a call now to verbally confirm the details ..."

You were the person who they called to confirm and you would have been called in this instance, wouldn't you?

A. If it says I had been called -- we would be called in that instance, but it wasn't me all the time, at all.

Q. <MDR00191671>, just to confirm. Leyla says: "I have confirmed the below with Andy and they are being processed now for you."

So you knew that the 1.5 was being divvied up between the four individuals, didn't you?

A. In this instance, yes, I accept that. But you've got two-step verification there. And, yes, as I said to you a couple of emails ago, I may very well have been involved, and clearly I have been.

Q. Can we look at <MDR00008549>, please. This is the share purchase agreement between Mr Hume-Kendall and London Power & Technology (2018) Limited. Do you know what this relates to?

A. It relates to a share purchase agreement between Mr Hume-Kendall and London Power & Technology.

Q. Do you know what it is?

A. Standing here now, Mr Robins, when you have taken me to so many documents, I have got so much going on in my head, I am, at this moment in time, slightly at a loss.

Q. Look at page 3, please. Do you see that the company is London Power Corporation and the sale shares are --

A. Can you make that a bit bigger? Sorry.

Q. The company is London Power Corporation and the sale shares are 25 million redeemable preference shares of 1p each in the company?

A. Yes, I see that.

Q. Does that help you understand what we're looking at?

A. Yes, I can see what we're looking at, yes.

Q. Did you own any redeemable preference shares at 1p each in the company?

A. This is part of the restructure and everything else. Again, it's -- my buyout agreement, I had 5 per cent in debentures that were connected to anything that -- and I can't remember the wording of the MOU and the buyout agreement, but anything that they did that I was -- that was connected to them and what we were doing previously, I would have benefited from. So if this is connected to that, then, yes, there was a benefit.

Q. So your evidence is you would have been entitled to 5 per cent of whatever was paid under this under your buyout agreement?

A. A 5 per cent benefit, I believe, if this is indeed where we are looking -- could we go to a signature page to see who signed it?

Q. The signature page is page 9. If we look at page 4, at the bottom, clause 3.1 has a purchase price of over £32.2 million. Is it your evidence that you were entitled to 5 per cent of that under your buyout agreement?

A. My buyout agreement entitles me to 5 per cent -- a 5 per cent ceiling. If the assets -- if the assets grew bigger than that, and I -- the ceiling -- I would have lost out. But over all of this, my buyout agreement is 5 per cent beneficial interest in everything that they do going forward for a period of time. A portion of this, if, indeed, that's what happened, then there would be a beneficial interest in line with my buyout agreement.

Q. The original agreement was simply that you would get 5 per cent of money from LCF that was divided up between the four of you. That changed to 7.5 per cent?

A. No. My buyout agreement is 5 per cent up to a ceiling of for a period of time. So, yes, there is the 5 per cent, but that is a beneficial 5 per cent, not a specific share, I believe is what we were trying to achieve with that agreement. The 5 per cent is a value, as opposed to a share. I agree the documentation that we have gone to is not entirely reflective, but my -- our understanding is that it's 5 per cent beneficial interest in terms of value of debentures over a period of time up to a ceiling. How they chose to pay that out is down to them. When I got to the ceiling, if indeed I did get to the ceiling, then it would have stopped.

Q. Mr Thomson, you were just given documents to justify large payments. You didn't know or care whether this purchase price was correct or justifiable?

A. The board of LPC and LOG, we, as LCF and myself, relied on the calibre of the people that were on that board, and this is what they -- there was, again, buying in and restructuring. This is part of what

that board, who are -- have some very high-calibre people on it, have agreed to do. So, the borrowings of LOG were in line with what the board wanted to do, and we lent accordingly. We were happy with the value of the security that we held. We were happy that it covered the loans that we made. And we advanced for their corporate purposes. Once they borrowed, what they did with the funds, they're their funds then, and they have a plan that they're working through, and this is part of their plan. It wasn't just the people you're mentioning.

Q. You say, don't you, that the suggestion that you simply gave away LCF's money to other defendants is absurd?

A. Yes. I didn't just do that, no.

Q. You didn't just do that?

A. No.

Q. So you did that and other things; is that right, Mr Thomson?

A. I didn't do that. There was a borrower -- a lender/borrower relationship, there was security that we were happy with. The borrower was going through their restructuring plan, their buying-in plan, that the board had agreed on. We had attended board meetings. We had sat down at the table with the entire board, with all of the people involved, and they indicated, "This is what we are doing. This is a process that we are going through and we are happy to borrow to do it". We, as a lender, lent and, yes, I benefited because of my buyout agreement. I disclosed that to my directors. It is in our conflicts register. I disclosed it previous years, and I redisclosed it when this was going on. My prior associations are in the PwC connected parties document. I disclosed them to them. My buyout agreement is in email correspondence in early 2016 that is in your written opening, Mr Robins.

Q. It is not absurd to suggest you simply gave away LCF money to other defendants, is it, because that's precisely what you did?

A. I didn't just give it away. If I was going to do that, Mr Robins, I would have given myself -- if I'm the architect of all of this, I would have given myself the lion's share and be living in a non-extradition company. I didn't do that.

Q. You were happy because you were getting your share but you thought the 5 per cent wasn't enough and it should go up to 7.5 per cent?

A. I believe I have already answered that question, Mr Robins, on a number of occasions.

Q. You say, when you set up LCF, you anticipated making loans to a number of businesses depending on what approaches you received from brokers?

A. The original idea of LCF, it evolved. Yes, that was what we were looking to do. We didn't get to that point. The first three years of LCF were -- in a company's history, three years is just starting. We, as a company, expanded very quickly. Yes, we only had a few borrowers. We were working from mid 2016 to try and get our costs of borrowing down.

2019 was going to be a transformative year. We were expecting large repayments from our borrowers, one of which being LOG. We were expecting a 40 million repayment from them in the first half of 2019. Our cost of funds was going to reduce dramatically with our regulated bond. Unfortunately, 2016, when we tried to put a bond together for discretionary fund managers, which would have lowered our cost of borrowing to a couple of per cent, as opposed to 25, that would have

been transformative. We would have lent to other companies because we would have not had the cost of borrowing. We were trying to work through a plan, but, sadly, the EWSM bond didn't get off the ground because the FCA chose, after we had spent the money and time to produce it, to apply MiFID 3 to discretionary fund managers, so that meant the asset, that we had just spent a couple of hundred thousand and almost a year developing, was useless. So we then started to develop another one, which then took a year and a half to do, which is the regulated bond was going to be listed on all.

MR JUSTICE MILES: Can I ask you to pause there, Mr Thomson? Can you go back to the question, Mr Robins?

MR ROBINS: You say, when you set up LCF, you anticipated making loans to a number of businesses depending on what approaches you received from brokers.

A. Initially, yes.

Q. Can we look at <MDR00195308>, please. This is 10 December 2018, which is when the FCA paid a visit. Katie Maddock is emailing a list of borrowers' names to Eloise Wade. The FCA had asked for this information, hadn't they?

A. Yes.

Q. If we go to <MDR00195610>, you can see the borrowers' loan book summary 10 December 2018?

A. Yes.

Q. At the bottom, total loans in force, £236.4 million. That's the gross sum owed by the borrowers, isn't it?

A. Yes.

Q. So, that includes the 25 per cent Surge fee?

A. Yes, because the cost of funds were passed on.

Q. So that's, broadly speaking, the amount that had been raised from bondholders?

A. Yes.

Q. So, when we run through it, London Oil & Gas, we know about that. That's Mr Hume-Kendall and Mr Barker and Mr Golding, isn't it?

A. Yes.

Q. Do you say you owned 5 per cent of that under your buyout agreement?

A. I had a beneficial interest up to a ceiling, as I've explained before.

Q. Then Costa Property Holdings Limited. That, at this point, was owned by Prime, wasn't it?

A. Yes.

Q. But, previously, had been owned by Elysian?

A. Yes.

Q. And, before that, by London Group?

A. Leisure & Tourism Developments or Global, I can't remember which one it was immediately after that.

Q. Before the Elysian transaction, that was a company run by Mr Hume-Kendall and Mr Barker and Mr Golding?

A. Yes.

Q. In which you had your 5 per cent beneficial interest?

A. I had the beneficial interest, yes, I believe we have gone through that.

Q. Then Atlantic Petroleum Support. That's the company that got the £16.4 million of L&TD's liability?

A. Yes.

Q. That's gone up, at this point, to 19.2. Is that because LCF has lent further money to Atlantic Petroleum Support so that Atlantic Petroleum Support can pay the interest due on the loan?

A. I don't know, Mr Robins.

Q. Is that probably the explanation?

A. I wouldn't like to guess.

Q. Then Colina Property Holdings Limited. That's owned by Prime at this point, is it?

A. Yes, it is.

Q. Waterside Villages Plc is also owned by Prime?

A. Yes, it is.

Q. Cape Verde Support. That's one of the Support companies that got some L&TD liability, isn't it?

A. Yes, it is.

Q. Costa Support the same?

A. Costa Support is Prime.

Q. But it's one of the companies that originally got some of the L&TD liability?

A. Yes, sorry, but I'm saying it's owned by Prime.

Q. Then the River Lodge Equestrian one. That's a company owned or part owned by Mr Golding, isn't it?

A. Yes.

Q. That took a novation of the loan that had been advanced to Mr Golding as a sole trader?

A. Yes, under Home Farm.

Q. Colina Support is another of the Support companies; yes?

A. Yes. Now, I believe, owned by Prime.

Q. River Lodge Equestrian 2. That's another loan to Mr Golding's equestrian company?

A. I'm not sure why there was a 1 and a 2. There would have been a reason at the time.

Q. And Waterside Support is another company that got some of the L&TD liability, isn't it?

A. Again, owned by Prime.

Q. Cape Verde Resorts. By this point, a contract in respect of Paradise Beach has been cancelled, hasn't it?

A. We are aware at this point and they -- we had engaged with Mr Hume-Kendall and Mr Barker. We had said, "Either repay it or provide other security for it, and show us how you're going to repay it". They did. They offered a security package for that and a repayment method. Unfortunately, the intervention happened. Part of that included personal guarantees as well as other security which were still on the table for the administrator, if they wanted to take it forward, and they didn't.

Q. That was something put in place for the purpose of LCF's audit, wasn't it?

A. That was something put in place because we were told that the Cape Verde agreement had fallen apart and we had asked them for security. I believe there is correspondence around that. "Either repay it" -- I think we gave them a period of time. "Either repay it or provide further security, and then show us how you're going to repay it", and they did provide those plans. The intervention happened. Again, those were provided to the administrator. I don't know if they took them forward.

Q. Then Express Charters, £825,000. That was --

A. London Financial Group.

Q. -- money that had been lent, effectively, to get a helicopter for the use of Mr Golding?

A. No. That was -- Express Charters -- as I said in my witness statement, Express Charters were going to buy it. We were going to lend to them. That didn't happen so LCF's parent stepped in and bought the helicopter.

Q. Was this the helicopter for your personal use?

A. This was the company helicopter that, yes, I did get use from, and we were going to sell it. We didn't. So we used it.

Q. Then the rest are shown as zero balances because the loans had been reallocated to various of the companies set out above?

A. Yeah, they'd been -- as I think you have gone through those already. Home Farm became River Lodge. International Resort Group, Lakeview Lodges and Leisure & Tourism ultimately became part of Prime.

Q. So, in three years, when you managed to raise over £236 million, you hadn't managed to find a single borrower who wasn't connected in some way with Mr Hume-Kendall, Mr Barker or Mr Golding?

A. That wasn't the plan at the outset. I appreciate that LCF ran very quickly. The borrowers expanded with us. We -- the company ran very quickly. It ran too quickly. There are things that I would change if I could again, but I can't, so.

Q. The answer to my question is, "Yes", I think?

A. The ultimate question is yes, but there is context to that question, Mr Robins.

Q. The truth is, you hadn't looked for any other borrowers. You didn't want to lend to any other borrowers because those loans to other borrowers wouldn't have resulted in substantial payments to you and your associates?

A. No, we did -- there was a couple of other companies that we did consider, that we didn't. I appreciate the optics of where this is. We were happy with the security. Bear in mind we are an asset-based lender. We were happy with the security that was on offer from these companies. They expanded. We expanded with them. And we expanded too quickly. So, the original plan was, yes, we did, indeed, try to buy a brokerage. We didn't achieve that. But that was going to be a task for 2019, when our cost of funds came down, to very much expand. LCF is still in its early stages of growth. 2019 was going to be transformative.

Q. So £60.8 million of that £236 million hadn't been paid to the borrowers, had it, it had been paid to Surge?

A. Yes.

Q. It is right to say that a total of 76.4 million of that had been paid to you, Mr Hume-Kendall, Mr Barker and Mr Golding?

A. I can't keep up with that mental maths, Mr Robins.

Q. Let's look at <B1/2> at page 4. The figures in paragraphs 1 to 7, at the top of the page, are all common ground. They have been checked and checked again from the bank statements. You don't say that any of those are incorrect, do you?

A. I'm not denying what you're saying, Mr Robins. I'm just -- your question to me was the percentage of that whole equals X, and I just said my mental maths isn't quick enough to agree that figure. But I'm sure you've calculated it.

Q. What it means, as you see from paragraph 11, is that 57.41 per cent of the £236 million wasn't available for any development of businesses by the borrowers because it had been paid to the defendants in these proceedings listed there in paragraphs 1 to 7. That's not something you challenge factually, is it?

A. No, it's just those are the figures, Mr Robins.

Q. I think you accept that the borrowers had to use a substantial part of the remaining 42.59 per cent to pay interest to LCF, which LCF then used to make interest payments to bondholders?

A. We allowed them to borrow against the assets that we held as security and they were in development phases of their growth. So, as other companies -- as other lenders do, they allow you to borrow against an asset to pay interest, and so on.

Q. Isn't the reality that those borrowers had no hope of repaying the principal amount of the loans to LCF and you knew that?

A. No, not at all. If you just take London Oil & Gas, London Oil & Gas, I think, if you look at the cross-guarantees and everything else that it was involved in, I think London Oil & Gas was, if I can use the word, on the hook for about 150 million. Looking at the assets of London Oil & Gas, indeed, in your -- the administrators' own presentation to bondholders in April 2019, they state that IOG has got a net present value of, I think, 688 million and they confirm in their presentation to bondholders if LOG converted all of its rights at that point, it would own 60 per cent of 688 million, which is more than

enough cover for 150. If you go on from there, in early 2019, LOG was expected to get 40 million in for its part of the sale and buy-in by Caltech, which is Mr Warren Buffett. All of that 40 million was due to come back to LCF to repay part of LOG's borrowing. We would have then used that money because the cost of funds would have been paid to lend to lots of other companies. So 2019 was going to be transformative. So I don't take your point at all that these businesses weren't viable. There was a plan. The plan got interrupted. Prime Resorts had engaged international architects and project managers who worked with significant multinational hotel chains and had secured letters of intent to run the hotel resorts that they are due to build, all of which we have seen, I think it's in disclosure. So, they were moving along with their plan, and, in 2019, Prime, once they got sufficient interest, were due to refinance out the entire debt. So we would have just been, you know, middle debt of LCF and repaid. Again, we would have had a significant sum to then go along to other parties without the cost of funds. So I don't take your point. There is a plan, Mr Robins, that got interrupted.

Q. You knew, from your previous involvement with these matters, that the borrowers had no hope of paying the principal sums they owed to LCF?

A. Again, I dispute that and, actually, the facts don't follow you up, Mr Robins, because the administrators themselves allowed the buy-in of Mr Buffett's company. They took in 19 million. So that proves that this was going to happen. The fact is, they got half of what they were originally going to get.

So, the actual facts that happened in 2019 don't follow your assertion. They did -- Mr Buffet's company did buy in. LOG did receive a substantial amount from that transaction. Half of what it should have received. All of that was going to come back to LCF. On top of that, the administrator has sold numerous shares to fund this litigation and other things, all of which shows there are asset values there that got interrupted. So, I dispute what you are saying.

Q. Your position was, you didn't really care whether the borrowers could manage to use the remaining part that they got, a very small percentage of the total, whether they could repay the total sum due, provided you and your associates got your own very substantial shares?

A. No, Mr Robins, you're making that up.

Q. As regards the interest and redemption payments to bondholders, you understand it is alleged against you that you ran LCF as a Ponzi scheme?

A. I understand it is alleged against me, yes.

Q. You have referred in your witness statement to the three witness statements from Mr Hudson?

A. Yes, I have looked through those.

Q. You have seen that those statements contain numerous examples of LCF lending monies from new bondholders to borrowers so that those same borrowers could then repay the monies to LCF to enable LCF to make interest and redemption payments to existing bondholders?

A. I looked at Mr Hudson's work, and he's clearly spent a lot of time on it. But the answer is contained for all to see in the loan documents that allow for that to happen. Again, there are numerous companies out there that allow borrowers to gear up on their assets to meet the commitments while they're in the development stage. What LCF did is manage the cash flow in the middle of that. I don't take that it is a Ponzi scheme. There are verifiable assets that we lent against.

Yes, we allowed them to borrow to meet principal and interest until such time as they could monetise the assets that they have or refinance out.

Q. That's right. So you don't challenge the facts of the payment. You take issue with what you might call the characterisation or the interpretation it's based on?

A. Absolutely. I have never said that our borrowers didn't borrow further funds against their assets to meet interest and principal requirements, and, indeed, in the loan document -- I forget the clause -- it specifically says that if LCF needs to make a repayment to a borrower, we reserve the right to make a demand against -- sorry, to a bondholder, we reserve the right to make a demand in that loan document on the borrower to provide those funds back to us, but then, also, we commit to the borrower that we will replace those. Because we got -- LCF raised money over one-, two- and three-year terms, but we lent out to our borrowers on three-year terms, on a rolling basis. So we managed the cash flow in the middle.

Q. So your evidence is that you were fully aware of what Mr Hudson described was going on, but, actually, you say there is nothing wrong with it?

A. It is contained in our loan documentation for all to see. It was disclosed to all of our auditors. We went through it with them. They followed the monies from cradle to grave all the way through, from bondholder through LCF through to borrowers, borrowers then back to LCF, through back to bondholder, both interest and redemptions. They had no issue with what we were doing. We took them through APR calculations that actually showed that the cost of funds over an average commercial loan term actually aren't that expensive. So they built their own models to follow the funds to make sure we were paying bondholders what we said we were going to pay, we were paying Surge what we said we were going to pay, we were paying GCEN what we said we were going to pay. We charged the borrowers the interest that we said we were going to charge on a blended rate, which is cost of funds, they checked that we received those funds back and paid them all to bondholders. Our auditors were well aware of what we were doing and how we were doing it.

If we were running a Ponzi scheme, like Mr Hudson suggests, Mr Robins, we would have hidden all of that. We wouldn't have said to our auditors, "Here you go. Have access to everything". One of my fellow directors, Katherine Simpson, I believe says in her interview with you that my policy was for the auditors and accountants to have access to absolutely everything. So you've got two multinational auditors going through all of our books, seeing exactly what we're doing. They didn't have an issue with it. Borrowing -- lending companies lend to borrowers to meet principal and interest. Bridging companies do it every day. They just do it in a different way.

Q. Do you remember I asked you some questions previously about the bond issued by LUKI?

A. Yes, I do.

Q. And you said that you hadn't been involved in a bond issue before that?

A. The bond issue for LUKI -- when was that? In 2013, we started working on them.

Q. You say in your witness statement that was your first experience of bond?

A. From memory, I think so.

Q. You said before that that's where you learnt how these sorts of bond issues work?

A. I think so. When did the LUKI bond actually get issued? Because we may have worked on the SAFE bond -- the LUKI bond and the SAFE bond at the same time. It depends which one was issued. Before leaving the bank -- what I'm trying to say there is, before leaving the bank and working with all of these people, I had no experience.

Q. You understood from your involvement in the LUKI bond that you shouldn't use new investors' monies to pay old investors?

A. The LUKI bond is different to LCF, Mr Robins.

Q. Can we look at <EB0003234>. In the middle of the page, Lee Smith of Project Kudos has emailed you and Mr Hume-Kendall and he says he spoke with Simon Welsh this morning, and he notified him that there may well be a one- or two-day delay in getting the interest over to pay the Lakeview investors:

"However, you did assure him that the interest was being paid from outside sources and not new investment funds, which is a very important element for us to be assured on, naturally."

You understood you shouldn't use money paid in by new investors to pay old investors?

A. The LUKI bond is different to LCF.

Q. So you say you understood it in relation to the LUKI bond but you thought different rules applied to LCF?

A. No. LCF is set up differently. I don't remember this email, to be brutally honest, but you're trying to characterise it incorrectly, I believe, Mr Robins.

Q. Can we look at <MDR00018086>. In the middle of the page, this is 22 September 2015, Vanessa Welsh from Hypa Management emails you and Mr Hume-Kendall to say that they need £43,500 to make interest payments. Towards the bottom, she says:

"I would also like as a matter of ongoing due diligence for you to confirm that the interest payments are being made out of existing profit generated by the borrowing company and not through the utilisation of any new subscription monies."

Do you see that at the bottom of the page?

A. I can see that.

Q. You understood from your involvement in the LUKI bond that interest payments to existing investors shouldn't be paid using monies from new investors?

A. This is part of that bond and that's what they're asking us to do. But, again, you've got an asset that you're lending -- effectively, there's an asset that they are lending against. They're raising money in a development phase. I appreciate this is a facet of this bond. I do take that. But it doesn't necessarily follow for everything.

Q. So, is your answer, again, that the same rules didn't apply to LCF?

A. I'm saying it is a different set of circumstances, Mr Robins, and, for this bond, this is what they are asking us, but it is not a facet of a Ponzi scheme, Mr Robins, that you have got an asset behind the scenes that you're lending against. So, I appreciate they are asking here and it is important for them. I get that. And in 2015, looking at this, I was exiting, and they had other funds available to them. So --

Q. So you refer to an asset. Do you accept, then, that if, in reality, the assets covered by LCF's security were insufficient to repay the bondholders in full, LCF would have been a Ponzi scheme?

A. No.

Q. So you say, even if the assets were insufficient, it wouldn't have been a Ponzi scheme because different rules apply?

A. No. What you are saying is -- and I know what happened to the assets, so, at the time that we lent the money, we had valuations that provided not just myself, the other directors and our auditors, with figures that we believed at the time were in excess of the funds that we had lent.

MR ROBINS: My Lord, I see the time. I'm about to move on to a new topic.

MR JUSTICE MILES: Did you think that for LCF it was okay for old bondholders to be paid out of new bondholders' money?

A. Yes, my Lord. I have been open about that with everyone. It was -- we were lending against assets. I've seen other asset-based lenders, other funding things that allow a borrower to use their assets to meet those commitments. So, I discussed it with accountants and auditors and none of them had said there was an issue with that, my Lord.

MR JUSTICE MILES: You have described quite a lot of the funding that took place as being development funding, so for the various properties and so on.

A. Yes.

MR JUSTICE MILES: And the bonds were for one to three years, as you have said.

A. Yes.

MR JUSTICE MILES: How were these companies, which were borrowing the money, going to pay sufficient to service the liabilities under the bonds, or was that not something that mattered to you?

A. Ultimately, we were expecting to be paid out -- with the property companies, we were ultimately expecting to be paid out by someone that would provide funding to develop them. So, we were never going to be a long-term development source of funds for them.

For the oil and gas assets, we were expecting lump sum payments and either we would be refinanced out and they were looking at their own fundraising, so to leave LCF behind, or, indeed, if that didn't happen, there are other funders that were coming into the oil and gas assets that would have injected cash and partially paid us down, and then, when IOG -- the plan was, if that hadn't happened, when IOG had reached first gas, then LOG would, out of first gas, be then repaid back down those sums, or, indeed, if they weren't due to be paid back down, to then make other investments in other companies. So, there was an expectation that they were going to be. It is just, at the phase that we were at, they were still developing those assets. The valuations that we had, we believed, covered those.

MR JUSTICE MILES: You say there were expectations.

A. Yes.

MR JUSTICE MILES: How far ahead did you think it would be before you got in enough money from the borrowers to be able to repay all of the liabilities to the bondholders?

A. It's not simply a payoff, because we are looking to build and roll forward. But with Prime, Prime were expecting to refinance us out by the end of 2019. So, we -- and they were working with RKTL to seek funders to do that. With London Oil & Gas, yes, Mr Buffett's company was due to pay in and we were due to get 40 million from that. The administrator got 19. So the evidence is that those plans were in place, my Lord. With London Oil & Gas, we were expecting to have a phased exit from them. They did get another significant chunk in from a Norwegian institutional bond, so the security package would have all changed. We would have -- LCF would have still been secured, but it would have been a phased exit over a number of years.

MR JUSTICE MILES: Can I go back to the land development companies. What steps did you take to monitor what was actually going on on the ground in those places?

A. We had -- we engaged with a chap called Jeremy Friedlander of the Dominican Republic. He became a director of the security trustee. He went out to the Dominican Republic on a number of occasions, engaged with Elysian and then Prime, and kept an eye on the progress they were making with planning, deslind-ing, purchasing in, and he was reporting back to us. With Prime, we were also seeing the work that they were doing with the likes of RKTL. We were seeing the updates on planning, their designs. We were seeing letters of intent from multinational hoteliers that wanted to take long leases on the properties when they were -- so they would take the lease pre build and, indeed, in the bank, I had funded developers on a pre-let and Prime was going to go and get funding on the back of those pre-lets and then pay us out. So there were lots of conversations, my Lord, around that. So 2019 into 2020 was due to be transformative.

MR JUSTICE MILES: All right, thank you. We will come back at 2.05 pm.

(1.05 pm)

(The short adjournment)

(2.05 pm)

MR ROBINS: Mr Thomson, you have talked about the other directors of LCF, Kobus -- how do you pronounce his surname?

A. Huisamen. I believe it is Dutch.

Q. And Katherine -- is it Simpson?

A. Yes.

Q. You say that LCF had a risk committee comprising Kobus and Katherine?

A. Yes, they did.

Q. You say their job was to look at all risks that could impact LCF?

A. Yes.

Q. Those risks included lending LCF undertook?

A. To a certain extent, yes. They looked at all risks that the company -- its compliance risk, its HR risk. They looked at risk generally.

Q. You say they looked at the assets that LCF was lending against?

A. They would have done, and they had access to.

Q. You say that they kept records of the risk committee meetings?

A. I believe they did, yes. I left them to it.

Q. But you didn't participate in those discussions?

A. Some of them I was involved with, not all of them.

Q. But you didn't see the minutes of the risk committee meetings?

A. Not necessarily, no. I don't --

Q. Your evidence is they decided they were satisfied with the risks?

A. Can you be more specific about the risks?

Q. The risks that they were -- that you said they were considering in the risk committee?

A. Yes. There is documents that they looked at. They looked at various different types of risk, from regulatory risk, HR risk. Yes, they looked at the loan book as well. Kobus kept various different documents and spreadsheets. They all had access to the loan and valuations and they would need to do that to approve any drawings. So, the risk and compliance committee, I left them to it and they generally decided what they focused on.

Q. You said that, having effected the introductions to borrowers, in relation to prospective borrowers where you knew the principals, you stepped back and let them get on with it?

A. In terms of what they were doing in that risk committee, yes, I let them get on with it. They -- Kobus, more than the others, or Katherine, rather, met more of the borrowers and spent more time with them. Katherine knew Lakeview and Mr Hume-Kendall from 2013 into 2014, when she provided all the HR functions down there, in Cornwall, but, in terms of physically meeting them, Mr Huisamen met them more often than Katherine, or, indeed, Kevin. Kevin was a part of the risk committee.

Q. Can we look at <MDR00225582>, please. Are you aware that the administrators' legal representatives interviewed Mr Huisamen on 18 November 2019?

A. Yes, I believe they interviewed him twice.

Q. Can we look at page 34, please. Mr Wilkes asks him: "... can we move on to the loan process? So this is LCF lending to its borrowers. Can you explain how the loan approval about the whole lifecycle of getting borrowers and approving the loans?"

Mr Huisamen said:

"The borrowers for LCF was all done by Andy. I had no involvement in that process. They were either all signed up or he has verbally agreed with them before I even started at the firm. When I checked back when I was at the firm some of the lenders that we had weren't -- they were all in negotiations with him so I think ... But anyway this was Andy's negotiation with them. I checked and just if the company's whatever was in the financial promotion material, that that was accurate and true and a fact. The decision to lend was Andy's decision. Andy explained to me his decision making process on who gets the money, the process that he gets. I asked him to document that so that I can have something to verify, then I have a written piece of paper. Because he has done these kind of loans in the banks I have no reason to think that he's not working on the same model that he's learned at the banks. So it's not something that I know much about, so it's at the point where you rely on the other guy's expertise that he must do his job, like he relied on me to do compliance. So that he sourced

whoever was going to borrow the money. He decided how much they were going to get, when, and so forth. And as the money came in he determined where it was to be distributed and when and he and Katie worked together on this."

That's all true, isn't it?

A. No. I've read this, and I'm saddened and shocked by the content. He was involved. Yes, some of what he says is true, some of the borrowers were there before he started. He, I believe, moved from Sentient to a couple of days a week with LCF in '16.

He was involved in the process from 2016, '17, '18. I went through the process with him. We discussed the loans. He, indeed, created his own spreadsheets to monitor these. I was looking at them two nights ago. So, the reason I think he is saying this is he's seen what has happened to me and he doesn't want any part of it, so he's saying, "It wasn't me. It was all Andy".

Q. He's saying it because it is true, isn't he?

A. No. He's seen exactly what's happened to me and he wants absolutely no part of it. He -- I remember Mr Huisamen coming out of a meeting with IOG and LPC that I left him, Mrs Simpson and Mr Maddison to have the meetings on their own so they could satisfy themselves what we were doing. I think that was midway through '18, for example, and I think Mrs Simpson acknowledges that she's met these borrowers and they were comfortable with the lending. Each director was empowered to say no to a loan. None of them did. All of them had access to all of the documentation and knew exactly what we were doing, and I think it is just easy to blame me because they have seen what's happened.

Q. Let's look at a contemporaneous document, <MDR00065480>. This is minutes of the risk compliance and HR committee, 13 November 2016. Do you see number 5:

"There is no credit committee. The loan decisions are made by, executed by and payment made by Mr Thomson to borrowers. No full creditworthy assessments have been documented and no process has been shown. The board should create a credit committee who would be responsible for assessing borrowers and who would make the decisions on loans to borrowers. This committee should comprise of three members."

On 13 November 2016, it was true to say that loan decisions were made by, executed by and payment made by you to borrowers?

A. We are 2016 here, so we are just over a year into the company. The company is growing. The borrowers that I think they're referring to were already there. These people have access to documentation. Yes, what they are saying here is future lending, we should look to have a credit committee. That was something that didn't get put in place. We were going to be putting it in place in 2019. Our borrowers grew with us. All directors had access to all the material and they were happy to continue lending.

Q. It continued to be the case in 2017 and 2018: you were the only person approving loans?

A. No. All directors had the ability to approve a drawdown. Our borrowers grew with us. So, I take the point that there's not that many borrowers and they evolved. Everyone knew where the position was. There was a couple of companies that we did look to lend to. Indeed, Mr Huisamen led one of those assessments that we didn't ultimately lend to. But all borrowers -- all directors had access to all

our loan files, all our loan spreadsheets, all the electronic documents, all the valuations, and if they didn't want to lend, then they could have stopped a drawdown at any time.

Q. Can we look at <MDR00124422>, please. This is an LCF compliance report dated 24 January 2018 by Kobus Huisamen. Can we look at page 8? Under "Loan activities", first bullet point:

"Mr Thomson is the only person approving the loans." That continued to be true into 2017/2018, didn't it?

A. Again, the loans that we had evolved with us, so I do take the point that there was no brand spanking new companies coming in. They evolved. They were part of these transactions. I don't take -- I think what he's going to -- looking at here is, there is no new lending coming in. So, yes, there is no policy on file. That's not correct. I was looking at some documentation last night that showed me upskilling and educating Mr Huisamen from '16 into '17. So I don't take this. Yes, we did discuss on a number of occasions, and the company grew far too quickly, we didn't have enough people on board. All people accepted that. But I go back to, all directors knew what we were doing.

Q. Mr Huisamen says no lending policy on file, no clear criteria stipulated. He didn't know what the lending policy or the criteria were, did he?

A. He absolutely knew what they were because he reviewed all financial promotion.

Q. It says:

"Mr Thomson seems to be the only person with full insight into the borrowers ..."

That's right, isn't it? You were the only person who really knew anything about the borrowers?

A. Sorry, where does it say that?

Q. The second line.

A. No. Certainly Mr Huisamen, more than the other directors, came with me. He met Atlantic Petroleum, he met Prime whenever I met with them on a quarterly basis, he met with the board of LPC. They all had access to the documentation.

Q. He makes the point:

"... business continuity plan is deemed insufficient to deal with the long term absence or loss of Mr Thomson with regards to the management of borrowers." That's because you were the only person who knew anything about all the borrowers?

A. That's not correct. Yes, I had the better relationship with all of the borrowers, but they absolutely knew who Kobus was. If Simon was giving evidence, which he is not, you could ask him. He knew Kobus. So I don't take this. One of the issues that I had with LCF is getting my fellow directors to do more. I was out of the office a lot. That's come through in their interviews as well. So, it's easy to say there's no lending policy on file. We didn't bring in lots of new borrowers. They evolved with us. The approving of loans, well, there was no new loans, they were an evolution. The drawdown of loans, I definitely don't take the point there, because I know Kobus, Katherine and Kevin Maddison all approved drawdowns on the loans that we had.

Q. Then Kobus says:

"The asset lists provided as security are provided by the borrowers and not all these assets have been physically confirmed by LCF."

So Kobus didn't really know anything about the security either, did he?

A. No, that's incorrect. That's just saying physically confirmed. Kobus wanted to fly out of

the Dominican Republic. I said, "We have sent Mr" -- I said his name before the break -- "Friedlander, we have sent Mr Friedlander, who is independently verifying these things". Kobus wanted to go out to the Dominican Republic and I said, "We don't have the time, we don't have sufficient people that we can go and do that". That's what he wanted to do.

Q. He is not just talking about going out to look at some cattle grazing on scrubland in the Dominican Republic because he also says, in the final bullet point: "It is not clear if the borrowers legally own the assets (no deed documents on file)."

So he hadn't seen anything to actually confirm to him whether these assets existed or not?

A. I also say that there is email traffic between him and Alex Lee in '17 and '18 that Kobus is independently going to Alex, our lawyer, discussing these points.

Q. Do you know that Mr Huisamen has recently been sanctioned by the FCA?

A. Yes, I think you mentioned that last week.

Q. Can we look at <R1/24>, page 1. Have you seen this before?

A. I have not read it thoroughly, no. I know it happened. This got released a week before -- conveniently, a week before this trial started. So I was concentrating on the trial as opposed to this. So I knew it happened. I've not read it.

Q. Can you see, in 1.1, he has been fined and he has been prohibited from performing any function in relation to regulated activities carried on by any authorised or exempt person or exempt professional firm?

A. I can see that, yes.

Q. At 2.1, it mentions that he was a director. Then, over the page, 2.4, it says that he played a key role in the sign-off process for confirming that LCF financial promotions complied with the financial promotion rules, including the fair, clear and not misleading rule. That's true, isn't it: he did play a key role in that process?

A. He signed them off. The date isn't correct. It wasn't 10 February 2017. He provided the sign-off when Sentient Capital were approving LCF's financial promotions. So it was well before that.

Q. That would have been under Sentient's authorisation?

A. Yes, but what I'm saying is, it's the same person.

Q. But the notice is dealing with his misconduct from that date. I don't think it is saying here that that was the first date he became involved?

A. Sorry, I was just trying to be --

Q. That was just a period covered by the notice. Then 2.5: "Whilst Mr Huisamen was closely involved in LCF communicating hundreds of financial promotions ... this notice focuses primarily on Mr Huisamen's involvement in LCF's information memoranda, brochures and its website." He was involved in LCF's information memoranda, brochures and website, wasn't he?

A. Yes, he approved them all for financial promotions and the early ones he had the large hand in drafting. He also worked with Lewis Silkin and myself and the others.

Q. We have been over that, Mr Thomson. We are not going to go over it again. You know our case is that you drafted the substance of the promotional materials, don't you?

A. I think, in one of Mr Huisamen's interviews, he says that in the early information memorandum, he says that he drafted the majority of it, so --

Q. Do you understand that Mr Huisamen has been sanctioned, essentially, for believing what you told him without checking whether or not it was true?

A. I don't believe the sanction says that.

Q. Well, at page 7, 4.16, at the bottom: "When Mr Huisamen did complete a verification schedule for a LCF financial promotion, he did not review and reference relevant documentary evidence to support representations made in the information memorandum. Instead, Mr Huisamen simply relied on the word of LCF's senior management and accepted the wording in the financial promotion as it was, without applying appropriate scrutiny."

You told Mr Huisamen things and he just accepted your word for it, didn't he?

A. Well, that's the exact opposite of what he says in his two interviews. So --

Q. I'm asking you, though, Mr Thomson. Do you say that's true or not?

A. That's not true. He was provided with all the information.

Q. Then the next paragraph, 4.17:

"It is important context that, prior to and during the time that Mr Huisamen was relying on uncorroborated assurances from LCF's senior management for the verification of the financial promotions, Mr Huisamen was documenting his misgivings ... about how LCF's senior management was making all the lending decisions, without any transparency or oversight, to companies they had close connections to."

You would accept the reference to "senior management" is a reference to you?

A. I do accept that is a reference to me, but I don't accept the content of what he's saying.

Q. Then page 11, please, paragraph 4.28 at the bottom of the page:

"Before Mr Huisamen became an LCF director he learned that LCF was diverting large amounts of undisclosed advance fees from bondholder funds to meet its marketing and other support service costs and that LCF's declared fees were also taken from this source." You would understand the marketing fees to be a reference to Surge?

A. Yes. I would take exception with "diverting". It paid for those services.

Q. "Mr Huisamen also knew that these marketing and support service costs, that he admitted to the authority in interview that he considered to be 'exorbitant' and 'too high' were borne by LCF's corporate borrowers ..." Did you have conversations with Mr Huisamen about how he thought these fees were "exorbitant" and "too high"?

A. Again, that is the polar opposite of what he has said in his interviews. In his interviews, I believe he said that it's the market rate.

Q. I'm not asking you about his interviews. I'm asking you what you say?

A. I'm sorry, repeat your question.

Q. Did you have conversations with Mr Huisamen about how he thought the Surge fee was "exorbitant" and "too high"?

A. No.

Q. Page 12, please, 4.29:

"Mr Huisamen knew about the 25.5 per cent of fees and was keen for it to be negotiated down to a lower rate. He considered the fee to be a risk to the corporate borrowers and understood that the high rate of fees was therefore a risk to the sustainability of the LCF lending model ... continually failed to challenge LCF on the sustainability of the lending model in light of the significant amount of funds in the form of fees being diverted from going to the corporate borrowers but for which they were liable. Mr Huisamen also carried out no verification on whether LCF had determined if the corporate borrowers could afford these costs."

Do you think that's a fair criticism of Mr Huisamen?

A. No. I disagree with that. I can go into detail. But --

Q. At paragraph 4.30, they say:

"Despite Mr Huisamen's knowledge ... he approved financial promotions which omitted this key information."

Do you think LCF's materials --

A. I'm just reading the last sentence. Sorry.

Q. Do you think that, to be true, fair and not misleading, LCF's materials should have disclosed the 25 per cent paid to Surge?

A. We disclosed the fees that we charged. The fees were borne by our borrowers so, in the unregulated marketplace, there was no regulation on -- specifically on that. The closest that we can come to it is if you look at COBS 6.4, I believe that brings up something that you could, if it was a regulated product, look at, but it would -- you would have to divulge those fees if an investor requested that information. It doesn't say that you have to. So, yes, LCF divulged to -- in a mathematical example to bondholders in our IMs how we earned money and the fees and interest that we earned. That was approved by Mr Huisamen, that was drafted by Lewis Silkin, who had three very knowledgeable lawyers and a counsel, and there was no criticism of what we put in there, and they all knew how much we paid Surge for their services.

Q. But do you think that, to be true, fair and not misleading, LCF's materials should have disclosed the 25 per cent paid to Surge?

A. No. Otherwise, we would have disclosed it. So I was comfortable with the financial promotion as it went out.

Q. Can we look at page 14, please, paragraph 4.35: "Throughout the relevant period, Mr Huisamen signed off verification schedules and/or confirmed COBS rule compliance for the LCF information memoranda and various iterations of the LCF website, while simply accepting verbal assurances from

LCF senior management that there was a lending process that entailed rigorous financial due diligence."

It is right, isn't it, that Mr Huisamen simply accepted what you told him without seeking to check whether or not it was true?

A. That's absolutely incorrect. Again, I'm shocked and saddened reading that. He looked at and had access to all the material. He met the borrowers. He created his own spreadsheets in LCF that assessed the loan to value and risk for each borrower. I was looking at them two nights ago. So, I don't accept this.

Mr Huisamen, through all of this -- I know he has an axe to grind with me because he feels that it was me that stopped the insurance policy that would pay for his legal representation. He is pointing the finger at me very unfairly. He was quite happy to take the money he was paid to do this role and he's simply pointing the finger at me because he doesn't -- he wants less criticism of him.

Q. It says:

"Mr Huisamen did not review any pertinent documentary evidence to check that LCF's lending process was the same as described in the LCF financial promotions and actually implemented by LCF in its recent decisions to lend. This was despite Mr Huisamen being aware of how important the alleged lending process was for influencing investment decisions into the LCF bonds and that investors could not carry out their own financial due diligence on corporate borrowers and were therefore reliant on LCF carrying out rigorous due diligence."

Starting with the first comment, that Mr Huisamen did not review any pertinent documentary evidence to check, that's true, isn't it?

A. No. I've sat with Mr Huisamen when we have gone through the -- all of the calculations of value in London Oil & Gas. He has, and I've seen him go through all of the valuation documentation for all of the properties. Again, there are spreadsheets that he created and he updated that show he has done this. So, he is trying to pass the buck here. He is lying. This is wrong.

Q. He is not, is he, because this is essentially saying the same as he said in the January 2018 document, that he hadn't seen the corroborating evidence?

A. At the time, I had the conversation with him and he had done. Mr Huisamen came out of the meeting with IOG in early 2018, suggesting with Ms Simpson -- Mrs Simpson, sorry, that we should look at the -- consider a debt for equity swap. It was their idea. We didn't progress that. All of them say they have met them, the borrowers. What Kobus wanted was a completely separate credit committee that would simply assess loans as they came in, completely separate. We didn't have the manpower for that. It is a conversation we continually had and he kept putting it in there and we were getting around to doing it eventually. But there is only so much to do and there is a short period of time.

Q. The next paragraph to look at is 4.37. It says: "During the time in which Mr Huisamen signed off LCF financial promotions and their verification schedules ... he was aware of significant red flags (by September 2016 at the latest) that indicated a risk that LCF's lending process as described in the financial promotions was not being followed and a risk that the LCF business was not sustainable, namely: "(1) ... the corporate borrowers were newly incorporated companies and could not provide historic financial information. He therefore knew that, contrary to what LCF's information

memoranda said, LCF could not have analysed the borrowers' performance over the last three years."

You accept the information memorandum did say that LCF would analyse the borrowers' performance over the last three years?

A. I don't remember the specific section in the IM, the wording of it. We did say we were going to analyse. We were an asset-based lender, so the biggest risk we have is the valuation. And, absolutely, he analysed the valuation.

Q. You must remember it said in the information memoranda you'd analyse the borrowers' performance over the last three years?

A. For an asset-based lender, Mr Robins, if the asset is bought by a new borrower, the lend goes with the asset. So we are an asset-based lender, so the risk is the valuation and the asset.

MR JUSTICE MILES: I'm not sure you're answering the question, Mr Thomson. Would you like to ask it again, Mr Robins?

MR ROBINS: You remember it said in the information memoranda that LCF would analyse the borrowers' performance over the last three years?

A. That was one of the criteria I believe we mentioned. I don't believe it said -- that was one of them. I don't remember the specifics of it.

Q. It is right, isn't it, as it says here, that some of the corporate borrowers were newly incorporated companies?

A. Through the transactions that we've gone through, yes.

Q. And they, therefore, couldn't provide three years of financial information?

A. They wouldn't have been able to because they were new.

Q. Do you accept that if the information memoranda did say that you were analysing the borrowers' performance over the last three years, that if, in reality, you weren't, that would have been misleading?

A. I would like to see everything that it said in that section. But the "analyse the borrowers' performance", if you look at the performance of the asset you're lending against, that is an analysis.

Q. But do you accept that if the information memoranda said you were analysing the borrowers' performance over the last three years, and if, in reality, you weren't, it would be misleading?

A. "If" and "did" -- I would like to see the section in the information memoranda, because I don't remember the specifics of what it said.

Q. Do you think it would have been misleading and, if Mr Huisamen was aware of the discrepancy, this would be a fair criticism of him?

A. There are other things that we said in that that we would have done. It didn't -- I don't remember if it said we would do all of these things. If it said that that is the only thing that we would do, yes, it is a fair criticism. But I don't think that's the only thing it said.

Q. And then (2), if we could just look at the whole of that, please, it says:

"Mr Huisamen was aware that the corporate borrowers were connected to LCF in terms of close business and personal relationships amongst their directors ... with LCF senior management."

The reference to "LCF senior management", you would accept, again, is a reference to you?

A. Yes, I accept that that's a reference to me, but I don't accept the "personal relationships".

Q. And then:

"In September 2016, Mr Huisamen recorded in a LCF conflicts of interest register the close relationships between LCF senior management and the corporate borrowers, along with his concern that LCF senior management could be influenced by the borrowers' boards who he wrote were comprised of 'a similar group of people for all companies'."

Is this what you were referring to earlier when you said it was all disclosed in the conflicts of interest register?

A. Yes, I don't remember what was written in the conflicts of interest. It was disclosed to Mr Huisamen. I don't remember what it says. And it was updated on a number of occasions.

Q. It says:

"Mr Huisamen knew that the conflicts of interest were unmanaged because there was no oversight of the lending decisions that were all being made." That's because they were all being made by you, isn't it?

A. I don't take that. He did have absolute oversight of what was going on. He just doesn't want to take responsibility for it.

Q. At (3):

"Mr Huisamen repeatedly documented concerns over the period November 2016 to February 2018 that there was no oversight of the LCF lending decisions and that there was no documented lending criteria or lending policy." That's true, isn't it?

A. This was an issue that the company had over those years. We ran very quickly. We didn't have sufficient manpower. But Kobus wanted a credit committee, a lending committee. We weren't at that stage. We should have done it before. We didn't. And that's what I believe he is documenting.

Q. Based on what you say, it is also true he "faced resistance from LCF senior management to his requests for transparency on the lending, rationales and data to support them"?

A. Absolutely not. I disagree with that.

Q. He wanted a credit committee and you said no?

A. No, that isn't what I said. I said the company ran very quickly. It only had a certain amount of manpower. It was something that was regularly discussed but not put into place. But that's a criticism of the board as a whole. It is -- so, you've got the head of risk and compliance saying there is no credit committee, but then doing nothing about it. He's getting paid to do the job. It is easy for him to point the finger here at me because he doesn't want it coming back at him. I don't take this. I do take the criticism that we ran far too quickly, I do take the criticism that there are things we should have done that we were going to do. But for Mr Huisamen just to point the entire finger at me is incorrect.

Q. Can we look at --

A. And, sorry, the transparency of lending is absolutely incorrect. He knew what we were lending.

Q. Can we look at page 17, please, paragraph 4.46: "In September 2017, Mr Huisamen began to make enquiries about the asset ownership of some of the corporate borrowers and noted in an email that he had not seen evidence that companies LCF was lending to owned any assets. Mr Huisamen was not provided with evidence to mitigate his concerns about the asset ownership, which led to him to write in a compliance report he produced in January 2018 ..." That's true, isn't it?

A. No, it's not. What do I have to do? I sat down with Mr Huisamen and the other directors. We'd gone through why we're lending, we'd gone through the assets. Do I have to go to the file and -- that's unlocked and open, pick up the loan document, take it to him, physically sit him down to read through it, for then him to document this? Yes, he was saying that we needed to do more. I accept that criticism. But I don't accept what we're saying here. And I did have conversations with him about it at the time and what he's writing. He assessed borrowers himself. There is documentary evidence that he has gone and done this.

Q. The reason you were unable to satisfy him was because the security was wholly illusory, wasn't it?

A. No.

Q. Mr Thomson, if you hadn't been taking a large part of the money that was paid out under the illusory security and on the strength of it, you, too, would have accepted that it was wholly inadequate?

A. No. And our auditors had the same information and they were happy. Mr Huisamen was absolutely happy. He's pointing the finger at me here to try and lessen the impact on him. I don't accept this at all.

Q. Can we look at paragraph 4.48, please. It says: "In late June 2018, Mr Huisamen began to review files held by LCF, attempting to piece together the group structures of six of the corporate borrowers. LCF had made the decision to lend to each of these companies over a year previously. However, at this point, Mr Huisamen had not seen evidence that these corporate borrowers themselves directly owned any realisable assets and he was trying to understand how four of these corporate borrowers may have been connected via corporate group structures to development property overseas."

That's all true, isn't it?

A. No, it's not. He absolutely knew. He had access to all the files. I saw him going through them and I have seen spreadsheets that he has worked on and signed off. I don't take this at all.

Through his -- just looking at the financial promotions that he did with Surge, he would have had to have approved those financial promotions. The one that you took me to a couple of weeks ago, he emailed Surge confirming the figures of the security and telling them -- telling them that "I approve these". He would have only got those from the valuations. The valuations sit in the loan files.

Q. Mr Thomson, it would have gone from you. That's why he's been sanctioned by the FCA: He just took what you said as being true without checking?

A. No. He gets paid a lot of money to do a job. He did the job but he's trying to point the finger at me. The files were electronic. He had free access to them. The loan documents -- all the history was in the loan files that were unlocked in the filing cabinet labelled "Borrowers -- loan files". He had

access to all of them. I saw him going through them. I saw the other directors going through them. I don't take this at all. He is trying to point the finger to lessen the impact on him.

Q. It says:

"The exercise found that there was a lack of evidence on whether corporate borrowers were part of the same corporate groups as third party overseas companies that Mr Huisamen speculated may have owned land abroad. At late June 2018, Mr Huisamen had still not established whether LCF had a valid security over the land, despite raising concerns about the asset ownership of corporate borrowers more than nine months ago ..."

That's, again, correct, isn't it?

A. No, and for the same reasons I've given you, I disagree with that.

Q. Then the next paragraph:

"Over the course of July 2018 to October 2018, Mr Huisamen corresponded with an external consultant, making multiple requests for evidence of the ownership of land abroad."

Is that a reference to Jeremy Friedlander?

A. Mr Friedlander was involved from 2017 and Mr Huisamen corresponded with him, and Mr Huisamen corresponded with our lawyer, Alex Lee, who was dealing with all the security and dealt with the loan documentation independently of me. I have seen emails between Mr Lee and Mr Huisamen. I'm not copied in. He had free access to all of the documentation, all of the security documentation. He had free access to the lawyers that were doing it. And he did take advantage of that free access. He did correspond with them. So I don't take this at all.

Q. Then:

"Mr Huisamen was informed that some of the land in one country had not been transferred to the third party overseas entity that Mr Huisamen thought may have been connected to two LCF corporate borrowers." Do you think that's a reference to him discovering that The Beach hadn't been entirely transferred to Tenedora?

A. I think that could be a crude reference to The Beach and the options to purchase haven't been finalised.

Q. "He was also told that charges could not be placed over the parts of the land that had transferred until all the land had been transferred."

That's what he found out, is it?

A. No, that's absolutely incorrect and he knows it's incorrect. Mr Friedlander went over there in '17 and '18, and the cost -- I think I have mentioned this before in this hearing -- to take a charge over a parcel of land in the Dominican Republic is 5 per cent of the valued asset, which is extremely high when you are looking at the valuations that came out of the Dominican Republic. So we were advised the better way to do it was to take a charge over a smaller ransom strip that the company completely owned, and the best way to do that is to form a company in the Dominican Republic. That company takes a charge over the parcel of land and that company is owned by LCF. I believe that company was passed to the administrators and Mr Huisamen absolutely knew that was going on.

Q. You see, the reason they're criticising Mr Huisamen is because:

"... the LCF financial promotions gave the impression that the corporate borrowers themselves directly owned significant assets, so that there was a maximum 75 per cent loan to value ratio on the lending to each borrower ..."

It is correct that the LCF financial promotions did give that impression, isn't it?

A. Because that's what we believed it was and that's what he believed it was when he was signing off financial promotion material over the course of several years, because he had access to the valuations and the methodology of valuing the oil and gas assets. He had access to all of it.

Q. Do you accept, if that is the impression that the financial promotions gave and if that impression was untrue, then the financial promotions themselves would be misleading?

A. We didn't believe that what we were saying was untrue, so I don't take it that it was misleading because we made the financial promotion on the strength of documentation that we had.

Q. Let's deal with Katherine Simpson. Can we go to <M1/12>, page 1, please. Do you know that she was interviewed by the administrators on 12 May 2022?

A. Yes.

Q. If we go to page 2, you can see, in the middle of the page, she says:

"So do you know the history of how I got involved?" And it is said:

"No, that's what we would like to know." She says:

"So AT's wife Debbie ..."

That's your wife, isn't it?

A. Yes, it is.

Q. "... and I have been friends since I was 14." So she's been friends with your wife since she was 14?

A. That's what it says.

Q. Is that true?

A. They have been friends for many years. I don't know when they met. I didn't meet my wife until I was 25. So ...

Q. You knew she had been friends with Katherine for a long time?

A. Yes.

Q. It says:

"When they moved to outside Tunbridge Wells, he started working on the place in Cornwall, Waterside, he got me to go down and help with his contracts." It is right she first started working for you in connection with Waterside or Lakeview as it was known at the time?

A. What Mrs Simpson did, when Lakeview was purchased, she, via her company JDS HR, was contracted to deal with all the TUPE-ing of all the staff over to the new company. She attended Lakeview on four occasions, staying down there for several days at a time. She was then -- after the TUPE process had been completed, she was then retained for another two years to be the

outsourced HR function for Lakeview. So she knew Lakeview and she knew the directors, she knew all the other parties that were involved with it. So, she's very much downplaying what she did.

Q. Then she says:

"Then they asked me to be a non-executive board director. He said he'd started up this business. I went down to that meeting in 2016 ..." She's talking about LCF there, isn't she?

A. Yes, and she actually joined in 2015.

Q. She says:

"At the time, he sold it to me that they needed to have so many people on the board to get it running. 'You just need to come down for a board meeting' is what he said."

Is that broadly what happened?

A. No, that isn't. I was impressed with what she did. Yes, okay, I knew her. She wanted to expand what she was doing. She was a bit bored in the HR world. She wanted new challenges. She's -- I thought she was reasonably good at what she did, and very adept at change. So I asked her if she wanted to join me on a new venture. I described to her what it was and what we were doing and she agreed to join. I explained there wasn't a lot to do for her in the early days but we would be building.

Q. Then she says she went to a board meeting. She says: "I remember saying to AT after that I didn't understand anything and he said he would explain it all to me."

She was entirely dependent on your explanations, wasn't she?

A. So, we are 2015 into '16. She's saying she's come down to a meeting at Eastbourne. Eastbourne would have been, in 2016, Surge. So she would have met Mr Careless, she would have met Mr Russell-Murphy, probably, although I don't remember, Kerry Venn or Graham, as she may have been, Jo Baldock. So she met all the people there. That's where they were functioning. And, yes, she wanted to learn more and, yes, I was assisting her in learning more. There was a programme of continuing professional development. She was learning about the industry.

Q. If we can see the next bit, she's asked, a point you mentioned a moment ago, towards the bottom of the page: "From Companies House, it looks like you were appointed as director on 1 October 2015, so before the meeting in March 2016."

She says:

"He reached out to me then but I didn't realise he had already appointed me as a director." It is true, isn't it, that you appointed her as director without her knowing?

A. No, that's absolutely incorrect. Oliver Clive & Co dealt with all the appointments of the directors and they would have had to have verified that she was happy to be a director. So I don't take that at all.

Q. Then she's asked what was the delineation of responsibilities between directors. She says: "At the time of my appointment, I had no responsibility. It was sold to me that I was just a figurehead and a non-executive director." That's how you sold it to her, is it?

A. I didn't "sell" her anything. I object to the language she's using. I didn't "sell" her anything. I explained to her what I wanted LCF to be. I explained, in the early days, there wasn't a whole lot to

do, but that "It would be good to join then, because you'll be learning from the ground upwards". So I don't take this. I didn't sell her anything.

Q. She said:

"They just needed people."

This was the point that Kerry had raised with you, wasn't it, that LCF would look more credible if it had more people on the board?

A. No. I took Catherine on. She is a competent person. She is a bright lady. She took to what she was doing. Yes, in the early days, there wasn't a lot for her to do. I was explaining to her that -- you know, the financial promotion world. There wasn't a lot for her to do. We already had a borrower in place and she was learning as she went, and she learnt a lot. Again, I think this is, like Mr Huisamen, she's seen what has happened to me and she's pointing the finger.

Q. She says she asked for more board meetings to understand more of what was going on. Do you remember her saying, "I don't really understand what's going on. We need to have some board meetings so you can tell me what this is all about"?

A. Really interesting, though, that we had a programme of CPD, quite a comprehensive one. She was the one that devised that, she was the one that actually delivered quite a lot of the CPD that dealt with financial promotions, it dealt with lots of various different back-office things. So I don't take this at all. She knew what she was doing. She learnt from the ground up, just as Katie and I did.

For her to say, "It was a joke in my eyes", well, she was quite happy to get paid a very decent amount of money to do a job that she was doing, but it is easy to point the finger because she's seen what's happened to me.

Q. Are you talking about her comment about the risk committee? She says it was a joke. Why would you appoint someone with experience of TUPE, Mr Thomson, to a committee that's meant to be assessing the value of security and the risk to LCF? It was a joke, wasn't it? She was appointed just to make up the numbers?

A. No, it wasn't. It was Kobus and Katherine. They looked at all risks. When this -- I can't remember when the risk committee was put together, but she was learning when she came on board the -- she -- Kobus and I put in training for her, to upskill her. She was part of the CISI -- Chartered Institute of Securities and Investments. She was enrolled in the CISI CPD programme, as were all the other directors, to upskill and keep up their CPD. Yes, I do acknowledge she would have had, from 2015 when she did join, a steep learning curve. She did take to that learning curve and she was working on it. So, I don't accept that, "It was a joke in my eyes, it was myself and Kobus". Well, at that time, there was only three directors. I was trying to build the financial promotions side of things and the other parts of the business. They were dealing with their parts of the business. I don't take this. It really saddens me and depresses me that she would point the finger like this. It is not right. It is not correct. She took the money to do the job, she got the training to do the job and now she's just saying, "It wasn't me, I was just a figurehead. It was all him".

Q. She then says:

"From memory, in mid 2018, there was one thing I did raise with Kobus Huisamen in a meeting and he went and investigated and then I got taken off the risk committee."

That's something that happened, isn't it?

A. I don't recollect that. If she would have brought up something that is significant, we would have dealt with it. I don't -- I don't remember that. I remember it was a risk and compliance committee and I remember, later in the year, that they were split. I don't remember her bringing something up and then effectively being kicked off the risk committee. I don't remember that at all.

Q. Let's look at <D1-0009754>. This is minutes of a meeting of directors, 24 September 2018. The third resolution is:

"Committee has been split into two separate committees."

The risk committee and the compliance committee. The risk committee is just you and Kobus. So, it is right that she was kicked off it, isn't it?

A. "Kicked off" and "split" are two completely different things. I think what she said in the prior document you took us to was midway through '18. This is the end of September '18. I had just come out of hospital, recovering from Rickettsia. This is the meeting, I think, that happened at my house because I couldn't travel. As the company was looking to develop and move into 2019, it was recognised that they needed to split. So, this isn't being kicked off. This is just evolution.

Q. Can we go back to --

MR JUSTICE MILES: Before we leave that document, is it right that, until then, she wasn't an executive director?

A. She was a full-on director from day one, my Lord.

MR JUSTICE MILES: Sorry, I'm just looking at the minute: "Offer to be appointed as executive director, be made to [her]."

A. Is that the bit above? Am I looking at the wrong thing?

MR JUSTICE MILES: Sorry, I'm just looking at 3.2.

A. I don't know. She was definitely a director, my Lord. She wasn't just -- or is she trying to refer to "I was a non-executive director".

MR JUSTICE MILES: I was just asking about the minute, actually, whether that is accurate or not.

A. Sorry, I don't think that is accurate. She was a director from day one, my Lord.

MR ROBINS: Was she an executive director from day one, though?

A. Sorry, my head is a bit -- can you define the two for me; the difference between a full-on director and an executive director?

Q. Are you saying that you don't know the difference between an executive director --

A. I'm saying my head is a little bit swimming at the moment. She was a fully-involved director of the company that had board permissions and decisions and acted accordingly.

Q. Could we go back to <M1/12> at page 2. We saw this earlier. At the bottom, she said:

"At the time of my appointment, I had no responsibility. It was sold to me that I was just a figurehead and a non-executive director." Having seen paragraph 3.2 of the minute, do you accept that that is likely to be correct?

A. No, I don't at all. A non-executive director that comes to the office three days a week, stays at my house three days a week from when she was appointed in 2015, that's not the activities of a non-executive director. She was a fully-involved director at board level of this company from the start.

Q. Then we saw that she says:

"In mid 2018, there was one thing I did raise with Kobus Huisamen in a meeting and he went and investigated and then I got taken off the risk committee." So if she raised something in mid 2018 and then Kobus went and investigated and then she was taken off the committee -- she's got the chronology about right, hasn't she?

A. She wasn't taken off. The committees got split, didn't they? It is not removing. That's splitting the committees, which is, I think, the document --

Q. The committees were split into a risk committee and a compliance committee?

A. I think that was the document --

Q. She wasn't on the risk committee anymore?

A. Because there was a division of labour. At that point -- so at that point, Katherine was sitting over the top of Katie in terms of responsibility. Katherine was responsible for the migration of all the loan and the bond books from our spreadsheet process to GMP. She was in the office. She stayed at my house three nights a week, so she was in the office three to four days a week -- more often than I was. The splitting of the committees is just evolution. As I say, 24 -- I think it was 24 September 2018. I was recently out of hospital with Rickettsia. If you don't know what Rickettsia is, it is a very nasty, life-threatening disease. And I was hospitalised for almost two weeks. At some points, I was delirious and didn't know where I was.

Q. Katherine's understanding of LCF's business was always quite basic, wasn't it?

A. How could it be basic, Mr Robins, if she was the one that sat over Katie and was responsible for the back-office systems? How could it be basic knowledge if that was one of her responsibilities?

Q. She knew that people bought bonds and then you invested the monies in a number of companies, but she didn't really know anything about the borrowers or the security, did she?

A. She absolutely did, just the same as Kobus and Kevin did. They had access to all the loan files, which included the valuations, which included any contracts that they were -- our borrowers were entering into, including all the historical documentation. She met with the borrowers on a number of occasions. From the early days. So it saddens me she would say this. She was up to the task. I mean, part of the CPD that she devised -- she devised the CPD model for the company that delivered CPD not just to LCF, but also to Surge, and she oversaw that that CPD was supposed to happen and, funnily enough, one of the things that she was responsible for delivering in CPD is whistleblowing. So if she really thought something was wrong, she was the one that was delivering whistleblowing CPD. Why didn't she say anything?

Q. Look at page 6, please. She is asked under the heading "LCF's business model":

"What did you understand about LCF's business model prior to being appointed? Did AT provide any background about what LCF did and how it was going to actually make money?"

She said:

"My understanding was quite basic, I knew that people bought bonds and then he invested the monies raised in a number of companies. As the time went on he would explain how there was a third party consultant who would check that the companies being invested in had the right assets if the company went bust." She is asked:

"Do you remember the name of that company?" She says:

"No, but it's one of the ones that was linked to LCF."

Did you tell her, "We have got this third party, independent security trustee, Global Security Trustees, which monitors the security for the benefit of bondholders"?

A. No, I'm just going back to the statement. One of the first things she did was read all of our information memorandums, and she knew what the security trustee did. They held the security on trust for bondholders and, if there was an issue, then they had the right to step in to protect the bondholder interests. So her characterisation there is completely incorrect. The last bit that she says, "No, but it's one of the ones that was linked to LCF", well, yes, I accept that I created Global Security Trustees. She knows that. But then I handed it off to others to run and hold that security for the bondholders. Her characterisation there is completely wrong and she knows it's wrong.

Q. Then she says:

"I remember coming up late 2018 and seeing LOG and it was the first time he brought me out to meet anybody."

So, the first time you brought her out to meet any of the borrowers was late 2018, was it?

A. Absolutely not. She met Mr Hume-Kendall in Lakeview in 2013 and '14. She was used in 2014 by Mr Barker for HR issues. So she absolutely knew them. So I don't take that. I've been to board meetings with borrowers that she has been present at on a number of occasions.

Q. Which board meetings, which borrowers, are you talking about?

A. LOG and Prime, our two largest.

Q. LOG she says in late 2018. That's right, is it?

A. No, that's not. That's a lie. She met them well before that.

Q. She says:

"AT was explaining all the assets are there and everyone will get paid back if anything happened." That's what you told her, is it?

A. No, she had access to all of the loan documentation, all of the same spreadsheets that Kobus had access to, all of the financial promotions, she saw those as well, as did everyone else. So I don't take that.

Q. Then she's asked:

"Did your understanding of the business model change over time?"

She says:

"The only concern I had, and I raised this at the time, was that although SG ..."

That would be Spencer, wouldn't it?

A. That would -- I think she is referring to him, yes.

Q. "... although SG wasn't tied to the company, AT and SG spent a lot of time together and I asked KH about this who looked into it. I asked AT several times about getting more companies as borrowers to improve our portfolio."

First question: you were spending a lot of time with Mr Golding throughout this period?

A. No. So she can't have it both ways. She also says in her interview here that I wasn't in the office and she was in the office --

MR JUSTICE MILES: Sorry, can you answer that question?

A. Sorry, can you resay it, please?

MR ROBINS: You were spending a lot of time with Mr Golding throughout this period?

A. No.

Q. She asked you several times about getting more companies with borrowers to improve the portfolio?

A. That is an ongoing conversation that all the directors had on a number of occasions, and 2019 was due to be transformative.

Q. Then she's asked:

"You mentioned LOG, did you understand much about them?"

She says:

"He explained LOG -- buying the pipeline for a pound. He also explained about their resorts and showed me a map as to where it was and that this was going to make all the money. Also the Cornwall property -- Waterside. The others, no, I didn't have much of an understanding of."

She was critically dependent on you for her information?

A. Not at all.

Q. Then it is put to her that during a risk, compliance and HR committee meeting on 11 November 2016, one of the action items was to obtain full access to the borrower files and to conduct a full borrower risk assessment over the next few weeks. The questions are identified. The final line says:

"Do you know if these questions were answered?" If we can look at the next page. She says: "I would say that nothing was provided and I would say that this was KH's role as risk and compliance to follow up."

Her role on that committee was a joke, wasn't it?

A. No, it wasn't. She is pointing the finger there because she doesn't want criticism of herself. Not having access to the files, which I believe she said in the previous paragraph, is a complete lie. The electronic files were in an open area of LCF's servers. The paper copies were in an unlocked filing cabinet in the open-plan office. There was no restriction on getting access to any of this. So, she's pointing the finger because she doesn't want criticism of herself. She wants it to go away.

Q. She says:

"AT was quite difficult in that respect -- it was his business and you couldn't challenge." If she sought to challenge you about anything you would fob her off?

A. No.

Q. She says:

"AT always said he did his best business on the shooting range. He was never in the office." One of the reasons she couldn't get information from you was because you never turned up?

A. That goes against what she said before, doesn't it? Previously, she said I was with Mr Golding all the time. How would she know that if I wasn't in the office?

Q. Were you doing business on the shooting range with Mr Golding?

A. Mr Golding didn't shoot.

Q. But it is right that you were rarely in the office?

A. I was in the office, probably, Thursday afternoon, Friday all day. I was out of the office -- those were my working patterns. Everyone knew that.

Q. If we go to page 8 --

MR JUSTICE MILES: What business were you doing, though, on the other days?

A. So, if we are looking at 2018, which is, I think, what your Lordship is referring to, I am up and down the country meeting and interviewing IFAs to get their input on the bond that we were writing with Lewis Silkin to list on ORB; a significantly large piece of work. I was sat bringing that information back. I was sitting with lawyers and drafting. I was off to meet -- we tried to put a family office offering in place. I was meeting with them. We eventually tied up with a large master agent called LGBR and we worked with them a lot and we worked with lawyers a lot. The work that entailed to develop this umbrella bond that was due to be listed on ORB was very significant. So the latter part of 2017 and a large chunk of 2018, I was out of the office doing that. I was up and down the country a lot, meeting with lots of different companies to essentially presell a regulated offering that was due to come to market in 2019. All directors knew that's what I was doing. And the evidence of that, my Lord, is the written bond that was due -- that had already been submitted to UKLA.

MR ROBINS: Is it right that you were working on the regulated bond because you thought that the unregulated minibond market had about 18 months left before the FCA made significant changes and, to ensure that the Ponzi scheme didn't come crashing to the ground at that point, you would need to switch to a regulated product.

A. I object to the use of the words "Ponzi scheme", Mr Robins, but the reason that we were trying to move to a regulated product, we actually started that process midway through 2016 with Lewis Silkin. We tried to write a bond that was EWSM compliant and was a standard asset. We tried to work with various different discretionary fund managers. We eventually listed that bond in Malta, I think, in 2017. Why we were doing that is because we recognised that the cost of funds at 25 per cent was not sustainable. It was what we needed to do to get the company going, but long term, moving into the medium term of the company, 25 per cent wasn't sustainable and wouldn't have been attractive to the wider market, which is why we were moving to a regulated world, so the cost of funds would have gone from 25 per cent to around 1 per cent. So, we were trying to do that from

2016. The EWSM bond didn't work because of MiFID 3. We continued then with the idea of that, trying to draft a bond that would be listed on the London Stock Exchange in an ORB listing. As well as doing that, we tried to engage with a number of family offices because the cost of funds would have come skyrocketing down. The plan was, we had already submitted, before I went away in August, to the UKLA a 175 million umbrella bond that was due to be listed on ORB. That was due to be done January '19. As soon as that was listed, we were going to write another one and migrate all of our minibonds on the same or better terms into a regulated bond on ORB, so our bonds -- it would have been transformative for the company in terms of cost of funds. We could have gone to a far wider borrowing marketplace. And our bondholders, the bonds they held were instantly sellable if they so wanted to.

Q. The fourth row here, it is put to Katherine Simpson: "One of the other things that was flagged in AH's report were the issues regarding the security provided by the companies which LCF invested in. You mentioned that you were told by AT that there would be enough to sit behind the loans. Did you ever have more in-detail discussions on this?"

And she says:

"No -- he explained that we used an outsource company who worked it out and they worked out how much the borrowing could be. It's one of the ones that's been linked to LCF."

So, if she asked you about the assets, the security, is it right you said, "Look, don't worry about it. We outsource this. It's all been worked out. You don't need to get into it"?

A. Absolutely not. Again, she had access to all of the documentation. She met with the borrowers. You even have to look at the lines below that: "Do you recall Oliver Clive having a role?" "The only time I met him ..."

Well, Oliver Clive is a company. So she is completely wrong. I don't know why she is saying this. I believe this entire thing has been written to try to divert any attention to her and it is easy to point the finger at me because I'm the one that's standing up and being counted, and they don't want any attention. It shocks and saddens me, this entire interview that she has given, and it is wrong.

MR ROBINS: My Lord, I see the time. I don't know if that is a convenient moment for the shorthand writer. (3.17 pm)

(A short break)

(3.23 pm)

MR ROBINS: Mr Thomson, you mention in your witness statement that an individual by the name of Martin Binks was briefly a director of LCF. You say he was not really able to offer the time commitment he initially indicated he was able to, and so he stopped being a director. Is that true?

A. Time commitments and then I found out some information -- I can't remember what it was -- that didn't sit well with me, so we resigned him.

Q. Do you remember telling Kobus that Martin Binks had issues with the regulator and some problems with a company that went bankrupt?

A. That may have been the information that I found out. I wasn't privy to it when he -- when he agreed to be a director.

Q. What you were referring to was that Mr Binks was connected to a company called Asset Life?

A. I don't know. I received some information. I instantly didn't like it. He had already told me that he couldn't offer the time commitments. So I found that information out and I resigned him from the company. I cannot remember what it was in connection with.

Q. If we look at <D1-0000538>, this is from your disclosure. It is an Asset Life information memorandum. Page 5. Maybe it is internal page 5. Is there a page with a blue table? There we are. So directors, Martin Binks, Terence Mitchell. You knew that Martin Binks and Terence Mitchell were directors of Asset Life?

A. I made it my business to download lots of different information memorandums from the internet. This could very well have been one of them. I don't remember if this was the reason. I've got numerous different information memorandums on my hard drive from various different companies.

Q. Can we look at <MDR00033167>. Talking of information memorandum, this is a draft LCF information memorandum, isn't it?

A. Looks like one of the early ones, I think.

Q. Can we look at page 28. It has directors of LCF, including Mr Binks, and then, in the second table, it shows that he is a director of a company called Asset Life Plc. Given that this was in LCF's draft information memorandum, that's something you would have been aware of, wouldn't it?

A. That would have been part of his director disclosures. As I say, I don't know the reason -- I can't remember the reason that we resigned him was because of Asset Life that you're referring to. I don't remember. But it was something that I was -- was brought to my attention and we resigned him.

Q. You had previously had dealings with Terry Mitchell's company, Asset Life, hadn't you?

A. It rings a bell. I can't remember the interaction.

Q. Can we look at <D2D10-00009588>. There's an email that Terry Mitchell has sent to Simon Hume-Kendall and Andrew Meikle, and then Mr Hume-Kendall has forwarded it to you, copying Mr Golding. Do you remember having a discussion in January 2015 about how Asset Life might raise funds by way of a minibond for Leisure & Tourism Development?

A. I may very well have done. It doesn't spring to mind. But, clearly, it's to me from Simon.

Q. Can we look at the attachment, <D2D10-00009589>. It is a letter from Asset Life signed by Terry Mitchell. A proposal that Asset Life will conduct a fundraising for Leisure & Tourism Developments by way of a minibond offering. Do you remember that this was one of the proposals for fundraising that was discussed before it was decided that it could all be done by LCF instead?

A. We were looking at various different sources of funding, and we had done since 2013. This doesn't particularly spring to mind.

Q. When Terry Mitchell --

A. Perhaps the name Meikle, I think, rings a bell.

Q. That's right, Andrew Meikle. You dealt with him in connection with the Asset Life proposal?

A. I may very well have corresponded with him. I can't remember if I ever met the guy.

Q. Let's look at <D2D10-00009456>. Do you remember, after Terry's initial proposal, it was Andrew Meikle that dealt with most of the discussions about the proposal?

A. Again, it's -- I recognise the surname.

Q. When Martin Binks ceased to be a director of LCF, do you remember anyone from Surge saying to you, "That's good news. His connections with Asset Life and Andrew Meikle are problematic"?

A. They could have done. I don't remember it. As I say, I don't remember the specific reason that I parted company with him.

Q. Can we look at <MDR00055392>. Look at the next page. On the right-hand side, Mr Russell-Murphy says -- well, at the bottom, we can see it is talking about termination of the appointment of Martin Binks and Mr Russell-Murphy says to his colleagues, including Mr Careless:

"Good move, the chap was a liability being linked to Asset Life and Andrew Meikle."

This is the sort of thing you could well have discussed with them, is it?

A. I'm not saying I didn't. I don't remember it. Again, I don't remember the reason that prompted me to resign him.

Q. No doubt it would have struck you as strange when Mr Mitchell popped up again, a couple of years later, as running an international tourist development company?

A. I don't think, at the time, I made the connection. He seemed to be a well-connected chap from when I met him again at Prime. I don't know how much interaction I actually had with him in the timeframe you're looking at with the whole Asset Life thing at the beginning of 2015. I don't have much of a recollection of a lot of interaction with him.

Q. You knew him as someone who moved in the same circles as you, raising money from unregulated minibonds and using it to subsidise a life of luxury?

A. No.

Q. In your witness statement, you talk about money that was paid to you by LCF which was booked to your directors' loan account, don't you?

A. So, I drew from -- are you talking about my monthly drawings and they were booked to my directors' loan account? Is that correct?

Q. Let me show you the exact sums we are looking at. If we go to <A2/1>, page 180. Can we zoom in on J5.2, towards the bottom. Talking about these payments: 10,000, 10,000, 9,733.19, 20,000, 20,000, 52,700, 20,000, 20,000?

A. It looks like the majority of those are a monthly drawing that did, yes, get booked as a director's loan, because I put money back into the company as well as taking it out, and Oliver Clive, at the end of the year, did the accounts for the company. They also did my accounts. They had all of my bank statements. And there was a balancing at the end.

Q. Can we look at <MDR00050909>. This is what you told Oliver Clive & Co. You said:

"Hi Steven.

"As discussed please find attached the invoices from Media GPS that cover the marketing and PR work for our bonds. The work this company has done to date cover all our bonds and we will be using them for the same work for our next series of bonds."

Do you accept that the sums that we were just looking at are the sums that were put by you into these Media GPS invoices?

A. They could have been. I may have mischaracterised them when you took me to it before without this information. I did draw on a regular basis and we did create, with my father, a company called Media GPS that was due to be life after LCF, because my plan was to sell it eventually, and, you know, create a job for my father.

Q. Can we look at <MDR00050910>. This is one of the invoices. This is for the specific sum we just saw, £9,773.19. It is an invoice. It says "Public relations and marketing services re launch of corporate bonds". Do you remember trying to tell Oliver Clive & Company that the money LCF had paid to you was to cover marketing and PR work for bonds, "The work this company has done covers all our bonds and we will be using them for the same work on our next series of bonds"?

A. My father, via the qualifications he's got, did proofreading and other work for the company, and, yes, it was -- it paid for those things. There was an issue around it at the time, I can't remember what it was. Steven had an issue with the invoices -- I can't remember --

Q. The issue was it wasn't true, was it? This money had gone into your personal bank account?

A. Paid on behalf of Media GPS.

Q. You were coming up with a false story to try to explain these payments to your accountant so that they didn't put them into your directors' loan account?

A. No, I could have just -- I could have very easily have just taken these as directed to me. I'm trying to create another company here, and this was the start of it.

Q. Is this a white lie or is this another example of you being prepared to make false representations for financial gain?

A. No. LCF is my company. If I wanted to take more money out of it, I could have very easily done. I'm trying to create something with my father and build a different company. This is part of that. If I'd just wanted to take extra money out of LCF, I could have done. No-one would have stopped me doing that. I didn't do that. I'm trying to build a company with my dad. Yes, I appreciate it is being paid directly to my bank account. Possibly -- I don't know whether Media GPS had a bank account at that time. But that's what I was trying to do. Maybe I didn't do it in the best way, but I could have very easily just taken that directly from LCF because it's paid directly to my bank account. My accountant has access to my bank account. So I would have had to have accounted, for tax reasons, for these payments anyway. So it would have made no difference whatsoever.

Q. Can we look at <MDR00051820>. Do you see Nick Angel is sending you the "directors' loan account nominal as per your discussion with Emma last night"?

A. Yes, we discussed my directors' loan account. It moved up and down a lot of the time.

Q. Can we look at <MDR00051822>. This is the attachment. Do you see all the sums that had been covered by the Media GPS invoices have now been put into your directors' loan account instead?

A. Yes, I can see that, yes.

Q. So, if the explanation you'd given your accountants was a genuine one, why didn't you say, "No, no, these are not debits on my directors' loan account, it genuinely is a separate company that's

done marketing and PR work. We are going to be using them on our next series as well"? Why didn't you stick to your story?

A. Because I chose to reverse it, for whatever reason. I don't remember what that reason is now. And I also was paying my father and Media GPS did do other things and it received, at a later date, my Christmas bonuses because I chose to do that. The other directors paid themselves through separate companies. That was fine. I chose to reverse it. I don't remember the reason.

Q. Do you think it is because your accountant caught you out and said, "No, this can't be right. These must be dealt with in a different way"?

A. No. It would have -- for tax reasons, it would have made no difference to me whatsoever if it was paid through Media GPS come to me or if it was a drawing on my directors' loan account. It would have been no difference. I can't remember why it was reversed, I can't remember the issue around it at the time. I remember Steven had a bit of an issue with Media GPS. I can't remember what that is.

Q. Can we look at <MDR00051126>. He says at the top: "Sorry, can't use these [he's talking about the invoices] as you have submitted dormant accounts for Media GPS. Must have been a mistake."

He's saying he knows Media GPS haven't been doing marketing and PR work for LCF's bonds because you have submitted dormant accounts for that company?

A. My father actually dealt with the online filings. I didn't. He absolutely did do the proofreading for these things. He is very good at it. So, unfortunately, he has submitted dormant accounts and I can see why that was reversed. It doesn't mean that the proofreading and checking wasn't done and, just to be clear, that wasn't a regulatory proofreading, it was a grammatical proofreading.

Q. But proofreading is not marketing and PR work, is it?

A. But it's involved in that because you proofread what's going to go out the door. You wouldn't want to send something out filled with spelling mistakes and grammatical errors.

Q. If we look at again the sums in question, <MDR00051822>, these are the sorts of sums that would be legitimate to pay for getting your dad to do a bit of proofreading, would they?

A. It is not my dad to do a bit of proofreading, it was quite a bit of work. And what the company chooses to bill and what the company chooses to pay are commercial reasons.

Q. So your dad does a bit of proofreading, you put this in your bank account, you knock up some invoices and that's entirely legitimate, so far as you're concerned, is it?

A. I object to the characterisation that you're giving it. My father did do a good job of work and LCF chose to pay this. Unfortunately, my father had filed dormant accounts, so we reversed the transaction anyway. It doesn't mean the work that he did didn't happen.

Q. You mentioned your Christmas bonuses a moment ago. That was £100,000 in 2016 and £175,000 in 2017; yes?

A. The figures sound about right.

Q. You say that you had no involvement whatsoever in the decision to pay those bonuses. The decision was taken by Katie Maddock?

A. Absolutely.

Q. You accept that those payments were made from monies from new bondholders, not from profits?

A. No, they should have been paid from profits of the company, as with everyone's salaries. I didn't make the payments and LCF would have had sufficient money in its account to do that.

Q. There's no proper basis, is there, for saying that Katie Maddock was involved. You just fancied a bit of extra Christmas spending money and saw no reason why LCF's bondholders shouldn't be made to give it to you?

A. No, absolutely not. It happened the first year, Mr Robins. Christmas bonuses were paid out to all the other staff members. We decided on those. Katie said to me, "What about you? You created the company". I said, "I'm more than happy with what I actually earned, so I'm not fussed". She pressed the point. I said to her -- I was out of the office at the time. I said to her, "I tell you what, I'm happy with what I earn. If you want to pay me a Christmas bonus, it is up to you. You pay me what you think it is worth", and I left it to her.

Q. Is that the conduct of a responsible company director, Mr Thomson?

A. I can appreciate the criticism. I would have been happy if she paid me a pound. I left the decision to her. She was the operations manager of the company. She was one of the people included in the decisioning for other people's bonuses, including the other directors. It was a rather flippant comment from myself. She made the decision. Everyone knew what I got paid for my Christmas bonus. The company was quite happy with it. It got repeated the following year. I think it is quite -- I said I would have been happy with a pound.

MR JUSTICE MILES: Sorry, how was it accounted for in the company's accounts?

A. So, it was -- it got paid -- so, our other directors -- so Kobus, Katherine and Kevin Maddison all opted to have their payments paid to their companies, so I opted to have my Christmas bonuses paid to Media GPS.

MR JUSTICE MILES: Was that then treated as an expense of the company or was it shown as part of your remuneration?

A. It was a cost of the company, just like the other directors do for their funds that they're paid. So it was usual practice for LCF --

MR JUSTICE MILES: So it came off the -- it was included in the costs of the company, rather than being shown as remuneration?

A. Yes.

MR JUSTICE MILES: Did you think that was true and fair, as a representation of what had happened?

A. Looking at it now, I should have just had it paid to me, but we allowed the other directors to invoice for what they earned from their companies, so, in my mind at the time, my Lord, I didn't see anything wrong with it. Looking back now, I would have done it differently.

MR ROBINS: You say in your witness statement that you carried out a consultancy project for Surge who paid you to help Blackmore. Is that correct?

A. Paid me to assist Blackmore and also I worked with them on some other potential fundraisings that they were looking at, yes.

Q. You say the majority of work was with Blackmore, don't you?

A. A good chunk of it, but it lessened over time. It started with Blackmore.

Q. Blackmore was run by two individuals --

A. Pat McCreesh and --

Q. -- Pat McCreesh and Phil Nunn?

A. -- Phil Nunn, that's right.

Q. You met Pat McCreesh, I think, in April 2016?

A. I met Pat McCreesh on a number of occasions. I'd not met Mr Nunn as often.

Q. You first met Pat McCreesh in April 2016?

A. I can't remember when I exactly met him. I met him at Surge's offices, I believe.

Q. Let me see if I can help. At the end of the evening, Mr Careless left you, Pat McCreesh and Mr Russell-Murphy in a strip club called Platinum Lace. Does that help place the occasion?

A. No.

Q. Do you remember, after that meeting, Pat emailed you to set out a proposal for LCF to lend £1 million a month to Blackmore to help with its property development business?

A. There were discussions. I don't remember the specifics at the moment. But I remember there were various discussions. But that wasn't the work that I did with Surge. I worked with Surge on -- predominantly with Blackmore. But other fundraisings or potential fundraisings as well.

Q. If we look at <SUR00022478-0001>. Do you remember getting this email from Pat McCreesh? Halfway down the page, there's a heading "Projects to fund" and he is talking about projects they are looking to fund immediately:

"... so many high profit opportunities ... we don't really want to be turning them away ..." He is making a proposal. Do you see the final bullet point is "0.5 per cent comm to you"?

A. Yes.

Q. Would you have understood that to mean a 0.5 per cent commission to you personally?

A. I don't know. That's not something I negotiated with them. I don't remember that, sorry.

Q. Was that because, in the fourth bullet point, 6.5 per cent per annum interest wouldn't have been workable for LCF, given the sums it had to pay to bondholders?

A. It would entirely depend on where the funds come from. But we ultimately didn't lend to Blackmore. I mean, I discussed Blackmore with Surge before this and after this and this was a proposal that they're suggesting that didn't happen. So, this is -- I don't remember this letter.

Q. Can we look at <SUR00026165-0001>. It is an email from you to Mr Careless:

"Hope your well and the Gold proposition is moving along, if there's any input you need from me just let me know."

You would accept you hadn't given any input in relation to the Gold proposition?

A. That was actually a proposition to build a fundraising to acquire -- I can't remember. He had a connection into Barrick Gold and they were looking at the potential of funding acquisition of dore gold to sell to Barrick Gold.

Q. You say:

"I haven't had anything from Kerry re Pat's bond so don't know how it's progressing ..."

You accept that you weren't, at this point, doing anything in relation to Pat's bond?

A. No, I haven't had anything from it -- it's not saying I haven't had anything, no. I don't remember what I had at the time of this email.

Q. You see the subject is "Media GPS invoice"?

A. Yes.

Q. And you have sent it from *****. Was this something rather sensitive that you didn't want to send from your normal LCF email?

A. No, because this was not LCF business, so it was separate, so I created that email for the work I did here.

Q. Can we look at <SUR00026166-0001>, please. That's the invoice. It's for £8,909.48. Do you say that's a fair reflection of the value of the work that you had done to justify this invoice?

A. So, the work that I did, I worked with Surge on what they did for Blackmore, so it wasn't just in association with Pat and Phil, it was also on Surge's back office, how they were interacting, so looking at Blackmore as a whole package and, whilst I was doing that, it was recognised that I was upskilling Surge as well. So, we agreed that, for the period of time that I would do this, Surge would remunerate because I upskilled Surge as well, whilst doing this, so it had a benefit to Surge and Blackmore and other things that they were doing. Media GPS would be paid a percentage of their revenue.

Q. It was 0.5 per cent of LCF's receipts from new bondholders in the previous month, wasn't it?

A. I don't have the calculation, but that was the -- Surge's revenue. It was Surge who received those funds. It was their funds and it was their choice to pay it.

Q. Let's look at <SUR00029112-0001>. We can see that, in May 2016, the amount that LCF has actually received, the cleared LCF bond account less GCEN cost, is £1,781,895.50. Half of 1 per cent of that is the sum that you put in your invoice, isn't it?

A. That is the revenue that Surge receives in the agreement because I was not only working with Blackmore directly, I was also working with Surge's back-office people to improve what they did, their processes in the back office, while I was upskilling Surge as well. So Paul offered half a per cent of their revenue.

Q. It is not half a per cent of their revenue, it is half a per cent of all new bondholder monies paid to LCF, isn't it?

A. It's their revenue, it's what their receipts are, so it's how it was calculated.

Q. You were basing it on the monies through LCF's bank account?

A. That was the rationale that Mr Careless suggested as payment. I accepted it.

Q. Well, it is what, in fact, you proposed to him, isn't it?

A. It very well -- it probably very well came up in a discussion that he and I had either at their offices or at Hotel du Vin. I can't remember.

Q. <SUR00029677-0001>, please. You say in the second paragraph:

"I've attached the Media GPS invoice for June and have based it on the funds through the account and not on the cleared figure from the deals spreadsheets ..." So you'd done this and based it on the monies coming into LCF's account, hadn't you?

A. There was a metric for payment, but the funds were Surge's. There had to be a metric for payment for calculation. You couldn't simply say, "Do this for Blackmore and get that", because I was upskilling not only Blackmore people, I was upskilling Surge's people. I was working with them on other fundraisings that didn't derive any income or funding. So, the only way we could recognise it, in terms of a metric, was what was coming through the door.

So, yes, it was used as a method of calculation, but the funds that Media GPS was paid were Surge's earned funds that they paid me from.

Just because we used a metric with the LCF figures doesn't mean it's not Surge's money, and I was doing lots of things -- I worked on Blackmore, I worked on Surge's back-office system for Blackmore. I worked on Barrick Gold gold potential fundraising. There was another property development called View that we were working on as well.

Ultimately, the work that I did with Blackmore, they eventually had an FCA intervention and they came out with it with everything covered and a clean bill of health. That was in part due to the work I'd done historically.

Q. Can we look at <C2/3>, page 20, please. This is Mr Careless's witness statement. At the bottom, he says:

"LCF was doing really well and had overtaken Blackmore ... this happened throughout 2016. Pat noticed that Blackmore was lagging behind LCF ... asked me to introduce him to Andy, thinking that Andy might help Blackmore improve. I agreed because I wanted Blackmore to do better as this would benefit Surge. If Blackmore could become a more attractive investment, then it would increase its investment from ... increased Surge's revenues."

Talking about revenues from Blackmore. He says: "At first Andy was hesitant. He saw Blackmore as competition."

He says, basically, you agreed. In 102, he says: "Surge paid for Andy to guide Pat and help Blackmore become more professional. Pat told me that Andy did this through face-to-face meetings, calls and emails, the intention of which was to improve the quality of Blackmore and bring it up to the level that LCF was at. My part was to cover the costs ..."

He doesn't say anything about what you have told the court regarding you helping Surge to improve its back office and build its people up. Is the reality, your stories are different because neither of you is telling the truth?

A. No. It says it there. The intention of which was to improve the quality of Blackmore and bring it up to the level that LCF was at. That isn't just working with the owners of Blackmore, that's looking at Blackmore as a whole and what they were doing. Yes, it doesn't go into as much detail as I would

want with his statement, other things that we did. We saw the invoice email that mentioned gold bond. There was various different things that we were doing. Bringing the quality of Blackmore up wasn't just sitting down with Pat and Phil. It was lots of different things. You know, improving the quality of Blackmore was -- you take a holistic view. So I see that as that. I don't agree with you.

Q. Can we look at <SUR00063736-0001>.

A. I'm sorry, it says at the end it was whatever could have benefited the growth of Blackmore. It covered a very wide remit.

Q. This is an email from you to Mr Careless: "Record collections month last month with £5.9 million cash coming through the bank, fantastic start to the year."

You accept your invoice was half of a per cent of the money that had come into LCF's bank account in the previous month?

A. I have already said there had to be a metric for calculation. It was recognised that I would -- the work I was doing wasn't just upskilling the Blackmore, because they were Surge's people that I was working with. So there was a knock-on benefit to Surge as well.

Q. But you accept --

A. We used a metric.

Q. -- it is not based on an hourly rate --

A. No, it is not.

Q. -- or anything referable to any days you'd spent or work you'd done. It is simply half a per cent of the money that's come into LCF's bank account in the previous month, isn't it?

A. No, because the -- you say the days I spent or the work I'd done. It wasn't specific hours. It was, you know, various different times, various different durations through the month. It was -- and, yes, it's a reasonable payment. Yes, it had to be a metric. Yes, it was something Mr Careless and I agreed upon. But the payment of that was from Surge's revenue. The metric to calculate what that figure was, we had agreed was in relation to where Surge --

Q. Are you making the point that if Surge is getting 25 per cent of the money that comes into LCF's bank account, then your half a per cent of the money that comes into LCF's bank account actually equates mathematically to 2 per cent of Surge's fee? Is that the point you're making?

A. I'd really like a pen and piece of paper to do the calculation.

Q. It is quite a simple calculation. If Surge is getting a quarter from LCF and you're getting half a per cent of what LCF is getting into its bank account, then you have to multiply that half a per cent by four, don't you, to see that you are getting what's equivalent to 2 per cent of Surge's fee? Is that the point you're making?

A. If that's the maths that work and add up -- my head is a bit all over the place at the moment.

Q. Doesn't that exchange demonstrate that that wasn't the rationale at the time? You were just basing it on half a per cent through LCF's bank account?

A. I'm saying that's what the metric was. Yes, that Surge paid it out of their revenue. There had to be a metric. Paul agreed with that. That's what it was.

Q. Is what really happened here that you raised your concern with Mr Careless that 25 per cent was not sustainable and said, "Look, if you want me to keep paying it, you're going to have to make sure there's something in it for me"?

A. No, and if I had done that, I wouldn't have been looking at the time trying to get regulated fundraisings across the line to dramatically reduce and then ultimately 42 leave Surge behind because that's what we were going to do in 2019.

Q. So, you accept that you weren't happy with Surge's fee?

A. No. As I previously said, we recognised, as a group, that it wasn't long-term sustainable. That is why, from 2016, we were looking at different ways to raise funds with cheaper costs. Those weren't successful, ultimately. We had the EWSM bond. Then we also looked at family offices. Eventually, we wrote the offering that would have been listed on the Order Book of Retail Bonds in the London Stock Market. We were constantly, from mid 2016, trying to find ways to lower the cost of fundraising and, once we had been successful in one of those, Surge would have been left behind. Mr Careless knew that. The work that I did with Surge was only for a -- it wasn't for a long period of time.

Q. Could we have a look, please, at <MDR00106006>. This is the final invoice from Media GPS to Surge, £38,870. I think you accept, and it is a fact, that Surge didn't pay this invoice?

A. I don't remember.

Q. Do you know that that is because, by then, the arrangement involving payment of half a per cent of new bondholder monies to you had been replaced by a new arrangement involving payment of 1 per cent of bondholder monies to Mr Golding?

A. I do know, because of what's gone on -- I can't remember when I found out Mr Golding was being paid -- it wasn't at that time. I can't remember why this invoice wasn't paid. If you, indeed, say it wasn't paid, I will take your word for it. I don't remember. But I disagree with what you say.

Q. You never chased up Surge to say, "Why haven't you paid my September invoice?"

A. I don't remember.

Q. That's because you knew that, from this moment on, Spencer would be getting 1 per cent instead?

A. No.

Q. You did know about the payments to Spencer, though, didn't you?

A. Eventually. I don't remember -- I do not know -- do not remember how and when I found out.

Q. The payments to Spencer were a sweetener for the continued payment of 25 per cent commission to Surge, weren't they?

A. Spencer didn't have any influence in LCF.

Q. So you say they weren't a sweetener for the continued payment of 25 per cent commission to Surge?

A. No.

Q. Look at <SUR00099143-0001>. it is an email from Mr Russell-Murphy to Mr Careless and Ms Graham. You wouldn't have seen it, but it reports a discussion with you. Under "SG", it says:

"Andy said Spencer didn't go to Las Vegas in the end, he has been dealing with some marital issues and has gone on the missing list.

"We discussed the SG invoicing and Andy wants to get everything out in the open. One of the requirements of our AR status with them will be to provide our financials to LCF. Andy and Kobus will see the payment going to SG and will ask further questions. Andy said he was willing to make a 1 per cent interest reduction on the loans to SG if we reduced our commissions to 24 per cent."

That was your proposal at the time, wasn't it?

A. (Reads to self). What loans? I'm not sure what you're driving at there.

Q. Is that a proposal you made at the time?

A. I don't remember that.

Q. It is a proposal you made at the time, isn't it? We can do this a different way. You reduced your commissions a bit, so reduced the amount that LCF has to pay to you, and LCF, in turn, will reduce the amount of interest Spencer has to pay on his loans?

A. You have got me at a loss, Mr Robins. I don't remember this.

Q. Isn't this just another way of economically achieving the same result? Instead of Surge getting 25 per cent and paying some to Mr Golding, you achieve the result by getting less from Mr Golding and paying less to Surge?

A. Mr Golding didn't have any influence in LCF. He wasn't part of LCF. So I don't remember this and I don't see what he's driving at.

Q. You knew at the time that he was getting 1 per cent of new bondholder monies from Surge?

A. This is -- so we are 2018. When was that last invoice that you showed me previously?

Q. Your final invoice was September 2017.

A. So some months later. This is -- I'm just trying to -- the reduction of the loan to SG. We didn't make a loan to SG in 2018.

Q. So are you saying these discussions with Mr Russell-Murphy never happened?

A. I have no idea what he's going on about. I don't -- "Andy said he was willing to make a 1 per cent interest reduction on the loan to SG". We didn't loan anything to SG at that point. "If we reduced our commissions to 24 per cent". That wouldn't have worked through our back-office system. I'm at a loss, Mr Robins.

Q. You remember the sensitivity about the payment to Mr Golding and the fact you didn't want Mr Huisamen to find out about it?

A. "Andy and Kobus will see the payment going to SG and will ask further questions". So this is Mr Russell-Murphy raising that concern, so saying that Andy and Kobus will see the payment going to SG and will ask further questions. I really don't know what he's saying about this loan bit.

Q. You remember, surely, concerns about the payment to Mr Golding and the fact you would need to dress it up to look like something else?

A. If Surge chooses to pay Mr Golding, then that's between Surge and Mr Golding.

Q. At one point, you were asked to set up a company that would be used to receive Mr Golding's payments from Surge, weren't you?

A. You have me at a loss, Mr Robins.

Q. Can we go to <D7D9-0010862>, please. It is an exchange of messages between you and Mr Russell-Murphy and, in the middle of the page, "2018-08-21" at 16:22, Mr Russell-Murphy says:

"Spencer has called chasing his money, I've said we are going to organise the payment via a company which you're setting up. He's now said he doesn't want to do that and he doesn't want you to know. Don't mentioned anything at the moment. I will discuss a different solution with Paul."

So, you were setting up a company that was going to receive Mr Golding's payments from Surge, weren't you?

A. I don't remember that.

Q. Looking at this, do you think you were involved in setting up that company?

A. I don't see how I would have been. Again, you've got me at a loss, Mr Robins.

Q. You see, you didn't reply to Mr Russell-Murphy to say, "What are you talking about? You have got me at a loss", or anything like that?

A. I'm just reading the bits below, sorry. He confirms I'm in hospital --

Q. If you look at the dates, you're in hospital about three weeks later.

A. I don't know. You have me at a loss. I don't remember this. "I've said we are going to organise the payment via a company which you're setting up". I don't remember that, sorry, Mr Robins. I don't know what to say.

Q. You understood at the time that the arrangement for the payment of half a per cent to you had been replaced by the arrangement for 1 per cent to Mr Golding, didn't you?

A. No. I had stopped working with Surge the previous year.

Q. There was nothing you could do about that because Mr Golding was still the boss. He still called the shots, didn't he?

A. No.

Q. You were responsible for misrepresentations being made to prospective bondholders, weren't you?

A. No.

Q. If we look at <MDR00041314>, right at the bottom of page 1, there is an email from you, May 2016, to Ms Graham and Mr Russell-Murphy. You say: "Hi, I've put together some answers to the account managers questions ..."

Do you remember being given some questions from the account managers?

A. The account managers put together questions on numerous occasions. So, this would have been normal, latterly, when Kobus probably came on, he dealt with it.

Q. Can we look at the answers you drafted: <MDR00041257>. Do you see, at the bottom of the page, there is a heading "Lending" and it says:

"How many clients have we lent to?"

You understand, as a matter of ordinary English, that's obviously referring to the number of borrowers? It is asking how many borrowers has LCF lent to, isn't it?

A. Yes, and I can see where you're going with it, Mr Robins. This also accompanied the conversation that I had with Surge. They were aware that we only had a few. But they were also aware that each drawdown was a loan in its own right.

Q. Do you say that the answer you gave, "As at the beginning of May 2016 LCF has made 121 loans", is an accurate and non-misleading answer to the question "How many clients have we lent to?"

A. Standing here now, reading that, I can see your point that that is misleading.

Q. If we look at <MDR00042902>, you have given this information to the account holders and they're using it. Jo Baldock is emailing a prospective bondholder, and she says:

"Further to your enquiry today, I believe you requested some further information ... provided below some of the common questions along with the answers. "How many clients have we lent to?"

"As at the beginning of May 2016 LCF has made 121 loans."

So, do you accept that you were responsible for misrepresentations being made to prospective bondholders?

A. I accept that that is not absolutely accurate at all. Yes, we did make 121 individual loans. However, looking at the question, yes, I can do nothing but agree with you, Mr Robins.

Q. Isn't it an answer that's deliberately crafted to mislead?

A. It is an answer crafted to create an impression.

Q. To create a false impression, Mr Thomson?

A. Yes, we did have -- we did make 121 loans. We didn't have 121 clients. I can do nothing but agree with you, Mr Robins. It is incorrect. It didn't last for long. We did stop it.

Q. Can we look at <MDR00052283>. This is now August 2016. Mr Russell-Murphy emails you saying that the AMs have put a list of commonly used facts which are not noted in the IM, and he asks you to confirm that it is accurate. Is this the sort of thing you remember happening?

A. Possibly. Kobus has had a compliance visit and got questions, I can see this happening. It clearly has, he's emailed me.

Q. Can we look at <MDR00052599>. You have provided your answers. Number 2, you said:

"Around 120 loans currently issued."

That was from Mr Russell-Murphy's email. You have then added:

"Agreed this is okay."

So, having crafted something to mislead, you are then confirming again that it is okay for them to say it to prospective bondholders, aren't you?

A. I've got no defence, Mr Robins, at all. That is -- I read it now and slightly cringe.

Q. "We turn down around 60 per cent of loan apps. Agreed this is okay."

That was also untrue, isn't it?

A. We did in the early days, actually, get phoned reasonably often and we didn't progress them. I think Mr Huisamen confirms in his interview that we received --

Q. But you weren't turning down 60 per cent of loan applications. That was something you said to create a false impression, wasn't it?

A. I won't agree with you on that one. I will agree with you on point 2.

Q. It was to help give the impression that LCF was lending to unconnected parties, wasn't it? That you have got all these people applying and you're turning them down?

A. It doesn't say anything about unconnected parties there, Mr Robins.

Q. That's part of the impression you were trying to create?

A. It says nothing about unconnected parties, Mr Robins.

Q. 5:

"Approx 40 staff at LCF. Agreed this is okay." LCF never had 40 staff, did it?

A. You're counting LCF in Eridge and also the ones representing it and working for it in Brighton.

Q. They weren't LCF staff, were they?

A. They were representing LCF.

Q. They weren't LCF staff, were they?

A. They were representing themselves to the bondholders as LCF, so that is why we calculated them as LCF staff. Mr Russell-Murphy would have had to have done a headcount to come up with that figure.

Q. Can we look at one of the information memoranda, <11/5> at page 1. First, you recognise this as one of the information memoranda, I'm sure, don't you?

A. Yes, I do.

Q. Can we go to -- it is either page 11 or page 12. Let's have a look. Yes, here we are, page 11. Do you see, halfway down the page:

"The lending process.

"LCF sources opportunities to lend from its network of industry contacts/brokers ..."

We looked at the list of borrowers earlier. You hadn't sourced opportunities to lend to them from a network of industry contacts or brokers, had you?

A. Contacts, and I think we say elsewhere in this that the directors will work with people they worked with before. So, we did get -- the idea was, when we first started at LCF, to go in a broader direction. We didn't evolve in that direction. We evolved differently and we ran very quickly. So, yes, the network of industry contacts is people that we used to work with/brokers. Yes, I did have a number of brokers that I discussed with. I didn't actually do any business with them.

Q. So you accept that none of borrowers in the list we saw earlier are actually sourced from brokers?

A. Contacts of myself, and that's how the business grows. In the early days of LCF, that wasn't the direction that we thought we were going to go in. We ended up in that direction.

Q. Then it says:

"A potential borrowing company is first assessed by a broker against LCF's lending criteria." You accept that none of the borrowers had been assessed by any broker against any LCF lending criteria?

A. No, because the borrowers that we had came from contacts that I had, not brokers.

Q. Then:

"When a company is referred to LC&F, its borrowing application and associated financials and assets will undergo a full financial review, lending assessment and, if required, a further financial analysis via an independent accountant and/or surveyor will be undertaken prior to any decision to lend being made." That's not something that ever happened, is it?

A. I disagree with you, because that paragraph covers lots of things. So, when you look at a decision to lend -- I'll take your point. With a brand-spanking-new company, because I'm sure you will take me there, you look at the assets, we are an asset-based lender, "Are we happy with the assets?". A full financial review of the asset will be what's going to happen with it and, yes, we absolutely got figures for that. A lending assessment would be, "What is the asset? Is it suitable security? What's the value of it? What are they going to do with it?" That would have been provided by a third party if we needed further analysis, then we could have gone to -- and we did, indeed, get a third party to value those assets. So part of that is correct. When you're looking at a lending process, there's no "one size fits all".

Q. Let's take Atlantic Petroleum Support. We looked at it yesterday. Mr Lee said the market cap of the whole company is 4.4. He told you you needed to look at BDO's advice that Mr Sedgwick had referred to. Two days later, you signed a loan agreement. The debenture referred to an assignment of an asset that everybody carried on on the basis that it belonged to LOG.

A. Sorry to jump in, I was wrong there, it was actually LPC not LOG.

Q. You mentioned a parent company guarantee yesterday. We looked at that as well yesterday. A debenture with a charge over preference shares that never existed. You can't say seriously that there was a borrowing application and associated financials and assets underwent a full financial review and a lending assessment in the case of Atlantic Petroleum Support?

A. No, because that's a restructure of an existing debt. I don't take your point with Atlantic Petroleum. The assignment of the loan did happen. It took a couple of months for it to happen. The debenture that we took was an all assets charge. It wasn't simply preference shares. The asset that is inside Atlantic Petroleum, you're only looking at the market cap, you're not looking at the financials behind that. If you look at the financials, the CPR and the associated financials, the base case was

\$30 million over, I think, two and three years and the high case was \$66 million. I saw that last night in disclosure.

So -- and there is associated financials that go with that. So, when you're looking at a lending assessment, is there security that we can see? Yes, there is. Is there financials that we can see via a CPR and the associated financials? Yes, there was. Is there security? Yes, via a debenture parent company guarantee.

Q. It says:

"The financial review and lending assessment process incorporates but is not limited to the following." The first is "Review of historical financial information":

"The historical financial review will seek to analyse the performance of the potential borrowing company over the last three years ..."

You would accept that none of the Support companies had any three-year financial information that you could analyse?

A. Well, that's why I said earlier, Mr Robins, because I said you would take me to it, that for new companies they wouldn't have that. However, what they do have is the value of the asset that is associated with it and the financials of the development of the asset that is associated with the lend, which is what you would look at. I do take your point it is a new company. You cannot go through financials that weren't there. But what you can do is look at the asset and what the asset is going to be developed, and that is your figures, that is your security, and that is what you are assessing as an asset-based lender.

Q. You mentioned earlier that LCF evolved in a particular direction. Do you accept that if LCF was operating a business that was not in accordance with the description in the information memorandum, then it would be completely wrong to continue raising money from members of the public on the basis of that description?

A. I would say some of this description is correct, some of it doesn't cover what we did. When we set out, this is what we set out to do, but an information memorandum has a period of time. It doesn't cover all bases. When you're looking at what you could do with -- when appraising a potential lend or a restructure or a refinance or a lending decision, you look at, as an asset-based lender, the asset. This doesn't cover everything. Parts of it were used. All of it wasn't used. But, when we put this together, the company was going into a different direction and it evolved differently.

Q. Did you put this into the information memorandum to help create the impression that LCF would be lending to unconnected companies about which it had no prior knowledge?

A. I don't believe unconnected comes into it, Mr Robins.

MR JUSTICE MILES: Sorry, Mr Robins, can I just ask a question about that bullet point?

You have said quite a number of times, I think, in your evidence to me, Mr Thomson, that it was an asset-based lender. What seems to be being said in that first point (a) is that you were going to assess the current profitability of the company, and that that's a reason -- and to see whether that's sustainable.

A. Yes, my Lord.

MR JUSTICE MILES: Do you agree that that's the impression that's being given by the document?

A. I do, my Lord. It could have been worded a whole lot better. It should have been expanded upon so it is not the borrowing company, it is the venture that is associated with the asset. I agree the wording leaves things to be desired.

Housekeeping

MR ROBINS: My Lord, I see the time. I have got about 10 to 15 minutes left. I don't know if it makes sense to finish off tomorrow morning. I understand Mr Ledgister has a few questions for Mr Thomson as well and then there is re-examination.

MR JUSTICE MILES: How long will you expect to be, Mr Ledgister?

MR LEDGISTER: My Lord, I'm hoping to be about five minutes, but it all very much depends on the answer to my first question. If not, it will be about an hour, so I think we should allow an hour, perhaps.

MR JUSTICE MILES: And then?

MS DWARKA: I expect to be 10 or 15 minutes, my Lord.

MR JUSTICE MILES: In the light of what Mr Ledgister has just said, it seems to me that we need to come back tomorrow.

MR ROBINS: Yes. Before we rise today, there is one point --

MR JUSTICE MILES: Sorry, Mr Thomson, so your evidence will in fact continue tomorrow.

A. Okay, my Lord.

MR JUSTICE MILES: But I think, as far as you are concerned, if you wish to do so, then you are welcome to leave the witness box now.

A. Thank you, my Lord.

(The witness withdrew)

MR ROBINS: I understand there is one point that Mr Ledgister wants to raise with your Lordship. He has indicated to me that he would like to make a point.

MR LEDGISTER: My Lord, yes. It is to do with the timetabling and scheduling of witnesses going forward. Clearly, in the absence of Mr Sedgwick attending, it is proposed that Mr Careless commences the giving of his evidence as of next week, I think it will be next week Monday. The original plan, of course, was that he would be attending next week Thursday.

My Lord, we would ask to retain the original scheduling insofar as having him attend next week Thursday, for the following reasons.

Mr Careless is ready to give evidence for that date and has made plans. Arrangements have been made, both with his family and also hotels, and so on and so forth, and there are plans to take instructions from him. My Lord will know, of course, there's been some movement insofar as the pleadings over the last few days, and so on, but there have been plans to take instructions from him over those next few days. That's one aspect. That's not the most important aspect, and I make it quite clear that, of course, we have been focused on other matters in the interim. Of course we have argument tomorrow, my Lord.

Mr Careless, notwithstanding what I have said, has made it clear that, if he is told to come to court for Monday, he will be here. He is somebody who is perhaps to be considered a very interested defendant. He has appeared on more than one occasion, he has attended the preliminary hearings, and he will be here if instructed. The bigger issue, however, is to do with Kerry Venn. She has been working to the timetable and cannot, unfortunately, be brought forward to be called back to back with Mr Careless, for this reason. She has recently set up a business, which is a business that provides services for caring of animals. We are told that there needs to be qualified personnel to oversee the centre, and if she is attending court, she has to bring somebody else in to do that.

Now, arrangements have been made to provide that cover while she is away, and, of course, as the timetable has shifted, she has moved the provision of replacement care on a couple of occasions. Due to the short notice that's required now, she is unable to find suitable provision of care in her absence. So, we would ask that she retains her position in the schedule. The alternative, of course -- and she has offered this -- would be for her to have an unqualified member of her family, or somebody else, to look after the animals in her absence. Clearly, that is something which is undesirable, particularly for her new business which she has recently set up.

So, again, it is not the case that she will not be here if told she must be here; it just creates a great deal of difficulty for her.

But given the position to be as it is, and if her position is to be secured, we will then have a break of a few days after Mr Careless's evidence and before Ms Venn's evidence, and if such a break is going to occur and we are going to lose a few days, we would respectfully ask that that break take place this side of Mr Careless's evidence, as opposed to at the back end of it, and we could then have his evidence back to back with Ms Venn's and have our defence case put in one tranche.

My Lord, there is a further matter to be considered. There are ongoing discussions between the parties at the moment, the types of discussions which would lead to the shortening of the trial further.

Clearly, if Mr Careless is in the box, we cannot engage in those discussions, and it would be fair to say, once he goes into the box, those discussions are likely to come to an abrupt end, in any event. So, for that reason, we would also ask -- or encourage the court to allow us the time to see whether we can advance those discussions because it may well result in the shortening of the trial, in any event.

To keep the original scheduling and lose a few days next week will not lengthen the trial. Admittedly, it won't shorten it, but it is not going to lengthen it at all. In fact, the amount of time allocated towards the back end of the timetable for the defence speeches, the closing speeches, I think perhaps is a little longer than is certainly needed for my part, so we are going to have a reduction, in any event.

So, my Lord, those are the reasons that we ask to keep the timetabling as it is. Of course, if instructed to do otherwise, we will comply.

MR JUSTICE MILES: When you say that Ms Venn's business is concerned with caring for animals, was does that mean? Is it --

MR LEDGISTER: A cattery, my Lord; so from Surge to cattery.

MR JUSTICE MILES: You will have to forgive me for my ignorance: is there any sort of regulation in relation to that area which requires a qualified person?

MR LEDGISTER: My Lord, the instructions that we have and the correspondence I have seen, the word "qualified person" is used, those words are used, so I'm assuming that is the case because she makes reference to the fact that an unqualified person, a member of her family, can provide the care, but that's clearly not desirable.

MR JUSTICE MILES: Thank you very much.

MR ROBINS: My Lord, for our part, we oppose any unnecessary delay, but it does strike me, listening to that, that it might make sense to revisit this matter at the end of the day tomorrow.

Your Lordship won't have seen yet, but in the skeleton arguments on the amendment application, it's being said, well, if the amendment were permitted, we would need to have an amount of time to take further steps. Equally, on the question of the fifth and sixth defendants' disclosure tomorrow, I am going to be submitting that there are a few thousand documents that it transpires haven't been reviewed for privilege by Kingsley Napley which ought to be reviewed for privilege by Kingsley Napley. Your Lordship's decisions on those points might have a bearing on what Mr Ledgister has said.

So, whilst I maintain we oppose any delay and my instructions are to oppose any delay, I'm not sure it would necessarily be fruitful for us to stay here debating it now.

MR JUSTICE MILES: Yes, all right. I think there is some sense in that because it may well be that the question whether a delay is, in fact, needed for other reasons will depend on the outcome of those debates. What I would ask, though, Mr Ledgister, is to have, in any case, a slightly clearer picture of just what Ms Venn's specific difficulties are in trying to get someone else to assist with her business so that if I were to say, "Look, we should get on with it", whether it would actually be possible, even though rather unsatisfactory for her -- I quite understand that she would rather not be in that position, but what I would really like to know is whether it is impossible or just unsatisfactory.

MR LEDGISTER: Understood, my Lord.

MR JUSTICE MILES: So, I would invite you also to be in a position to make slightly more, if you like, informed submissions on that point if we come to it.

MR LEDGISTER: My Lord, I will research the regulatory cattery position overnight. I will take instructions, my Lord.

MR JUSTICE MILES: Also, what steps she has taken to find a substitute person who might be able to assist. I mean, I understand that she is found someone else to cover these days. It may be that person isn't available for the four earlier days, or whatever it is, but it may be someone else might be available. I imagine that it is a world where there are quite a lot of qualified people, but that's a guess rather than based on any --

MR LEDGISTER: Any personal knowledge, my Lord.

MR JUSTICE MILES: -- any knowledge. So if you could find 48 out a bit more about that.

MR LEDGISTER: Will do.

MR JUSTICE MILES: Obviously, as a matter of general principle, the court should avoid unnecessary gaps in the timetable, and I think the fact that it may be there is some time at the end doesn't really hold much water because the idea is not to fill up such time as we have been allocated; it is to get the trial done in the most efficient way.

MR LEDGISTER: Thank you, my Lord.

MR JUSTICE MILES: So, we will return at 10.30 tomorrow. Am I expecting skeleton arguments?

MR ROBINS: On the amendment application, yes.

MR JUSTICE MILES: What about on the disclosure?

MR ROBINS: There isn't one at the moment, but I can do one this evening if your Lordship would like --

MR JUSTICE MILES: If possible. It does help. It doesn't need to be very long, but it does help.

MR ROBINS: I can set it out. We can aim for 9 o'clock tomorrow morning. Will that give your Lordship long enough?

MR JUSTICE MILES: Yes.

MR CURRY: My Lord, on the question of disclosure, I don't wish your Lordship to be without a skeleton argument from me unnecessarily, but, in practice, until I see what Mr Robins is asking for and why he is asking for it, I'm not, in fact, going to be in a position to put in a skeleton argument.

MR JUSTICE MILES: Has it been covered in correspondence?

MR CURRY: Not as far as I'm aware, unless there has been correspondence going on today that I haven't seen.

MR ROBINS: Not yet. I only saw the witness statement for the first time this morning. It was sent to my instructing solicitors at 10.40 pm last night. I got it sometime around 8.00 this morning. So I have only had a quick look at it myself. We have been in court. We haven't been able to correspond about it. But it is something that needs to be addressed fairly urgently, particularly if there is a suggestion that there should be a gap in the timetable before the cross-examination of Mr Careless.

MR CURRY: I'm not trying to delay the issue --

MR JUSTICE MILES: No, I understand that. It is helpful that you have made that point. I'm just wondering how practically this can best be dealt with. If you are going to be asking for something else to be done, in order practically to have a debate about it, they probably need to know what your points are.

MR ROBINS: Yes, we can tell them immediately. I can tell my learned friend now. We will be asking his instructing --

MR JUSTICE MILES: Why don't you tell him after court?

MR ROBINS: Absolutely. We can put it in a letter.

MR JUSTICE MILES: You don't need to tell me, because I will see that tomorrow, but if you are able to explain to him what you are going to be asking for, and perhaps, in brief terms, at least, why, so it is not just, "This is what we want and I'm not going to tell you anything more" --

MR ROBINS: No, absolutely we can do that.

MR JUSTICE MILES: -- but, "These are the shortcomings, as we see them. This is what we are after", then that's something that should then arm you with the ability to put in a short skeleton as well.

MR CURRY: I'm grateful, my Lord.

MR JUSTICE MILES: By 9 o'clock tomorrow morning. (4.38 pm)

(The hearing was adjourned to Thursday, 18 April 2024 at 10.30 am)

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