

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 28 - Monday, 29 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

Monday, 29 April 2024 (10.51 am)

MR LEDGISTER: May it please my Lord, may I call Paul Careless, please.

MR PAUL JAMES CARELESS (sworn)

Examination-in-chief by **MR LEDGISTER**

MR LEDGISTER: Mr Careless, would you mind giving the court your full name, please?

A. Paul James Careless.

Q. If we can please have up document <C2/3>, do you see a document before you?

A. Yes.

Q. Do you recognise that document as your witness statement, your first witness statement, in relation to these proceedings?

A. Yes, I do.

Q. Can we please turn to page 24. Has the page changed for you?

A. Yes.

Q. Is that your signature?

A. Yes, it is.

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

A. Yes, they are.

Q. Can we please turn to document <C2/6>. Do you recognise this document as your witness statement?

A. Yes, I do.

Q. That was made in connection with these proceedings, just to be clear?

A. Yes.

Q. Can we please turn to page 4. Is that your signature?

A. Yes.

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

A. Yes.

Q. Finally, document <C2/8>, please. Is this a further witness statement made in connection with these proceedings by you?

A. Yes.

Q. Can we please turn to page 4. Again, is that your signature?

A. Yes.

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

A. Yes, they are.

MR LEDGISTER: My Lord, may these witness statements be admitted as Mr Careless's evidence-in-chief?

MR JUSTICE MILES: Yes.

MR LEDGISTER: I'm grateful. Mr Careless, before I sit down, the room is quite large, it is very important that I and Mr Curry hear what you say, so please keep your voice up. The microphones may not amplify your voice, necessarily.

A. Okay.

MR LEDGISTER: Please wait there.

Cross-examination by MR ROBINS

MR ROBINS: Mr Careless, The Investment Experts was a website operated by you and Kerry, wasn't it?

A. Yes, it was.

Q. You are calling Kerry as a witness in these proceedings, aren't you?

A. Yes, I am.

Q. Presumably, you have read her witness statement?

A. Yes, I have.

Q. Presumably, you say she gives a reliable account?

A. Yes, I do.

Q. Do you think that, when she's asked a question, she gives a truthful answer?

A. I do.

Q. The Investment Expert website had a big question box on it, didn't it, where members of the public could type in a question?

A. Yes.

Q. They could ask questions about investments?

A. Yes.

Q. If we could look, please, at <I3/59>, page 1, or <I3/60>. Maybe we will leave that one and bring up another one. Can we look at <SUR00129198-0001>, please. <SUR00129198-0001>, please.

MR JUSTICE MILES: Is there a problem with the system?

MR ROBINS: It comes up, my Lord, when I put the number in. <SUR00129198-0001>.

That's what The Investment Expert website looked like in 2015, isn't it?

A. Yes.

Q. The public could ask questions about investments, couldn't they?

A. Yes.

Q. They would ask things like, "I've got an old pension, I don't know how to trace it", or, "I've got three pensions I want to consolidate", and that sort of thing?

A. Yes.

Q. Or, "I want to invest £15,000, what's a good investment?"

A. Yes.

Q. You and Kerry would sell those leads to financial advisors, wouldn't you?

A. Yes, we would.

Q. You would tell them to make a bid by postcode?

A. Yes.

Q. So, if someone in Bolton asked a question, you would try to find a financial advisor in Bolton?

A. Yes.

Q. And then you'd get the best price you could for the links?

A. Yes.

Q. So, there wasn't a fixed price for leads, it was just the best you could negotiate at the time?

A. Yes.

Q. So, if someone asked a question, it wasn't you and Kerry phoning them back to give investment advice, was it?

A. No.

Q. On the screen, it says:

"Ask an investment expert a question for free." It says it is completely confidential. It wasn't completely confidential, was it?

A. I suppose you're suggesting that -- we're looking at the leads now?

Q. Well, no, if you're selling people's details to the highest bidder, it is not 100 per cent confidential, is it?

A. No.

Q. So, you were lying to members of the public to make money?

A. Well, I don't sort of agree with that characterisation. I mean, perhaps a little bit of context on this one. The Investment Experts came from a business where I'd set up similar websites for various operations. So, my background was, I'd been involved with price comparison, and we knew that there was a need for people to ask a question and get some initial advice from an expert, whether that expert was a lawyer or perhaps a doctor or, in this, an investment expert. This is a kind of --

where it morphed into. Yes, I mean, it was -- we sold them to IFAs, and financial advisers would then contact them and, if they could, they would work with them.

So, in answer to your question, it was confidential between the client and the IFA.

Q. But here is a website, The Investment Experts, saying to members of the public, "completely confidential", and you were selling their details to the highest bidder. So, as between the member of the public and the website they're submitting the enquiry to, it wasn't confidential, was it?

A. Perhaps the way to explain it is this: when we used to do this for doctors and solicitors, of course the same applied, where the expert, or the profession in this part, would be the only person who would read this. Obviously, we had access to it to read the questions, and we did read the questions, because we wanted to understand what it was people were looking for and, indeed, what we could sell.

But I don't agree with the characterisation that I was misleading the public because I say it's confidential. I mean, how else would people be able to write any form on the internet in any way that could go to any person?

Q. You didn't need to put the words "completely confidential" on the front of your website, did you?

A. I disagree. I mean, it was confidential. Well, we weren't publishing them at all.

Q. We have your answer, Mr Careless. I will move on to another topic.

A. Okay.

Q. Pat McCreech and Phil Nunn worked for a company called Aspinall Chase, didn't they?

A. Yes.

Q. They set up a company called Blackmore as well?

A. Yes, they did.

Q. You sold leads to them?

A. Yes.

Q. Is that why the leads were automatically copied to Pat and Phil?

A. Yes, I presume that's why.

Q. If we go to <SUR00000867-0001>, for example, you can see that the leads are being sent to ***** and ***** . That's Phil Nunn and Pat McCreech, I assume?

A. Yes, that's right.

Q. You were selling leads to them for about £33 a lead in, say, January 2015?

A. I genuinely, I'm afraid, couldn't tell you the price back then.

Q. But it was that sort of order of magnitude, was it?

A. It sounds about right. I couldn't remember precisely, I'm afraid.

Q. You were looking to bring the cost down to something like £16 or £17 a lead, weren't you?

A. I presume so. If -- I mean, I actually cannot remember --

Q. Okay.

A. -- quite how the commercials of this business worked.

Q. Let me show you an email <SUR00000879-0001>. That's an email from Kerry. She says:

"... we have now delivered 423 leads ..." She says:

"The good news is that the cost per lead has come down ... from ... to £33.37 per lead and it is anticipated we can get that down further in time. The invoice is to generate 800 leads at a cost of £16.69 for each lead ..."

You don't say that's wrong, do you?

A. No.

Q. You also did some branding and marketing work for Blackmore, didn't you?

A. Yes.

Q. You helped to create a website and some brochures for them, I think?

A. Yes, sounds familiar.

Q. You created a customer interface for their website as well, I think?

A. Yes.

Q. In terms of what you charged for that, it was in the order of £30,000 for the customer interface, £20,000 for the website, that sort of thing?

A. Yes, that sounds familiar.

Q. It is fair to say, isn't it, that money was fairly tight in February 2015?

A. Yes.

Q. You were having to manage cash flow issues?

A. Yes, that's correct.

Q. Do you remember Kerry expressing concern about cash management?

A. Not specifically, no, but we were a start-up, so yes.

Q. You wanted to do more than just sell leads, didn't you?

A. Yes.

Q. It is fair to say you had ambitions for a bigger business?

A. Yes.

Q. And you felt you weren't making enough money?

A. I'm not sure that was entirely everything. Could I give you a little bit of colour on this one, Mr Robins?

Q. It is up to his Lordship.

MR JUSTICE MILES: I think, if you are able -- I think, if you are able just to answer the questions which are asked, because it is counsel's job to ask the questions that he wishes to. Obviously, if, in relation to a particular matter, you want to expand your answer, then by all means. So, I think the question was, you felt you weren't making enough money. If you want to say a bit more about that, then do so. But, if you can, try to stick to the question which is being asked.

A. Yes, my Lord. The answer to that is yes.

MR ROBINS: Yes, you felt you weren't making enough?

A. Well, we were a business and we would have always liked to make more money.

Q. What you really wanted to do was to start building websites and software for the product, for the investment companies?

A. Yes.

Q. At some point in February 2015, you had a conversation with a guy called Ben Beal?

A. Yes.

Q. This wasn't in a business context, was it? It was just a social conversation?

A. Yes.

Q. You said to him something along the lines of, "We are selling these leads, but we want to do more. We would like to meet product, we would like to go and meet investment products"?

A. Yes.

Q. Ben said, "You should talk to John"?

A. Yes.

Q. Had you met John Russell-Murphy before this?

A. No.

Q. He was a colleague of Ben Beal, I think, wasn't he?

A. I didn't know he was a colleague at the time, but I knew they were associated, yes.

Q. That led, I think, to some preliminary discussions with John Russell-Murphy?

A. Yes.

Q. You explained to him that you had been dealing with IFAs, trying to get them to have better websites, but they didn't really like to make investments in business development?

A. That sounds familiar.

Q. So, you were thinking, bypass the IFAs, go straight to their products?

A. Yes.

Q. When you discussed that with John, he said, "I can introduce you to a man called Spencer Golding, who is very well connected"?

A. Yes.

Q. And he told you that Spencer could introduce you to at least three or four products and would be able to open doors for you?

A. Yes.

Q. John also told you that Spencer and his colleagues were serious investors with a portfolio of opportunities?

A. Yes.

Q. He said he had known Spencer for years?

A. Yes.

Q. So, you prepared a pitch for Spencer Golding?

A. I believe so.

Q. Do you remember a meeting was then arranged by Ben Beal?

A. Yes.

Q. He told you that you were going to need to go to somewhere called The Long Barn in Ashdown Business Park, didn't he?

A. Yes.

Q. He told you that the companies involved would include SAFE, Lakeview Country Club and London Oil & Gas?

A. Yes.

Q. Do you remember Kerry telling you that she had conducted some cursory internet searches?

A. Yes.

Q. Basically, she Googled various names, didn't she, and saw what she could find on the internet?

A. Yes.

Q. If we look at <SUR00000897-0001>, we can see her email to you. In the paragraph just above the subheading, she said:

"The London Oil and Gas fund has not launched yet, there is currently no public information about it and Ben has said they have been reluctant to tell him much about it at this early stage, other than the fact that they want to raise £50mil. I asked about the purpose of the fund and if it was for oil and gas exploration (thinking that is so high risk/high reward, that their conversion will be below 5 per cent) and Ben said he really isn't sure, so we are going in blind about the new fund."

When she says "conversion will be below 5 per cent", she means that a high risk/high reward oil and gas business wouldn't be very attractive to members of the public?

A. I think that's what she's saying, yes. I haven't seen this email for sort of eight or nine years, but that sounds familiar too.

Q. Conversion below 5 per cent means that you're converting less than 5 per cent of leads?

A. Yes, I think that's what she's referring to.

Q. This really was the extent of your knowledge about London Oil & Gas before you went into the meeting?

A. Yes.

Q. Similarly, if we look at the bottom of the page, Kerry says:

"Ben also lists their business involvements as: "1. SAFE investment bond (Can't find anything about this on Google)."

It is fair to say you didn't really know anything much about the SAFE investment bond before you went into the meeting?

A. That's correct.

Q. Kerry found, I think it is fair to say, a bit of information, but not much?

A. Correct.

Q. I think one of the things she found -- maybe it is in the middle of the page -- is just above the headline we were looking at:

"Spencer Golding, can't find anything on him." You and Kerry didn't know anything about him before you went to meet him?

A. No.

Q. Other than what John had told you?

A. Correct.

Q. So, at the meeting at The Long Barn, you and Kerry did a pitch?

A. Yes, I think so.

Q. You explained your marketing skills, graphic design skills, branding skills, et cetera?

A. Yes.

Q. And that the people you had gone to meet started brainstorming opportunities?

A. I mean, I probably couldn't tell you the detail. I mean, I couldn't tell you the detail of what was said at that meeting because it was so long ago. I could probably tell you who was there and I can probably give you an opinion on the impression I formed from it because I did form an impression from it. But the detail of what was said would be difficult.

Q. Maybe I can help you with that. If we go to <M1/2>, page 1, this is a transcript of Kerry's meeting on 3 September 2019. You can see she met with Guy Wilkes of Mishcon de Reya, Colin Hardman of Smith and Williamson. Do you think you have seen this document before?

A. I think I might have done, yes.

Q. If we go to page 8, please, you will see Kerry says: "... that's February in 2015 that we had a meeting at a big barn office in Crowborough, and present at the meeting was not just Spencer Golding and John Russell-Murphy; they'd also invited Simon Hume-Kendall." That's correct, isn't it?

A. Yes.

Q. Do you have any recollection if Elten Barker was there?

A. I think there were several meetings at this office and I'm sure he was at one of them, but I couldn't tell you if he was at this one, I'm afraid.

Q. Then she says what I was just asking about: "We did a pitch. So we explained where our marketing skills were; our graphic design; our branding skills. It was a very successful meeting because ... [people] started brainstorming opportunities ... "Simon Hume-Kendall himself was working for an oil and gas company and he was in the final stages of getting an investment memorandum or a retail prospectus, I think, not that we knew what retail prospectus was at the time, but it was in the final stages of getting his oil investment ready for sale to the public. We were -- made all the right noises, 'Oh, it's wonderful and we're very interested' but actually we thought, from a marketing and sales perspective, this would be a harder thing to sell to the public. He said: "'No, no, it's not exploration it's production. It won't be so hard to sell to the public'." That's, in your opinion, not inaccurate, is it?

A. No.

Q. You will have seen her witness statement. I'm sure she says there were some uncomfortable moments in the meeting. Have you seen that?

A. I can't -- obviously, there is millions of documents and I have been trying my best to go through as many as I can, but I can't recall that specific one.

Q. What she says was that Simon's real interest was in oil bond:

"Paul and I thought this was less attractive. We couldn't see the public would be interested in an oil bond. It seemed too speculative and risky. Simon tried to give Paul a prospectus for the oil bond to look at but Paul did not take it as he said he didn't need to. I could see that moment had caused a little offence. I remember trying to placate the situation by saying I would take a copy of it instead."

Does that ring any bells?

A. Yes, it does.

Q. Is that broadly accurate?

A. Yes, it is.

Q. We can see on the screen Kerry says: "We then moved onto, we've got this leisure and tourism business that was also a bond. Again, we didn't want to say the wrong thing to put them off, but land in Cape Verde is not what the retail public really want to invest in: too high risk."

You don't say that's inaccurate?

A. Well, I think, with the optics of us being a marketing firm, our job was to present -- this pitch would have been about presenting what else was out there. Because we did marketing, so we wanted to help these potential clients understand what the public want and I think I was aware at this stage there was quite a few bonds back then which did offshore property. The bond market back then was doing a lot of offshore property. So I can recall -- yeah, I would agree with that comment that Kerry's wrote there.

Q. You were trying to find something that you could sell successfully to the public?

A. Well, we were just giving them our advice as a marketing firm on what was in the marketplace and, you know, what would be -- what members of the public would be investing in. And, at the time, if we could just cast our minds back to 2015, interest rates were low, people were investing in -- they weren't investing in this, they were investing in money lending companies, they were investing in litigation funding, they were -- property was enormous back then. So they were the sort of predominant areas that people were investing in. So, yes, I do agree with that.

Q. When you say "agree with that", do you mean the comment that the everyday person on the street is not going to want to invest in Cape Verde, the comment there in the middle? Is that what you are referring to?

A. Yes, the "everyday person on the street is not going to want to invest in Cape Verde". I think I would agree with that.

Q. So what you were really interested in what was called at the time Sales Aid Finance (England)?

A. Yes. I mean, yes, that was how they proposed -- that was their best product, in our view.

Q. You knew that John Russell-Murphy was already selling that?

A. I think, yes, I did know that.

Q. You knew he'd had some success in selling it?

A. Yes, I think he had.

Q. He knew how to sell it?

A. Yes.

Q. You thought a lending-to-companies kind of an investment was something the public would understand?

A. It seemed to be the market at the time -- all of the successful funds at the time were in the SAFE arena.

Q. So you thought that's something you would be able to sell?

A. Yes.

Q. There were three distinct products. You could either market a bond that's for the oil and gas industry or a bond that's for a leisure and tourism company or a bond for a company that lends to SMEs?

A. Yes, at that stage.

Q. There were three separate and distinct investments. You were told at the time they weren't in any way related?

A. I don't recall, but, no, I don't think I was told they were related. It was an initial pitch the client -- Kerry and I were already working with one client, we were looking to bring on other clients.

Q. If we could look at page 16 of this document, please, in the middle of the page. Towards the top of the page, Kerry said:

"No, there were three separate distinct products. So you could either market a bond that is for the oil and gas industry. A bond that's for a leisure and tourism company or a bond that's for a company that lends to SMEs. So, they were described as three separate and distinct investments. Not in any way related."

That's how it was described to you at the meeting?

A. Yes.

Q. After the meeting, Kerry sent you some notes of what had been said during the meeting, didn't she?

A. I would -- yes.

Q. She told you that Ben had been in contact with her and that the people you met wanted a million pounds' worth of leads as soon as possible?

A. Yes.

Q. She told you that you should try and sell the leads for £150 per lead?

A. Yes.

Q. If we go to her notes, <SUR00000914-0001>, do you recognise this as the document that she prepared for you?

A. Yes, if you say -- I mean, I haven't read this in nine years, but yes.

Q. In the middle of the page it says:

"SAFE ...

"Charge SMEs 12-15 per cent and give a return of 8.5 per cent to investors, this is paid quarterly. Money tied in for 2 years. Loans no longer than 1 year and 150 per cent asset backed security. The company also put up £4.5mil security from their own Real Estate portfolio. This is a section 21 exemption bond ... They have £1mil in this fund."

That's essentially what you were told about SAFE at the meeting, isn't it?

A. Yes.

Q. You and Kerry discussed the possibility of providing websites for the three funds that you had been told about, didn't you?

A. Yes, that's quite likely.

Q. You thought you might be able to provide them with brochures and online reputation management services?

A. Yes.

Q. What you proposed in the end was a trial period of leads for SAFE?

A. Yes.

Q. Can we go to <D7D9-0001771>. This is your email to John Russell-Murphy, and it says -- well, you say in the middle of the page:

"The terms of the trial ..."

And 4 is:

"Leads will be generated from our website www.investment-experts-online ..."

"5. You can open your conversations with the leads as if you are calling from [Investment Experts Online]." Mr Russell-Murphy, at this point, wasn't anything to do with Investment Experts Online, was he?

A. No, he wasn't.

Q. If he phoned someone up and said, "I'm calling from Investment Experts Online", that wouldn't have been correct, would it?

A. John Russell-Murphy, when we first met, held himself out to be an IFA working for Rothschilds, and he was the standard type of person we would have sold leads to.

Q. But if he phoned someone up at this time and said, "I'm calling from Investment Experts Online", that wouldn't have been correct, would it?

A. No.

Q. So you were telling him that he could make incorrect statements to members of the public?

A. I mean, the entire business model was predicated upon selling leads to professionals in the industries of which they were professionals in. And, of course, ringing someone up and saying your name is John Russell-Murphy, without relating to where you got their information from, would be difficult to sort of explain away. So that's where they got the information from. It was true. And so, yes, we would want him to say that.

Q. Wouldn't it be more correct for him to say, "I bought your contact details for £150 from the Investment Experts Online"?

A. I just don't think that's in any way realistic, commercial or indeed practical.

Q. So to make it realistic, commercial and practical, he had to mislead members of the public?

A. Well, I'm not sure he is misleading members of the public. I set the terms out of what I think he would be paying for, and I'm expecting him to call them up and introduce himself properly, and I think -- I don't see a problem with that.

Q. So, you say it would be misleading or wouldn't be misleading for him to say he was calling from Investment Experts Online? Misleading or not?

A. I would say not.

Q. So you'd say not. Surge sent an invoice to SAFE for £3,000 for the 20 leads?

A. Yes.

Q. You sent him 21 leads, I think?

A. Yes.

Q. With a value of £1.3 million?

A. Yes.

Q. When I say "value of £1.3 million", that's the amount available to invest mentioned by each member of the public who asked the question?

A. Yes.

Q. Mr Russell-Murphy expressed a positive or optimistic opinion about being able to make some sales from those leads, didn't he?

A. Yes.

Q. Do you remember he persuaded one person to cash in a Halifax investment to invest £200,000?

A. I do not remember.

Q. At this time, you still had some financial difficulties, didn't you?

A. Yes, I did.

Q. You had some debts which you needed to settle?

A. Yes, I did.

Q. It is fair to say you were scraping for funds?

A. That is fair.

Q. You weren't happy living on building out websites?

A. Well, I'm an entrepreneur. I'm naturally inclined to see if I can scale a business. In answer to your question, I had successfully sold moneyexpert.com in 2007 and had been through a lot of businesses which had failed, so I was carrying quite a lot of debt, both commercially and personally, yes.

Q. You thought that scraping for funds and living on building out websites was a situation that couldn't last indefinitely?

A. Yes.

Q. So you continued to have discussions with Mr Russell-Murphy?

A. Yes, we did.

Q. And I think also had further meetings with Spencer Golding and Simon Hume-Kendall?

A. Yes.

Q. You were asking, I think, at this point, for some sort of upfront payment from the people you were dealing with?

A. Yes, sir.

Q. You thought that they were not going to be willing to provide an upfront payment?

A. Yes, I didn't think they were.

Q. But you carried on having discussions with John Russell-Murphy?

A. Yes, sir.

Q. And you thought that you had the marketing experience, the online experience, he had the selling experience and there was a potential synergy there?

A. Yes.

Q. You also thought, if you joined forces with him, then you'd be able to have a more profitable business?

A. Yes, I think he was -- there were a lot of bonds around at that time, and -- not very good ones -- and he seemed to have access to a much more in-depth understanding and knowledge of the market. So, yes, we were impressed with John.

Q. I think the first thing you were able to do with SAFE after the trial was to work on the rebrand when it was becoming London Capital & Finance?

A. Yes.

Q. So they needed a new website, I think?

A. Yes.

Q. But the business model wasn't changing, was it?

A. No, I don't think so.

Q. They were still going to be lending money to small and medium-sized enterprises?

A. Oh, yes.

Q. You say in your witness statement you don't recall the details of what you were paid for that. Is that still the position?

A. Yes.

Q. Do you remember you were interviewed in court on 24 January 2020?

A. Yes.

Q. Do you remember it was Mr Shaw here asking you questions?

A. Yes, I do, yes.

Q. Do you remember telling him that, in broad terms, you were paid something in six figures, although probably less than £250,000?

A. I don't recall saying it, no.

Q. Can we look at <M1/9>, page 7, please. At line -- sorry, next page, next page. Sorry, I've got the wrong reference. Here we are. Line 15, internal page 10, you said:

"Answer: ... The initial fee, I am afraid I cannot tell you precisely that number.

"Question: Approximately?

"Answer: I create products for companies for £250,000 ..."

At line 19, Mr Shaw said.

"Question: In broad terms what the proposition was for a figure under £250,000 but probably in six figures? "Answer: Yes."

A. Yes.

Q. That's not actually correct, is it?

A. Could you show me why it's not? I can't remember.

Q. It was in the low five figures, wasn't it?

A. It could well have been, yes.

Q. Can we look at <D7D9-0001867>, please. You say in your email to Mr Russell-Murphy:

"I have reviewed the documentation and noted that SAFE will now become London Capital & Finance ... "I propose the following."

You set out a list that includes online brochure and website. Then, two paragraphs below the numbered list, you say:

"We will charge for just our time as we will be working with LCF. We will charge £10k + VAT with £5k + VAT due on start date ... and £5k ... payable on completion ..."

So it was just £10,000 for that initial work, wasn't it?

A. Yes, it was. Having read the testimony I gave to Mr Shaw, I think what I have done there is I have conflated the timeline slightly. That was something we used to do. We did later on, where we would charge -- where we set out what we were going to charge. As we got bigger, more competent -- we are a scrappy start-up at this stage, not really knowing what we were doing. As we got more competent, we became -- you know, that was the set fee we would charge, so, yes, but I apologise if that was inaccurate at the time.

Q. It was around this time that you first had communications with Mr Thomson, I think?

A. Yes.

Q. Can we look at <D7D9-0001923>. This is 9 July 2015, and Mr Thomson says to you:

"Hi Paul.

"We've not met yet ..."

You don't think you had met him before this date, do you?

A. I don't, no. Sorry, I don't, no.

Q. We saw, a moment ago, your signature on your witness statement. Could we look at <C2/3>, page 29, please. Oops, can we go back a few pages. One more [page 24]. Did you read the statement of truth above your signature before you signed it?

A. Yes, I did.

Q. So you say the contents of this statement are true?

A. Yes.

Q. This is what you ask his Lordship to believe, the contents of this statement?

A. Yes, sir.

Q. Can we look, please, at page 5. At the top of the page, you say:

"We were paid 20 per cent commission on the money raised for Blackmore. That commission rate was set by Pat in or around 2014/2015."

A. Yes.

Q. Then you go on to say in the final two lines: "We had been working with Blackmore for at least 6 months prior to meeting LCF or any of the other individuals involved in LCF."

Is that true?

A. Well, to the best of my belief, when I wrote it, my recollection of the timeline was not very accurate, and any mistake here would be in good faith and honest held. So, yes, I think it was true.

Q. Can we look at page 9, please. Paragraph 48. You say: "John originally negotiated the fee between Surge and LCF. I do not recall giving him any instructions or negotiation parameters. He was already receiving 20 per cent from SAFE and we, Surge, were already receiving 20 per cent from Blackmore."

That's true, is it?

A. Everything in my statement I believed was true when I wrote it.

Q. Do you still believe it to be true? You swore that it was true earlier?

A. Where is the disconnect that I'm being pointed to, please?

Q. I'm just asking you, do you say that's true?

A. Yes, I think so.

Q. Now, Surge actually started selling for Blackmore in late June 2015?

A. Right.

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

A. I couldn't recall sat here, I'm afraid, but if you say so, then I shall believe it, yes.

Q. Let's have a look at the document. <SUR00001292-0001>. It is an email you sent to Phil and Pat on 19 July 2015?

A. Yes.

Q. After dealing with leads under the heading "Blackmore Estates" you say:

"John Russell-Murphy ... is my new sales director." You say you have had to cut a strong deal to secure him:

"Having used our leads in March when he put £1 million into the SAFE product he can see the huge opportunity we have."

Then you say:

"It runs as a loan note ... and he was earning a 20% commission. The SAFE product is being re-branded and I am comfortable that it is not a 'rinse'." To "rinse" someone means to extract money from them, doesn't it?

A. Yes, I think that's fair.

Q. A rinse is, what, a fraud?

A. I would also say that's a good description, yes.

Q. So the thought had crossed your mind by this point that SAFE might be a rinse?

A. No.

Q. Well, the thought had crossed your mind and you felt comfortable that it wasn't a rinse?

A. So, I was working in the nonregulated environment at the time, so if you could put the context around that for a moment, there were a plethora of bonds, funds, loan notes, and other products which were always looking for good marketing companies, which we were quickly becoming, and a lot of them, frankly, were not very good. We were probably seeing, you know -- I don't know how many we saw, but we saw quite a few of them. You know, I can remember seeing -- I've seen various things which just really weren't very good, the people behind it didn't have the background. You know, litigation funding businesses where the person was a conveyancing guy who had been, like, two years in the game. There were just lots of things out there. So we were a little bit cynical about bonds and generally in the marketplace at the time.

Q. Given everything you have just said, given your knowledge of the various products that were out there, the thought had crossed your mind, when you had been told about SAFE, "Is this a rinse?", and you'd got comfortable that it wasn't?

A. Yes.

Q. If we go to the next page [page 2], please, you say to Pat and Phil of Blackmore:

"We only started selling BME on Monday, 22 June." That is the date on which Surge started selling for Blackmore as opposed to merely selling leads to them?

A. Yes. I think so.

Q. Mr Russell-Murphy was going to be selling Blackmore bonds at this point?

A. Yes. So, when we first started with Blackmore, Mr Robins, we began -- they were actually a pension company and we used to send them pension leads to their IFA, sort of, network. One of the reasons we moved from just doing the leads is because John was -- had a good understanding of the sales process, and we wanted to try and do more of the process, if it was possible, to benefit our clients and our potential future clients.

Q. You also wanted to sell bonds to the public for Blackmore to make more money?

A. Yes, sir.

Q. In fact, you thought that, without Pat agreeing for you to run a sales team, things would look a little bleak.

A. Yes, I think that's fair.

Q. That's also the reason you were keen to sell the SAFE bond?

A. Yes. I mean, we were a start-up, and we'd just -- the last business we'd had -- I met Kerry by selling Ask An Accountant to a firm she worked with or was a consultant to. Prior to that, I'd sold Ask a Financial Advisor to a building society called Shepherds Friendly. Essentially, there was clearly a business model -- the Ask a Professional stuff, Ask a Doctor, and so on, wasn't working very well, so we wanted to focus back on what was working, and obviously we sold Ask a Financial Advisor to this company and we thought, "Well, we will stay in this industry". It is a natural step for a start-up business to sort of expand its proposition slightly.

Q. Bringing John on board, having him sell the SAFE bond, was essentially a drive for you to ease your cash flow issues?

A. Yes, sir.

Q. Can we look at page 3, please. At the end of the first paragraph, you say to Pat and Phil:

"I would welcome you running due diligence on that deal ..."

You're referring to SAFE?

A. Yes.

Q. "... if you wanted as I know you'll be screaming 'rinse'! It's not."

You thought they would be screaming "Rinse" because the basic facts about SAFE were obviously troubling?

A. No, that's not true. I think they'd be screaming "Rinse" for two reasons. Firstly, they won't like us moving into other clients, they would like our full attention on them; secondly, as I have outlined previously, the entire industry was awash with low-quality products and, you know, good products were difficult to come by. That's why, you know, I was clearly sort of heading off their -- they wouldn't have known enough about it at this stage to have that view, as, indeed, I didn't.

Q. Well, the one thing they would have known about it was what you told them in this paragraph?

A. Yes.

Q. 25 per cent commissions. That's why you thought they would be screaming "Rinse", isn't it?

A. No. I think they would be screaming "Rinse" -- well, they were paying 20 per cent commission, Mr Robins, for a lesser -- for a product which was not -- you know, they had a property product which was what we moved into with them called Blackmore Estate bonds, I think was the name, and we paid them 20 per cent, and so, paying them 25 per cent was not dissimilar at all, really, and was industry standard. I know that's something you don't agree with, but we didn't see that as a problem.

Q. Everything you have just said is completely untrue, isn't it?

A. No, it's not. Everything I have just said is completely true.

Q. Can we look, please, at <SUR00001331-0001>. EPE OPERATOR: That isn't coming up.

MR ROBINS: Let me check it.

My Lord, I see the time. I wonder if that would be a moment for the shorthand writer's break. It is a document we have seen before. I know it is in the trial bundle.

MR JUSTICE MILES: Do you want to call out the number again, to make sure you have it right?

MR ROBINS: I will double-check it in another document as well. I think Mr Shaw might have found it in another place.

MR JUSTICE MILES: We will take the break now and try to sort this out.

MR ROBINS: Maybe we can get the transcript working as well.

MR JUSTICE MILES: Mr Careless, I am sure you have been told this by your legal team, but while you are giving evidence, until your evidence is completed, you mustn't discuss your evidence or the case with anybody -- and that means anybody.

A. Yes, my Lord.

MR JUSTICE MILES: Do you understand that?

A. Yes.

MR JUSTICE MILES: Can we try to get the transcript up and running before the end of the break as well? Thank you.

(11.50 am)

(A short break)

(11.55 am)

MR ROBINS: Mr Careless, the commission paid by Blackmore at this time was actually 7.5 per cent, wasn't it?

A. I don't recollect that as being correct, Mr Robins.

Q. The document that I was going to take you to is -- I don't know what's happened to it. It's being added to the trial bundle. It is an email from you to Pat and it says:

"JRM's sales team target for SAFE is £1m closed by 1 September (£250k comms to SF)."

"SF" would be Surge Financial, wouldn't it?

A. Yes, sir.

Q. So, if it's £250,000 out of £1 million for SAFE, that is a commission of 25 per cent, isn't it?

A. Yes.

Q. Your email also says:

"JRM's sales team target for BME ..."

That's Blackmore Estates?

A. Yes.

Q. "... is £2m closed by 1 September (£150k comms to Info Connect)."

A. Yes.

Q. £150,000 out of £2 million would be 7.5 per cent, wouldn't it?

A. Yes, it would.

Q. That was the commission rate actually paid by Blackmore at this time, wasn't it?

A. So, my recollection on that is that Blackmore had a number of products, they had a pension product where you got paid per lead plus a back end. Then they had their property bond, which is the Blackmore Estates that you have just referred to. And some of their deals we gave by leads, I believe, and some of them we would have closed. That's how we would have got 20 per cent, as I recall.

Q. So you think it was 20 per cent commissions?

A. I do seem to remember that, yes.

Q. Can we look, please, at <SUR00001451-0001>. An email from you to Pat, 20 July, middle of the page. It says: "We have two products to sell:

"1. BME. Details you know. 7.5 per cent comms and ownership of the company.

"2. LCF. Comms only. 25% paid to Surge Financial." So the commission for BME was actually 7.5 per cent, wasn't it?

A. Yes. I'm not quite sure -- correct. I'm not sure what "ownership of the company" is referring to. At some point in the relationship with Blackmore, we were offered, and did consider, being involved with them in the product side of it. I'm inclined to think this has some reference to that.

Q. Yes, I think they had promised you some shares in Blackmore but you hadn't received them yet. Does that ring a bell?

A. I don't think we actually finalised the deal. There was a lot of chitchat about it and I think we decided perhaps it was better to -- now we had a second client as well, not to do it, as I can remember from nine years ago.

Q. So, at this point, it was just 7.5 per cent comms?

A. That doesn't -- I mean, it is written there, of course, but it doesn't sound right to me. I seem to remember we were on 20 per cent before LCF came. I could be incorrect. Of course I could. But I don't believe that's the case.

Q. You would agree that, if it was actually 7.5 per cent, then what you said in your witness statement is wrong?

A. If -- and it is quite a big if -- it was 7.5 per cent, and the way to check that would be to look at the numbers that came into the company over that period, and I do accept it says 7.5 per cent comms there, and I'm not even sure if that's something which is presumptuous, so we're talking about what I'm going to do, because I was a big writer of a vision, really, or whether it was something we were currently doing.

But my recollection is that we were already taking 20 per cent from Blackmore as a commission and, indeed, we were engaging with lots of other -- not lots, some other products. For example, if you look at the bottom of that email, it says:

"I will be there from 0900 and James Churchman from Leander Wealth is there from midday."

Leander Wealth, I haven't seen that for a very long time, that triggered me. They had a bond that paid, I believe, a similar fee. But if I am incorrect, then of course, again, I wouldn't have written something I didn't believe to be true, Mr Robins. My recollection may have been off.

Q. For Leander, it was a deal where you could get 20 to 30 per cent of the fee which Leander received, wasn't it? It wasn't 20 to 30 per cent of investors' money, it was 20 to 30 per cent of Leander's fee?

A. I stand corrected. I didn't know that. I presumed it was the full.

Q. Mark Partridge was your accountant, wasn't he?

A. Yes, sir.

Q. He was someone you trusted?

A. I did and I do.

Q. You had him, at the time, on a retainer to give advice on various things?

A. Yes.

Q. He was very blunt, wasn't he?

A. I think that's a fair comment.

Q. If you put something to him and he thought there was a problem with it, he would pull it apart and tell you why?

A. And often if there wasn't, too.

Q. But he was someone whose opinion you trusted?

A. Yes, I did.

Q. It is fair to say you trusted him implicitly?

A. Yes, I did.

Q. And you also counted him as a friend?

A. Yes.

Q. Can we look at <SUR00129143-0001>. It is an email you sent to Mr Partridge on 23 July 2015. On page 3, you said to him in the middle of the page:

"I own 33 per cent stake in a property investment fund called Blackmore Estates ... The deal is that we share the cost of the lead generation ... and then I receive 7.5 per cent commissions of funds into BE." Looking at that, do you think it was 7.5 per cent commissions?

A. Yes, this is a helpful email, Mr Robins, because, as you can see there, it says:

"The deal is that we share the cost of the lead generation 50:50 and then I receive 7.5 per cent of commissions of funds into Blackmore Estates." So, it is, of course, less upfront risk because they're paying for the sort of upfront risk of that. I think it is worth pointing out at this juncture as well, people don't invest instantaneously. Out of the 11,600 bondholders in LCF, the average sales cycle, I

believe, was around three weeks, which we did reduce to around two, and so, of course, that has implications on cash flow.

If you are advancing money for a business, you are trying to get -- a combination sometimes can be more beneficial, certainly as a start-up. You might want to let them carry some of the risk in the cost upfront and then take some at the back, and I think that's what was happening here.

Q. When you say in your witness statement that "John negotiated a fee between Surge and LCF. He was already receiving 20 per cent from SAFE and we, Surge, were already receiving 20 per cent from Blackmore", you accept that's not correct, you weren't receiving 20 per cent commission from Blackmore?

A. Well, at some point, I did receive 20 per cent from Blackmore. For the majority of this deal, 90 per cent of the deal I did with Blackmore, I did receive 20 per cent, yes.

Q. But in the period you're talking about in that paragraph of your witness statement, when John negotiated the fee between Surge and LCF, you weren't receiving 20 per cent commission from Blackmore, were you?

A. Well, it does seem that way, although I'm still thinking perhaps there's some, you know, issue there. For example, I say:

"I own 33 per cent stake in a property investment fund ..."

And I didn't, at that stage, own that, although that was potentially the ambition, the pitch to do that.

Q. That's what you had been promised by Pat and Phil, wasn't it?

A. Yes, I believe so.

Q. If it's right that you had been receiving a commission of 7.5 per cent from Blackmore, then 25 per cent from LCF would have seemed huge, wouldn't it?

A. Well, I was aware through meetings I'd had previously of the industry standard, and I know this is a contention that you will have with me, but it wasn't -- 25 per cent for what we did -- most introductions were 20 per cent, so that would be -- an introduction would be, quite simply, you would introduce someone who wanted to invest in a bond and you would be paid 20 per cent and they would be in that bond for a period of three to five years, typically.

Q. When you --

A. 25 per cent was paid to us because we had ambition -- well, our business model was to do far more than just do an introduction. We wanted to sort of manage the entire process of creating the lead and dealing with the sale and managing the bond using technology and process throughout the entirety of it.

Q. You're right to say we don't accept what you say about that. If 25 per cent had been market standard, you would have said at the time 25 per cent is market standard, wouldn't you?

A. No, I don't agree with that.

Q. You wouldn't have said 25 per cent is huge, would you?

A. Well, no, but 25 per cent is huge because, of course, I had come from an industry where we were paying per lead, and a lead cost was, as you mentioned earlier, between 35 and 50 quid, so 25 per cent in comparison to that was huge.

Q. Well, it was huge in comparison to any reasonable fee, wasn't it?

A. I don't agree with that. I mean, no, I don't agree with that. It was the industry standard for what we did. It was -- you couldn't have done it yourself for that level at the scale we did it.

Q. If we look at the next page, you say, after the link to LCF's website:

"I earn 25 per cent commission of money into that fund. I know, that's huge right?"

You were saying that to your trusted advisor because you thought it was huge?

A. I did think it was huge, yes, I don't deny that.

Q. It was huge compared to any reasonable fee that might be available from other providers?

A. No, I definitely do not accept that. With respect, Mr Robins, people will pay for a good product and a good service, and it was the industry standard. We were aware it was the industry standard. We had spoken to a number of products who we were looking at. I remember one in particular called Dolphin, which was a property bond we ended up not working with, that, again, offered 20 to 25 per cent. It might be worth noting that, even today, that is the industry standard. Litigation funding is a classic example of a bond or a loan note that pays 20 or 25 per cent.

Q. Mr Careless, I am going to cross-examine you in chronological order and we will come to this on the final day because everything you're saying now is the result of a case that you put together after LCF's collapse, isn't it?

A. I'm afraid that's not true.

Q. It's not a reflection of anything that you knew at the time?

A. Everything I have just said to you is correct.

Q. Can we move to <C2/3>, page 9. This is from your witness statement. At the end of paragraph 48, you say: "John reported back to me saying he had agreed 25 per cent for Surge to do the same job for LCF that it was doing for Blackmore."

If it is the same job for both and 7.5 per cent from Blackmore, then 25 per cent is huge because it's seriously out of line with reasonable expectations of what would be paid for that job?

A. Again, that's just not true. I have tried to provide you with evidence. I know we have got experts who won't have much -- well, essentially, 25 per cent is the fee, and I think -- I've mentioned -- I can mention today lots of litigation funding businesses that pay for personal injury by way of bonds that pay 25 per cent. In my inbox today, I have multiple contracts of people asking me to raise money. Of course I'm not in the industry anymore and I haven't been in the industry since 2019, but these are big companies, companies you would have heard of, companies that many law firms would have been paid for, for litigation and personal injury work. Why? Because it is high risk. It takes five years. It is five years since I've been here. And it is the fee. And, actually, I can understand why it is the fee because it is a lot of work to create and set up processes and systems to securely onboard millions of pounds. This isn't a simple or easy business to do.

Q. But for a bond-issuing business that's lending money to SMEs to pay 8.5 per cent a year on a two-year term, a commission of 25 per cent is obviously insane, isn't it?

A. No, not at all. I mean, I'll tell you a figure Kerry and I were aware of at the time, which was ISAs tended to stick to -- once you open an ISA, you would keep this ISA for around 13 years, most people didn't move. So, of course, although it wasn't something I was, you know, specifically looking at everybody's business model how it worked, I was aware of amortisation, I've been in online businesses for a number of years, I built Money Expert, we sold tens of millions a year of financial products, and I understood sunken costs, and I understand that people would pay for a product -- in fact, the data proves it. With LCF in particular, I think Blackmore was not too dissimilar, out of 11,400 bondholders, Mr Robins, 4,700 took a second bond, therefore halving, in the long term, the cost of acquiring a customer. All businesses, whether they are banks or otherwise, will have two considerations: the cost of acquiring a customer versus the lifetime value of the customer. So, I was not -- this was not a, "It is a fraud because it is 25 per cent", it was the industry standard, it made sense. I was happy that, with the amount of products out there, we thought we had a good product to work with.

Q. This is all something you have convinced yourself of after LCF's collapse, isn't it? It is not what you thought at the time?

A. Well, I'm very careful not to retrofit my memories on what happened back then with what I know now. But I genuinely do believe that is the industry standard and it was the industry -- the facts I'm telling you about, litigation funding and property bonds, they are, today, right here, right now -- and funds you would have heard of that pay those fees. They are not frauds. They are operating now, have been for many years. I can't do any more than tell you the truth on that.

Q. As you say, that's a matter for the experts. Let's look at what was going through your head at the time. <SUR00129198-0001>, please. This is Mark's response to your email. After the hyperlink to LCF's website, he says:

"So you effectively own TIE (Info Connections Ltd) which provides leads to BE ... TIE gets 7.5 per cent commission on funds ..."

As these references to 7.5 per cent commission build up, do you now accept that was the commission paid by Blackmore in this period?

A. Sorry, could you say that one again?

Q. As we keep seeing references to 7.5 per cent, do you now accept that that was the commission paid by Blackmore in this period?

A. I will accept that if you -- if this is the information. But I genuinely believe it was 20 per cent for Blackmore for at least 90 per cent of it, if not at the beginning, but, at some point, it clearly was 7.5 per cent, yes, I accept that.

Q. Then he says:

"Also you effectively own Surge Financial Limited which provides leads to Eastbourne which sell one product, an 8 per cent bond ..."

That's a reference to LCF, isn't it?

A. Yes.

Q. He says:

"... SFL get 25 per cent of any bonds sold. "As you say this commission is insane. On a flat rate the fund would have to grow by 55 per cent in two years to pay your commission and the interest. "Who are LCF, is this the aim stock?"

"You 'pay' me to be cynical but I can't see how these figures are sustainable."

If your trusted advisor tells you something like that, you take it seriously, don't you?

A. Yes, just one remark I would like to make about Mark. Mark is a great friend and a very good chartered accountant, multiple offices and audits. I do take his advice very seriously. However, I think Mark is, like a lot of people who work in the profession, inclined to be a cynic. He could find the downside, frankly, in a lottery win. You can see how it is. I was obviously -- Kerry and I would have spoken about this commission a lot, and we would have spoken to the clients, both Blackmore on their commission and LCF on theirs and various other clients. I was satisfied that it was a genuine fee for a genuine job.

Q. You say Mark was cynical, but the reason he gives makes sense. If LCF starts 25 per cent down, to get back to 100 per cent of capital and a total of 16 per cent interest by the end of a two-year term, it does need to grow the remaining 75 per cent by 55 per cent in two years, doesn't it?

A. Well, yes, of course Mark has written that. The way I looked at it back then, not with the understanding I have now, is twofold. One, it was the industry standard. People paid. The reason they paid is because it was a bond. It was bonded for a period of time, typically between three and five years. During that period of time, it was the endeavour of the bond issuer to, of course, make that money back, and that's precisely what LCF would have done, in my view, based on those facts, that they would have the money for that period of time, bondholders would have -- the lifetime value of the bond would have increased, as they would have taken more bonds. The facts show that just under half of people took a new bond. We had other data which made us comfortable, like the ISAs being held for 13 years, which made us feel comfortable because we knew a portion of people who invested in a product would continue to invest in that product way beyond the deadlines of what the bond was, whether it was two, three, four or five years.

Q. That's not true, is it?

A. It is true.

Q. The reality is, you thought 25 per cent was huge, Mark told you it was insane and unsustainable, but you wanted to settle some debts, you wanted to have an easier life than you had scraping for funds, and so you were prepared to turn a blind eye to all of that and carry on selling product?

A. That's just simply not true, Mr Robins.

Q. Can we look at <C2/3>, page 20. This is in your witness statement. At the top of the page, you're dealing with Mr Russell-Murphy and you say:

"I paid him on the basis of a combination of the deals he secured and how the business was doing generally. It was an informal mechanism and at my full discretion. I felt this was an incentivisation to him to do well. I wanted to keep this flexible, like a discretionary bonus scheme, albeit it was possible for John to negotiate my decision, for example if he felt that he'd brought in a big deal in any particular month."

Is that true?

A. Yes, if it is in my witness statement, I believe that to be true.

Q. Wasn't the deal actually that you and Mr Russell-Murphy would receive equal distributions from any profits?

A. So, the context around this was, very early on, I was very impressed with John. I was impressed with his connection to good-quality products, his understanding of an arena we were just coming into, we were just selling leads, now we saw a whole arena where people were being paid 20 to 25 per cent to raise money for other products, bonds. I felt he could have been a very useful partner. So, of course, I offered him an opportunity to join me on a 50/50 deal, and say "Join us in Surge, we will make room for you", and that was my endeavour sort of early on. We are talking about a five-year period and things do change during that period of time.

Q. But in 2016, for example, it was 50/50 for you and Mr Russell-Murphy?

A. I think what happened with that deal is, it was on the cards, I'd said it, I meant it. But we never really ratified it. Although John was very good early on, as we scaled into a more significant company, Surge Financial and its associated companies were over 100-and-something staff. It was becoming more apparent that he was more of a sales director than someone to drive the business to a more corporate level.

Q. If we look, for example, at <SUR00056027-0001>. You can see that Mr Russell-Murphy sent an invoice to Steve Jones, who has asked, "This is a joke, isn't it?" Then if we look at the subsequent exchange, <SUR00056059-0001>. If we go to page 2 or 3, we can see Steve asks in the middle of the page, "This is a joke" and you say:

"No, need to chip him off due to my 700ker. "I agreed him to be equal when he secured the 25 per cent deal.

"You continually being angry at that situation won't help.

"Next company won't be like that, but that's the situation here."

That was the deal between you and Mr Russell-Murphy: if you can get LCF to agree 25 per cent, you can be 50/50 with me on any profit?

A. No, not quite like that. The 25 per cent securing that deal with JRM, as I recall, he secured the deal, and I now know, obviously retrofit, that he already had that deal with LCF, having seen the discovery and so on. But it wasn't necessarily the fact he secured a 25 per cent deal. It was the deal itself. These were, at the time, and with what I knew then, the best -- these were good products and the people behind it seemed very sort of capable and competent, and so I was keen to secure John. He had the sales aspect, he had the connections in the industry, I was keen to, at this point, secure him.

Q. But the reason you agreed 50/50 with him was the 25 per cent deal?

A. Yes, it wasn't quite 50/50. Kerry had a 10 per cent stake in the business. So he was offered sort of 45/45.

Q. Yes, sorry. What I mean is, you and he were equal?

A. Yes, that's how I was gearing up to it, yes, at that stage.

Q. If we look at the top of the page, Steve says: "Can't help but be angry about it every time. It is so unfair. He does absolutely nothing to earn a penny of it."

Do you recall Steve being annoyed that Mr Russell-Murphy was equal with you?

A. Yes, in every business, certainly growing ones, certainly, as the CEO, you are constantly dealing with people -- personalities, egos, vying for who does what, who is better. There is a bit of this going on here as well.

Q. Can we look at the previous page, please. You say, at the bottom of the page:

"He needs to be the same as me. Your anger doesn't help. Deal with it, I have to."

Is it fair to say you weren't particularly pleased with Mr Russell-Murphy being equal with you?

A. I think that looks like me placating Mr Jones, Steve. That's the context I read that.

Q. You see the date this, is late 2016. So for the whole of 2016, he was getting equal drawings?

A. No, I don't think he was getting equal drawings. I think the plan was -- so, two things were going on at this time frame. Firstly, we were reinvesting quite heavily into the business. We were doing a lot of hiring at this time, especially technology and marketing to build a tech team. So I did keep him discretionary. I was, kind of, still the driver and the CEO, but I did feel like his experience had taken us to that point, his experience with sales and his background with Rothschilds and St James's Place and so on, was a bit of something we were missing, the part we were missing.

Q. It wasn't discretionary, because you were going to give him half of your shares, weren't you?

A. I think at this point it was suggested, and I think, like a lot of the things we look here, we have got to recall -- remember, please, that this is a snapshot of a moment in time, and things -- there's an evolution in a business, as in everything, in a relationship, and at that particular time, yes, that was something I was considering.

Q. When you say "at that time", you mean sort of mid to late 2016?

A. Yes.

Q. That was because he'd increased the comms to 25 per cent?

A. No.

Q. You thought that was the main factor in your success?

A. It was a factor, yes. It was because he was good. It was because he had good connections in the industry to what I perceived as being really good quality products, and he also was -- I thought at the time -- a first class salesman with a great prestigious background in financial advice.

Q. If we look at <SUR00035780-0001>, please. It is an exchange between you and Kerry. You are "Device owner" in this.

A. Okay.

Q. I don't know if you recognise the number ending 244. That's Kerry's phone number; is that something that you recognise?

A. I don't recognise it. I take your word for that. Thank you.

Q. On the next page, you will see that Kerry says, about a quarter of the way down the page, 10 August 2016 at 8 am:

"... if the starting point is PC: 45 per cent, JRM: 45 per cent, KG: 10 per cent ..."

That's what you were explaining a moment ago?

A. Yes.

Q. Three up from the bottom, you say to her: "Without JRM, we wouldn't be here today. He increased comms to 25 per cent, it's the main factor in our current success."

That's why you were giving him half your shares, because he increased comms to 25 per cent and you thought that was the main factor in your success?

A. So what do I say there:

"I disagree with you. Without JRM we wouldn't be here today."

That's true. He introduced us to what we thought was a really good product:

"He increased comms to 250 per cent, it's the main factor in our current success."

That's also true. Yes, that was true at the time.

Q. From the beginning of your involvement with LCF, you and Kerry worked on public image, branding and web presence, didn't you?

A. Yes.

Q. You were giving advice on appearance or presentation?

A. I believe -- yes, yes, we would have done that.

Q. Can we look at <MDR00227545>, please. This is an email, at the top, from Mr Russell-Murphy to Kerry and team@infoconnections.co.uk. You received the emails that went to team@infoconnections.co.uk, didn't you?

A. I believe so.

Q. He says:

"Kerry, further to your email on Friday, please find attached the FAQ document and the proposed letter from Buss Murton Law."

Do you remember that letter?

A. No.

Q. It is <MDR00227547>. It is a letter from Buss Murton Law. You understood them to be a firm of solicitors?

A. Yes.

Q. It says:

"Our role is to collect funds on behalf of the company and ensure there is always adequate security ...

"We currently hold a debenture ..."

The next paragraph:

"As of the date of this letter, the total outstanding loans from investors are £1.1 million." Do you remember reading that?

A. I do not.

Q. You would agree that, from the perspective of a member of the public being asked to invest in LCF, the fact that the outstanding loans was only 1.1 million is material information. It is a very small operation. It's material to the investor's decision?

A. Yes.

Q. Can we look at <SUR00129106-0001>, please. In the bottom half of the page, you reply to Mr Russell-Murphy: "Morning John."

Second paragraph:

"On the letter can I suggest that is line is simply removed. 'As of the date of this letter the total outstanding loans from investors are £1.1 million'. It makes the entire operation look very small." Your advice was, essentially, although this is material information, we should conceal it, wasn't it?

A. No, I'm a marketing person, marketing guy, and my job is to try and -- I mean, when any -- you know, even if you're a one-man law firm, you want to put your best foot forward if you are marketing. If you say, "I'm just a bloke at my house doing litigation", I think you're going to struggle entirely to do it. What you try and do is say, "I'm a lawyer with experience in litigation" and that's it. You're reading far too much into it. It is as simple as that.

Q. It's the fact, if investors knew they only had £1.1 million, they wouldn't have invested, they wouldn't have proceeded, that caused you to say it should be removed, isn't it? Precisely because, if they had known the truth, it would have put them off?

A. The reason that's untrue, and it is borne out by the facts, is, of course, people don't just read something on the internet -- it is a misnomer -- and then invest. What they do, and it would be -- is, they will speak to you. You know, like I say, it is three weeks -- I mean, if one someone wants to invest in LCF, or any bond, there is a process to go through. They are going to have to do their passport photo, they are going to have to do AML checks with third party people. You don't just go into a fund.

So, these questions would have been asked. But, at the front, to try and get the initial call or the initial enquiry, you want to try and keep everything simple when it comes to marketing. These things can be put in your information memorandum and your other sort of details where these things go.

Q. Isn't it that, if you are telling people London Capital & Finance Plc is a financial institution lending monies to small and medium-sized enterprises, people are going to have a natural expectation that it is a multimillion-pound organisation or a lending bank for SMEs, and you didn't want the truth to come out because it would be inconsistent with what people might have expected and, as a result, they would have decided not to invest. That's the reality, isn't it?

A. I think you might be reading too much into it. Of course -- all bonds have to start somewhere, day one. They have to start somewhere. You know, the companies that are issuing bonds have got to put their best sort of face on, and that was our job as a marketing firm, and all of this information, I know, and I presume from this information too, would be available for the clients should they ask the

company, it's in the IM, and various other things. But I wouldn't, as a marketing company, try and get people to show how small they are, day one. I think that would be -- I appreciate I'm in a room full of lawyers and you want to put these facts right at the front, but in the marketing parlance it is not necessary.

Q. Can we look at <SUR00129111-0001>. In the middle of the page, Kerry says:

"I think £1.1 million makes the business sound small and we should move it. There is a natural expectation that a bond issuer is a multimillion-pound organisation/a lending bank for SMEs. For the same reason I have concerns about the focus in the brochure on the 'south-east' and 'local councils' ..." She was saying that members of public, when told about LCF, would naturally expect it to be a multimillion-pound organisation. You wanted to suppress the truth so that they didn't cease to operate under that assumption?

A. So, if you were to remove the focus on fraud for a minute and just look at this as a marketing angle, our job is to present our client's information in the best way we can, legally. And, of course, we want to make the company look as good as it can do, not because we want to commit fraud on members of the public, because it is our job to market them. This advice is key. You know, you want to do that. You know, with respect, if you go on a barrister website, you read the great things about the barrister. You don't talk about how much the fees are or perhaps -- and they are probably very material. If I go on your website and look at your name, I presume I see all the great things they say about you, but they don't say how much you cost, for example, and that would clearly be material to your job, but that doesn't make you -- I don't see anything bad with that.

Q. Do you think 25 per cent commission would be material to investors' decision?

A. Yes, I think I do.

Q. Do you agree that that was never disclosed to members of the public?

A. Yes, I do agree with that.

Q. Would you agree that that amounts to material non-disclosure?

A. I mean, with regards to the specific words you've just said, the legal words you've just said, I actually wouldn't know. I do accept the point. So, for example, Blackmore had 20 per cent written in its brochure, and lots of bonds did -- lots of bonds didn't, actually, lots of big ones didn't -- but LCF chose not to. They're a client. I mean, Mr Robins, I'm sat in a room with a barrister working for Lewis Silkin who is no different than you: very sharp, on the detail, called Owen Watkins. And he told us he worked for the regulator for ten years. I now subsequently see he has drafted lots documents and seen lots of things that I didn't see. I took comfort from that. I took comfort from that throughout the entirety of it. Now, not just Lewis Silkin being involved, but, as they grew, I would have put that in there. But it wasn't -- they're a client. I'm the marketing agency. I don't -- I can make recommendations but I don't end up with the decision on these things.

So I didn't really give it too much thought, to be honest. I thought, you know, they knew what they were doing, Andy was from a banking background. They had these lawyers and various people around them. So I just let them get on with it. I was new into this industry. I didn't know what went into -- I didn't believe I knew the detail of what would go into an information memorandum.

Q. Can we look at <SUR00164239-0001>, please. You see this next draft omits the reference to £1.1 million. You were happier with this because a key fact that might dissuade members of the public from investing had been removed?

A. Well, I think it's also worth pointing -- the answer is, yes, I would have been happier if it was removed. But if they said, "No, keep it", we will work with it. We're a marketing firm. We will work with what our client's wishes are. We make recommendations, our clients make decisions. Many of the times we make recommendations, it is beyond our sort of capabilities to know what is right and what is wrong. We just put it to them, "This would be better", and they make the decision.

I think it is also worth noting with this, if you were looking for accuracy, Mr Robins, and you put 1.1 million in here, the very first day someone puts in 100 grand it is now 1.2 million and it is inaccurate and you would be drafting this letter on a week-by-week basis or, indeed, if someone was to remove their money out. So yes.

Q. You say it is beyond your capability to know what is right and wrong. You accept that misleading members of the public is wrong?

A. Yes, I would agree with that.

Q. Now, another thing that you were concerned with at this time was preparing LCF for people Googling its brand, weren't you?

A. Yes. Reputation management.

Q. You wanted to ensure that when people Googled LCF, they saw buy signals?

A. Yes.

Q. What is a bullshit site?

A. A bullshit site? Perhaps you can tell me what you are referring to.

Q. Can we go to <MDR00016546>. At the bottom of the page, you say to Kerry:

"We need to get LCF prepared for people Googling its brand and seeing buy signals ... We have managed to arrange for our friends to list LC&F on a site called [www.best-investment funds.co.uk] for a fee of £1K." Is that a bullshit site?

A. No, it is a real site. I mean, it depends on your definition of a bullshit site, Mr Robins.

Q. This is a site where they will list LCF for a fee, is it?

A. Yes.

Q. Being listed on that site is something you'd refer to as validation material, is it?

A. Yes.

Q. It is material that makes it seem as though LCF has been endorsed by some third party website?

A. Yes, to use the -- just because everyone in here is a lawyer, it might be an easy one. Having worked -- done some legal marketing, it is no different to James 500, for example, where various lawyers are listed on there with things clients and colleagues may say about them. This is buy signals. That's why people do it.

Q. To be clear, barristers don't pay to be listed on James & Partners or Legal 500. This was being listed for a fee of £1,000, wasn't it?

A. Yes, and although barristers don't, many, many professions -- probably the vast majority -- do.

Q. Can we look at <MDR00016556>. This is the invoice that Kerry sent to Mr Thomson to be listed?

A. Yes.

Q. You see it is payable to InfoConnection Limited. That was a company owned by you and Kerry, wasn't it?

A. Yes.

Q. So LCF wasn't being asked to pay Best Investment Funds. Were you and Kerry running Best Investment Funds?

A. Yes. We were potentially getting other people to run them, yes.

Q. So it was your own website that you were listing LCF on for £1,000?

A. I believe so. We have invoiced them. Or we paid another -- I believe that was one of ours, unless you can tell me otherwise.

Q. Can we look at <SUR00001692-0001>. This is a to-do list you sent to yourself the very next day, 10 August 2015. You can see, halfway down the first block of text, you have typed:

"LCF needs a bullshit site up (BIF?)"

In your view, BIF, Best Investment Funds, was a bullshit site, wasn't it?

A. Well, my colloquial terms aren't -- you know, are a bit fruity, but, yeah, I mean, you either pay to go on somebody else's website or -- I'll give you an example. Trustpilot. Everyone uses Trustpilot to get reviews, for example, for various products and services. It is not free. You pay to go on there. Of course, that's it. Sorry about my colloquialism, but -- yeah.

Q. Well, it was a bullshit site because it was creating the impression that LCF had been endorsed by a third party when, in fact, that was not true?

A. No, I don't think that's specifically true. I mean, so we're addressing the Best Investment website here, I think, aren't we?

Q. You have written "BIF". I'm assuming that stands for Best Investment Funds. So you say that stands for something else?

A. No, I think that is what it stands for. My colloquialism to put up words like that -- I come from a background of price comparison, Moneyexpert.com is it, and price comparison is a great way to get eyeballs on a product because it is simple, it is in a list, and it works. It is the same, really, as any other type of sort of listing site, whether it is for ratings, for reviews or whatever. And so, yeah, I'm not pleased I wrote this, but there are many things over the last nine years I'm not pleased I wrote. But it was a real site, the products were real, the rates were real, and reputation management, which is what Kerry refers it to, is a way in which we, as marketers, can create signals, positive signals, to our clients, whether that be through getting people to review them, whether it is to list them on price comparison sites, you know, all of this stuff, and you see on them best investment rates as seen

in various newspapers. That's another example, you advertise them in the newspaper and allow yourself to say, "We have been seen in the Daily Mail", and so on. It is just brand association.

Q. "Bullshitting" is lying or otherwise misleading, isn't it?

A. I'm sad to say it is.

Q. You were calling it a bullshit site because it would involve lying to or otherwise misleading members of the public?

A. No, I don't see it in that way. I see it as a -- it is just -- it is not the actual website. It is just throwing up a site, putting a list on there, getting some signal out onto the internet for my client.

Q. Bullshitting members of the public because you were creating the impression that LCF has been endorsed by a third party when you know that is not true?

A. So if LCF goes in the FT with an advert, does that make the FT a bullshit newspaper? I would argue it doesn't. I think "throw-away" would have been a better way. "LCF needs a throw-away site up", not its own site, not a site which is London Capital & Finance, but a site which is referring to it in a positive way.

Q. You ramped up the sales operation for LCF to generate higher bond sales, didn't you?

A. Yes.

Q. You set ambitious sales targets?

A. Yes.

Q. Can we look at <SUR00001707-0001>. There's an email from you to Pat and Phil, 11 August 2015. At the bottom, you say:

"JRM and a few of the main guys have been focusing on LCF for the past two weeks to ensure we have good cash flows moving forward. We will hit £1m into LCF in the next 19 days."

You say:

"... it is an easier sell due to the higher coupon (8.5 per cent) and the interest being paid quarterly, the latter being the big main reason."

Blackmore's interest rate was significantly lower, wasn't it?

A. I actually can't remember, but if you could remind me, please?

Q. A fixed rate property bond at 6.5 per cent?

A. Over what period of time?

Q. A two-year bond and a five-year bond. Does that sound right?

A. Which one was the five-year?

Q. It's 6.5 per cent with a deferred interest option with a 5 per cent bonus?

A. Yes, that sounds about right.

Q. So, LCF was an easier sell because it had a higher coupon than Blackmore and the interest was paid quarterly?

A. Yes, that's true. It is one of the reasons. I wouldn't say it is the only reason, but, yes, certainly one of the reasons.

Q. Over the page, you say:

"We are learning plenty of lessons about the selling. Persistence is key ... Some folks agree to come aboard after 20 + calls."

Would you agree that persistent sales techniques, 20 calls, is fairly pushy?

A. Are you referring to us calling them 20 times?

Q. "Some folks agree to come aboard after 20 + calls." You're calling them 20 times?

A. During the entirety of Surge, which was -- I don't know when Surge started, but perhaps 2014, 99 per cent of all calls that we received were inbound from people seeing adverts on the internet, either on the price comparison sites, direct on the internet or through other means, you know, maybe newspapers or so on. So, this might be a great point to explain to you the sales --

Q. Just answer this: when you say "persistence is key", you are talking about persistence of your salespeople, aren't you?

A. Yes.

Q. Do you agree that they were pushy, they were persistent, they would call people repeatedly?

A. So, no, I do not agree with that. Out of all of the companies that did marketing -- and most of them didn't do a sort of all-in process like we did. The vast majority did outbound, you know, someone would be (inaudible), ringing in. We had a much more refined -- you can't bully someone by ringing them 20 times. It doesn't scale, it is not proper. If you want to build a proper company, like we did -- perhaps early on, we were, you know, not -- we were a bit scrappy, we weren't as good as perhaps we could have been. But we very quickly, like all startups with an ambition to grow, started to professionalise. As I said earlier, 99 per cent of all the calls that LCF received came inbound, not outbound. Although we would have called people back and so on, or -- if they asked to be called.

Q. The plan at this point was to concentrate on selling LCF to achieve a strong cash position?

A. Yes.

MR JUSTICE MILES: Sorry, can I just ask a question about that? So 99 per cent. Do you mean the initial calls or do you mean then the follow-up calls?

A. That's a good point, my Lord. The initial calls were inbound, predominantly. But the follow-up calls, we may have called someone 20 times-plus, but it would have been not in a sort of "Can you invest, can you invest?" way, but "Where is your passport? Where is your AML?" Certainly, as we grew -- early on, the model was -- you know, was more outbound, people would pull a lead in, we would call them. Sometimes you might not get hold of them straight away and we put processes in place to ensure leads weren't abandoned or wasted because they had a significant cost. Just like any business, if someone was enquiring about your product, it is your best endeavour to get hold of them. I think it would be mischaracterisation of Surge, and indeed our process, to say we would hammer people on the phone like that. That was not the case.

MR ROBINS: When you say some folks agreed to come on board after 20 plus calls, you do agree now it would be 20 plus outbound calls?

A. I'm inclined to say it is.

Q. You were hoping to achieve a million in sales for LCF per month for August, September, October and November?

A. Yes.

Q. That was going to give you a total of £1 million in commissions by the end of the year?

A. Yes.

Q. You were pushing hard on LCF sales to get cash for the short term?

A. Well, cash generally, I would think. Yes.

Q. Can we look at <SUR00001718-0001>, please: you're replying to Phil Nunn, and you say:

"BME is still our priority. We own it." Do you think you'd been given your shares in BME at this point?

A. No, I still think I was -- no, I don't think -- well, we weren't ever given shares, is the answer to that. This is to Phil Nunn, who was the -- one of the co-founders of Blackmore. He was very -- you know, I thought he was a very good guy and we wanted to work with him. So I was keen to push forward our relationship, and I think this is a demonstrative of that. But we didn't know him at that stage, no.

Q. You say:

"The extra comms on LCF has had the boys' attention in the last week and it has been converting slightly better due to the reasons I outlined below. It is just for cash ... in the short term ..."

LCF was for cash in the short term, wasn't it?

A. To give this one some colour for you, we have two products at this stage, two companies at this stage: Blackmore Bonds and London Capital & Finance. Surge was still a start-up. It was still emerging. We didn't quite have a clear roadmap of what we were going to do. I think Blackmore had its own ambitions, and that's -- I think them offering to provide shares for Surge or Kerry and I was their way of regaining our attention away from LCF, who were paying 5 per cent more commissions, and indeed had a better -- how can I put this -- prospect in many regards because there were a lot of property bonds out there.

I think I reverted -- in the original email you put up, I talk about Harewood Associates, which was a pretty significant bond, a couple of hundred million quid I think, if memory serves me right, and that was a property bond, and there were a lot of property bonds. So I wasn't --

Q. You just said that Phil was a very good guy. You don't say that you were lying to him in this email, do you?

A. No, I don't think I was lying to him.

Q. Around this time, I think you started invoicing LCF for the commissions. Is that right?

A. Yes.

Q. You started selling for them and you started having money come in and you were invoicing. The invoices were payable immediately, weren't they?

A. Yes.

Q. When the investor paid their money, they had to pay it to Buss Murton; yes? The law firm?

A. Presumably, at this stage, yes.

Q. And then Buss Murton would pay 25 per cent of that to Surge?

A. I don't remember if it came from Buss Murton or not.

Q. You --

A. I seem to recall it came -- perhaps this is later on. Maybe it came from another company. I beg your pardon, I --

Q. Later on, it came from LCF's Lloyds account. At this point, it was all being run through Buss Murton?

A. Surge wasn't paid from LCF's Lloyds account, as I believe, for its commissions. I believe it was paid from a company called -- sorry, it was, I beg your pardon, you are right. I stand corrected. I think you said the bondholders paid LCF. I think that's where it might be incorrect because I don't think they did pay LCF.

Q. At this point, the bondholders were paying their money to Buss Murton and then Buss Murton paid 25 per cent of each receipt to Surge?

A. Right. Thank you.

Q. That was your understanding at the time?

A. I believe so, yes.

Q. You were pleased to be able to start invoicing LCF because you felt as though you'd been operating on fumes for the last six months?

A. Yes.

Q. Mr Russell-Murphy had said that LCF would be a good way to fill the coffers?

A. Yes. I haven't read that.

Q. Let's look at <SUR00001720-0001>. An email from you to Phil Nunn:

"We still need a little cash to be comfortable we have been operating on fumes for six months. JRM wants to fill the coffers ..."

That's a reference to pushing LCF to fill the coffers, isn't it?

A. Yes.

Q. To help fill the coffers, you sought a loan from Mr Golding, didn't you?

A. Yes, I did.

Q. Do you remember telling him that his product fitted your leads extremely well?

A. I don't remember that, no. But I could well have done.

Q. Can we look at <SUR00001783-0001>, please. This is 15 August 2015. You are emailing to clarify John's call:

"In brief, we have two products that we are driving funds into, yours and Blackmore Estates, a property fund in which John and I are shortly to be shareholders. With property being 'long' the commissions upfront are not that great ..."

That's a reference to the 7.5 per cent, isn't it?

A. I think it might be, yes.

Q. You say:

"Your product fits our leads extremely well and as you are aware we only started selling LCF on Tuesday 4 August ..."

That would be the correct date, I'm assuming?

A. Yes.

Q. You say:

"We already have £11,000 closed ..."

"Closed" is a term to mean where you have done the deal and got the money in, isn't it?

A. Yes, I think so.

Q. "... and £360,000 in applications out, 90 per cent of which we will expect to close within two weeks. This is why if you were to support us in a sprint for LCF it would only be needed from Monday or Tuesday next week." A "sprint" is a big sales push, isn't it?

A. Yes.

Q. You were asking at this point for a loan of £20,000?

A. Yes.

Q. Do you remember you were proposing to repay the loan by receiving half commissions from LCF, 12.5 per cent?

A. I don't recall that, but that could have been the case.

Q. <SUR00001810-0001>:

"Morning Spencer, thanks for the positive reply. I suggest the following terms: £25k loan to Surge Financial Limited and Surge to receive half commissions (12.5 per cent) until loan cleared." Was that the terms of your agreement with Mr Golding about this loan?

A. So, I think, yeah, I'm asking if he would be willing to lend us money to assist us in our cash flow.

Q. We can see at <SUR00001814-0001> -- we can't quite see it but we know this is -- one of the numbers is Mr Golding, another of the numbers is yours, isn't it?

A. Yes, I recognise mine.

Q. Which one is yours?

A. I think I'm the 2271, the sort of bottom one.

Q. Ending 2271?

A. Yes.

Q. So the penultimate message, 8595, it looks like Mr Golding has copied and pasted something: "Thank you for using Barclays online banking, your payment for £25,000 to Surge Financial on 18 August has been made successfully."

Do you remember getting a loan from Mr Golding?

A. Yes.

Q. Do you think it was on the terms we have just seen, repaid through half commissions?

A. I can't recall.

Q. Do you think there was another loan of £25,000 a couple of weeks later from Mr Golding?

A. There could have been. I don't remember that either, I'm afraid.

Q. Let me see if it jogs your memory, <SUR00001984-0001>. At the top is an email from you, 3 September, the third line:

"We will have 25k from Spencer later today, all being well."

Does that jog your memory at all? Do you think there were possibly two loans?

A. I still can't remember it but, yeah, we were definitely burning cash on growth at that stage, and so a loan would have been welcomed.

MR ROBINS: My Lord, I see the time. We have eaten slightly into the lunch break, given our late start. I wonder if now would be a convenient moment for your Lordship to rise?

MR JUSTICE MILES: We will come back at 2.00 pm.

(1.06 pm)

(The short adjournment)

(2.00 pm)

MR ROBINS: Mr Careless, before the short adjournment, we were looking at the fact you started selling LCF bonds in August. You got the two names from Spencer, one at the end of August and one at the beginning of September, and then you pushed your team fairly hard to achieve results, didn't you?

A. Yes.

Q. Can we look at <D7D9-0001950>. At the bottom of page 1 is an email from you to John, Kerry and Steve, 6 September 2015, and then, over the page, in the middle, in bold:

"Our immediate focus remains sales into LCF with a sense of urgency."

Then the next paragraph:

"It is another sprint week; I expect full throttle from everyone."

Then you gave instructions. This is fairly typical of how you managed and pushed your team to work hard, isn't it?

A. Yes.

Q. It is fair to say, isn't it, that you transformed LCF's position?

A. Yes.

Q. Did you know that, in the first month of Surge selling LCF bonds, Surge sold more LCF bonds than Mr Russell-Murphy had managed on his own in the previous year?

A. I did not.

Q. If we look at <A3/7> at page 1, this is a graph showing monies in to LCF month by month, and we can see when you and Kerry become involved, because that's actually the first time that the vertical bars become visible to the human eye. You had a major effect on LCF's fundraising, didn't you?

A. Yes.

Q. Surge was getting 25 per cent of each of these vertical bars, wasn't it?

A. Yes.

Q. So selling the LCF product was transformative to your finances as well, wasn't it?

A. Yes.

Q. You went from running on fumes to making well over £100,000 profit per month?

A. Yes.

Q. Can we look at <SUR00164248-0001>, please. There is an email from you to a philhove1 email address and you start with the word "Pops". This is your father, isn't it?

A. It is my late father, yes.

Q. You say:

"£100k in commissions early next week. "We will deliver at least £200k in commissions in September and with £50-60k in outgoings. "£140-200k profit before tax."

It is fair to say you were fairly pleased with those results, weren't you?

A. Yes.

Q. The amount of profit available to you was why you were so keen on pushing your team and having sales sprints, wasn't it?

A. Yes.

Q. If we look at <SUR00129441-0001>, it is an email from you to Mark Partridge, 17 September 2015, you say: "£400,000 going into LCF tomorrow. £100,000 commission."

If £400,000 is going into LCF and you're getting £100,000 commission, your understanding at the time was that the £100,000 was coming out of the £400,000, wasn't it?

A. I'm not sure if I was certain about it. Perhaps you can remind me. But I can't remember how I -- what my exact thinking was back then on that.

Q. Can we look at <SUR00129510-0001>. You will see, at the bottom, Katie Maddock of LCF tells Steve: "We should have a client account any minute and funds have finally been instructed that £170,000 will be released today."

Then above that, Steve tells you:

"That should be another £47,000 comms tomorrow!" So you knew, in this case, that £47,000 was coming out of the 170,000?

A. Yes. If I'd have read that email, I would have known that, yes.

Q. That was how you understood it to work at this time, wasn't it?

A. Honestly, I'm not quite sure. I have a recollection which -- it was never said precisely. I don't know, unless you can show me otherwise, but it's not something I recall of knowing or indeed, you know, it wasn't the kind of -- sorry, I'm just going to collect myself for a minute. It's my father's email.

Q. Sure.

A. I was never quite certain. I don't think I was certain where we were paid our funds from, whether it was, as you're suggesting, from that 170 or if it came from elsewhere. Obviously, from my point of view at that time, I had other sort of focuses on, ie, continuing to scale processes, systems, and ensuring there was enough security in place.

Q. But when you're told that Buss Murton received 170,000 and you're getting 47,000 in, you know you're referring that from Buss Murton? You know your 47 has come out of 170, don't you?

A. I presume so, by this.

Q. In October, you set a target of £1.5 million into LCF, didn't you?

A. Yes.

Q. Your understanding at this time, in autumn/winter 2015, was that, although Mr Thomson ran LCF on a day-to-day basis, Mr Golding was the man in charge?

A. Yes, I think that's fair to say early on.

Q. He was the king pin, wasn't he?

A. Yes, I think, early on, we'd -- so, if I may -- because this isn't as straightforward as a "yes" or "no", Mr Robins. When we first met Spencer, we thought he was the king pin, as you describe, and my view on that oscillated during various parts of that four-year period, and, depending on when you're talking about, because there was a point where it was made clear by Andy that he was not the owner of LCF but he was connected to the borrowers, we had established that. I'm just looking at the date here. Probably the following -- early the following year. But of course he was instrumental, because, as far as I was -- he'd introduced it. Perhaps he'd even -- well, he'd funded us, helped us with our cash flow. So I knew he was very important to LCF, yes.

Q. You're right to say there comes a point on one occasion, at least, where Mr Thomson tells you that he's in charge of LCF. But throughout the period you knew that Spencer Golding was the man in charge?

A. I don't think that's a fair characterisation, because it wasn't as clear as that, and I think, as I said to the SFO in my interview with them, in fact, it was unclear -- you don't go into a business meeting

with people and start establishing who is a shareholder, who is a director. It is just -- it is not something naturally you do in business. So you just kind of -- you think you're speaking to the right people, you're not sure. There was an element of, you know, it wasn't very clear, and we didn't -- for us, it wasn't an enormous issue. I know it's a big focus now, but back then it wasn't something that we considered an issue at all.

Q. Let's look at <SUR00002637-0001>. This is an email from Kerry to John Russell-Murphy, 13 October 2015. It is copied to you, and she says:

"Hi John.

"As requested I phoned Spencer. He had a moan about two things ..."

She sets out her thoughts. And then, in the final paragraph, she says:

"Ultimately I don't think he is pissed off with us, I think he is pissed off with Andy and he asked me to keep the pressure on Andy and 'chase him harder'." This is reflective of the sort of conversations you were having with Mr Golding at the time, isn't it?

A. Yes, it is.

Q. If we look at <EB0007893>, and if we look at the next page, we will see that was October. This is November. You're emailing Mr Golding saying:

"See below from Kerry. It seems we are required by your lawyers to have a much harder sign-up process than our ... competitors on LCF. Can we not at the very least match their sign-up process for compliance." If an issue like this arose at that time, Spencer was the person you would go to to iron it out, wasn't he?

A. Yes, that's correct -- not all the time, but sometimes, yes.

Q. Well, your understanding at this time was, ultimately, it was Spencer's business?

A. So -- see, I'm loath to say things which I now know and retrofit the evidence I knew then. I'm trying my best to put myself back in the situation I was then. I was of the opinion back then that he was the person, the driving force, to help get them off the ground. But I'd like to sort of say this: it was in no way looking bad at anything. I have helped people start their businesses, many people start their businesses, which I don't own or be a shareholder or a director, and I'm not conducting it for nefarious reasons. Sometimes you do connect people, you put them in there. I think, back then, that was the opinion I'd formed. Of course, my opinion, as I said earlier, oscillated throughout the entire period. But back then, yes, I think he was definitely a driving force to get things unstuck.

Q. Just to be clear, I'm not asking you a question about whether it looked bad or there were nefarious reasons. It is simply that, at this time, your understanding was that, although Andy ran LCF day-to-day, it was ultimately Spencer's business?

A. No, I don't agree with that.

Q. Can we look at <SUR00003170-0001>. There is an email chain. We can see from the top that you were copied into it. At the bottom half of the page, Kerry says: "I know you have spoken to Paul so you possibly already know all of this but just for the avoidance of doubt ..."

And then 2:

"The sign-off to use our shorter assessment is a commercial decision taken by Spencer and has not been agreed by Andy who runs LCF day to day and equally has not been agreed by their corporate advisors ... Ultimately it is Spencer's business so it's almost certain we will be able to use our [shorter] version test."

That was Kerry's understanding. It was your understanding at this time it was ultimately Spencer's business as well, wasn't it? You thought the same as Kerry?

A. Obviously, Kerry has written that and I will leave it for you to ask her that yourself. But I cannot -- it wasn't clear. He wasn't appearing as a shareholder. It was Andy day to day. Without going back to the specific time, it was difficult to discern easily who owned the business. It is clear that Spencer, certainly early on, was a big influence. If we had something sticking like this, or various other things, we would go to him. He was the first person we met. So we met Spencer prior to meeting Andrew Thomson. So we would go to him to unstick things.

But I don't think it is a fair -- you know, if that's a certainty, I wouldn't have said it was a certainty at that stage.

Q. You at least thought he was the major shareholder in LCF?

A. Well, I mean, I don't think I did think he was the major shareholder. I think, now, where I am now, not -- I've done this. I have done what -- you know, I'm not trying to retrofit anything, but I have done exactly what Spencer's done. I have helped businesses get off the ground whilst not being a shareholder. So there is a possibility for that. But, yes, it does look that he was driving that business early on. He was funding us and helping our growth, he was funding them, I presumed. But I couldn't -- like I said at the very beginning, it wasn't something where we established with a conversation with Spencer and said, "What do you own? What does all these people own?" It wasn't something we did.

Q. Where Kerry says "there is a little politics with Andy that I will iron out", the politics to iron out suggests that Andy wasn't particularly easy to deal with, doesn't it?

A. I think this might have been more to do with Kerry than I, because Andy and Kerry weren't particularly -- didn't get on particularly well.

Q. Wasn't it your experience as well that he could be rather prickly or difficult?

A. There were times where he wasn't easy to deal with.

Q. If the new website needed to be approved, it would be necessary to get approval from Andy and Spencer, wouldn't it?

A. Unless you can point me to something to show me, I --

Q. <SUR00003210-0001>. It is an email from Ashleigh to you copied to Kerry and Steve. He says:

"The LCF [website] is now live ..."

At the end of the email he says:

"... however it is ready for approval from Andy/Spencer."

Your understanding at the time was something like a new website couldn't go live without Spencer's approval?

A. Again, I don't agree with that characterisation. Even though it's there, it's not how I looked at it at the time. Just looking at the date on that, that's in November 2015. It just wasn't something which was -- it is true, there were times where we -- by "we", I mean Surge and people within Surge and associated with Surge -- would ask Spencer things. But I think that was a hangover, frankly, from the way in which we got involved with this business, the introductions, the support and everything else, as opposed to being some kind of guarantee that he was the main driver. It is also worth pointing out, having, you know, met Spencer on a number of occasions, that he was not the person I would consider to review a website, frankly. Could this be someone being courteous or civil?

Q. Could we look at <SUR00002372-0001>. We will come back to this later. I just want to show you what it is. It is an email from Desmond Bailey of InfoConnections. He was one of your salespeople, wasn't he?

A. Yes, sir.

Q. It's to John Russell-Murphy. John's response, which you recently disclosed, is <SUR00159541-0001>. It is copied to you. Right at the bottom, John Russell-Murphy says: "In addition to this, the major shareholder of LCF has been a client of mine for over 15 years and is worth over 40 million, he would certainly not get involved in any scams as he doesn't need to."

When you saw this reference to "major shareholder in LCF", you would have understood that to be a reference to Spencer, wouldn't you?

A. Yes. In all honesty, I cannot recall this email. I have seen it in the sort of, you know, preparation I have been doing. I am not sitting here and saying that Spencer Golding was not a shareholder. I am saying, to me, it wasn't really apparent what his position was. He seemed to have been an introducer to the borrowers, he seemed to have been instrumental at the beginning of LCF. He helped fund Surge, but he didn't own it, he wasn't a shareholder of it. He lent us some money.

Q. Mr Careless, if you are repaying the loan by having half commissions, that can only be because you thought it was his company, surely?

A. Can it only mean that? Could it not mean that it's the way to show him the way in which I'll be repaying him? Well, you asked for a loan. Someone says, "How are you going to pay it back?" That was it. I'm not saying --

Q. You get a loan from him personally and you pay it back by having half commissions. You thought it was his company?

A. At this point, in 2015 -- I can't even remember this email. But in 2015, I don't think I was 100 per cent that he was the owner. But I thought he was in some way benefiting from it. But I don't remember that being him as an owner, and that's not because I'm trying to, you know, detract you from anything. If I thought he was the owner, I'd tell you I thought he was the owner. I just genuinely wasn't sure who he was. I'm sorry I don't have a cast-iron answer on that.

Q. In practical terms, if commissions were tied up, if there was a problem in paying commissions, you knew that Spencer was the person you needed to go to to sort out the problem?

A. In practical terms, I probably saw Andy Thomson, over three and a half years, 50 times; I probably saw Spencer less than 10 per cent of that, 20 per cent of that, maybe 10 times. So early on, the answer to that question is, yes, if we needed something doing, we would ask Spencer. He was the one who facilitated the entire deal and so we thought he was the guy to get it done. Obviously, as

you have mentioned earlier, sometimes Andy was, early on, finding his feet, it was a new business. We weren't quite sure of -- it wasn't just Spencer and Andy here as well. I think it is worth pointing out there are a number of different people involved at a sort of senior level in that business, none of whom were obvious if they owned it or not.

Q. You say you didn't have any dealings with Spencer yourself, but that's because you'd often be getting John Russell-Murphy to talk to Spencer?

A. That's true.

Q. So if, for example, commissions were tied up, you'd get John Russell-Murphy to go and sort out the problem with Spencer?

A. Yes, that's true.

Q. He was a person who would sort out any problem paying commissions because, ultimately, it was his business?

A. I mean, as I've said previously, I wasn't 100 per cent that it was his business, and -- I was under the impression that he was driving it early on, but, as I have said, it wasn't obvious in the way in which -- everyone was using his name because he was the guy that had introduced us, he was unsticking things, he was driving lots of things forward. But it wasn't obvious he was the owner. As I said previously, I have done this. I have assisted people setting up businesses, in many different ways, where I have not owned a business. It is not without the realms of possibility. But also I wasn't focused on it as we are in the minutiae now. I wasn't focused on it. It was a group of people who had a great product and good security and looked like they were doing it professionally. That's what I was more --

Q. You thought Spencer was probably the shareholder or at least major shareholder?

A. Without perjuring myself to say either way, it was difficult to discern and I don't think, back at that point, I could be -- I could put myself back in a position to guarantee I thought he was the shareholder exactly then.

Q. That wasn't my question. You thought he was probably the shareholder or the major shareholder?

A. I'm not sure I did. I'm not sure I did. I think it was quite opaque who was what and who was owning what. I think it would be unfair of me to say that and say things which are just -- because there are emails saying, "Can we ask Spencer to sign things off?".

Q. Let's look at another practical example. If Andy had told you to do something that you didn't like or didn't agree with, you knew you could go to Spencer to override him?

A. If you remove the word "override", I'd agree with the rest of the sentence. I will give you an example --

Q. Can I just show you where the override is coming from? <SUR00003280-0001>. Kerry is saying to you, 17 November:

"We need to override him and speak to Spencer." In practical terms, you knew, if Andy was being difficult, if he said something you didn't like, you could get Spencer to overrule him?

A. I don't think it was a definite thing, but, yes, it's something we definitely did and you can see it there. Can I give you an example of the practical nature of this which might shed some light onto

what's happening. If we couldn't get hold of -- in the same way, if I can't get hold of my barrister and I need to speak to him, I would ask my solicitor and he would do that for me because he introduced me, and because he is the person who is influential in getting things done, and that barrister will then give me a call, hopefully, or indeed we would engage. But it doesn't mean that -- I'm just saying it is not quite as cut and dried, I think, as we are now explaining to ourselves in this court, as back then.

Q. Obviously, I'm not suggesting you didn't deal with Mr Thomson, he was running LCF on a day-to-day basis?

A. Yes.

Q. But you had fairly regular meetings with Spencer to discuss the progress of LCF's business, didn't you?

A. I think that would have been more John Russell-Murphy. We did meet him, but nowhere the same level as Andy.

Q. Let's look at <MDR00023166>. There's an email from you to Andy, and in the final paragraph you say: "I am meeting with Spencer tomorrow in Eastbourne. I am not sure if you are coming along ..." It is correct to say, isn't it, you had reasonably regular meetings with Spencer to discuss LCF's business?

A. So, early on, yes. Later on, no. Well, actually, later on, we did meet Spencer, but not about LCF, about other bonds and products that he was pitching or introducing. So this one I specifically remember. I presume this was around the same sort of time as we were asking Spencer for loans. And, yeah, we would invite Spencer, not to every meeting, but to some meetings, and early on, and that was on the basis, as I said previously, we knew he was instrumental in connecting it all together with regards to, you know, LCF and introducing us to Andy.

Q. If, for example, you wanted to increase the sales team and Andy was saying, "No, I don't want to do that", that's the sort of thing you would potentially discuss with Spencer. At the very least, you knew that Spencer would have the ultimate say?

A. Yes, so, for example, on Surge business like that -- I presume you're talking about Surge hiring more staff for its own retinue. On things like that, yes, I think, early on, we may have spoken to Spencer about that. We may well have -- it would have been very benign. We were growing a business which was looking to provide this as a service for various products on which he was introducing us to some. So it made sense for us to try and show off our capabilities and our skills because we were interested in being introduced to more products and more opportunities.

Q. Let's look at <EB0009131>. At the bottom of the page, Kerry's emailed you and John Russell-Murphy and she says:

"Hi, just to keep you in the loop regarding a potential looming problem. I have just got off the phone from Andy who said that the three new bonds had been created for online sale and now that many sales are being assisted by a salesperson he isn't sure that we are fully compliant."

On the next page, Kerry says:

"I don't understand this because he knows we also have a sales team who will continue to sell via the traditional route ..."

She goes on, in the third line, to say: "He said something interesting, which is that he thought we were moving away from having a sales team ... I said that contradicts our last meeting with Spencer when he suggested we expand our sales team to have a bigger capacity for face to face meetings." Then she thinks that Andy has maybe made a mistake and then she says that he contradicted himself. And then, in the penultimate paragraph, she says: "I'm glad we are meeting Spencer tomorrow and can clarify/correct this madness!"

It is fair to say, isn't it, if Mr Thomson said something you didn't agree with or thought was difficult, you could take it to Spencer and get him to correct it?

A. I think that's fair, early on. I presume that's in -- this email is 2015, Mr Robins.

Q. Sorry, the date was 30 November 2015?

A. Yes, I would say that's a fair assessment.

Q. If we look at <SUR00003797-0001>, Kerry says: "Let's put it down to Andy being Andy and see if it actually gets raised with Spencer tomorrow." "Andy being Andy" is a reference, and you would have understood it as a reference, to the fact that Mr Thomson could be pretty difficult to deal with?

A. I think that was more -- yes, is the answer, he could be, but it wasn't necessarily with me. The sort of structure as we started to grow ended up being, I was the CEO and Kerry was the chief operating officer and she dealt predominantly with Andy and, you know, it is fair to say that they were neither fans of each other throughout that, for various reasons, in just the general growth of the business.

Q. Now we have looked at these emails, hopefully your memory has been refreshed. Do you accept it was your understanding at the time that LCF was Spencer's company?

A. I'm afraid I still can't -- at this stage, I was inclined to think -- and it is really difficult to not retrofit all the information I know now, but I think, at that time, I was inclined to think that he was the seed funder, the founder, the guy that sort of connected everyone together. I could not, hand on heart, sit here today and tell you I was assured he was the shareholder, because I just can't be sure of that.

Q. But you thought it was probably his company? You were working on the assumption it was his company?

A. No, I don't think I did. I think, early on, it was difficult -- later on, as things progressed, I was much clearer. Early on, there were people who thought it was, it wasn't, but it wasn't really an issue that we -- he'd connected us, he'd helped everyone set up. It just wasn't -- and, as I've said previously, I have done this, so I have to be -- you know, I have got real-life experience of helping people set a business up in which I'm no longer a shareholder. I did it because I was going through this. I couldn't bring the litigation drama I was involved in onto people who had nothing to do with it and trying to build a business. So, I helped people set up a business, who -- and I'm not a shareholder, I wasn't a director. So it is entirely possible that you can facilitate a business moving like this without owning it, and I did -- I had no guarantee that he was.

Q. No guarantee, but you were operating on the assumption that he was, weren't you?

A. I think, early on, we definitely used him to unstick issues because he was our connection, in the same way I have just used the analogy with a solicitor, you can't get hold of your barrister, I use the solicitor and he will do it because he's connected everyone in.

Q. I'm not really asking about connections. You were working on the assumption that LCF was his company, weren't you?

A. I mean, I really can't think I can change my answer without being repetitive or, indeed, trying to confuse the court. At the time, it was unclear precisely what role Spencer Golding had in LCF. I was inclined to think that he was a driving force in that business early on, but, later on, my mind changed on that.

Q. Can we look at <MDR00025912>. We are now into January 2016. You're emailing Spencer about the logo. We can see that from the subject "Logo on website". You say -- we can see no-one else is copied into this. You say:

"The conversation is below, it was with Kerry. Not that it really matters, it's your company and you can have any logo you want."

It was your belief at the time, wasn't it, LCF was Spencer's company?

A. As I said previously, I oscillated between thinking he was the driving force and it was his, and to not thinking that, and there is further evidence, or there is further information later, where my mind was changed. I know you want to secure me down for the entirety of it, but, at that time, he was clearly the most influential person in LCF. He had introduced everybody. He was the person who was making things happen. I'm not even sure if I wrote that colloquially or not. Maybe I did think back then that it was his, but I wasn't sure, and that -- it was so far from clear, other than the fact that he got things done. I think the other stuff is, it looks like he's coming to all these meetings. He wasn't. He was literally used by me or by John, and indeed Kerry, as a way to unstick Andy, and the reason for that is because he had a control over Andy through either connecting him, funding him -- I couldn't quite work it out. I have seen this email. I saw it recently when I was going through my discovery, and my mind is not made up. It wasn't made up back then, certainly. Obviously now it is different. But back then it wasn't made up. I'm almost certain I couldn't have been sure from one period to another.

Q. You say your mind oscillated, but certainly, for the period that we have covered, February 2015 to January 2016, your understanding was that LCF was Spencer's company?

A. No. My understanding was he was involved in that company, but I couldn't quite discern how, whether or not he was funding it, founding it, seeding it, helping them. You know, Spencer was one of these types of characters who would come to our office, just to put a little bit of colour and understanding on it, and would tell us how to do, you know, various things and so on and so forth. He was that kind of character who had that kind of opinion. He was also the -- how would we describe it -- he was the wealthy guy, he was the money in this operation. I think someone refers to him being worth £40 million previously, or whatever he was worth. He had a gravitas around him that, I think, some of which emanated from the fact he was wealthy and some of it emanated from the fact he was clearly influential amongst LCF.

Q. At around this time, January 2016, was there another loan from Spencer to Surge of £200,000?

A. I don't know.

Q. Can we look at --

A. I don't seem to recall it.

Q. -- <SUR00005951-0001>.

A. Oh, yes, there might be.

Q. This is a message exchange between you and Steve Jones, you're "Device owner" again. On page 5
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EPE OPERATOR: There are only two pages.

MR ROBINS: Only two pages. On the right-hand side -- it is formatted differently here -- you said to Steve Jones, second message down on the right-hand side: "Also, I am getting Spencer to advance/loan us 200k payable back from comms by reducing comms to half comms till paid. Be good to learn how to live on lower comms."

You were discussing with Spencer another loan of £200,000 repayable from half comms?

A. Yes.

Q. Again, you must have thought at the time, if he gives you a loan personally, and you're repaying it by taking less money from LCF, you thought he was the owner of LCF?

A. I'm not sure it's quite as straightforward as that, Mr Robins. I mean, the first thing is, did that -- sorry, I'm not going to ask you questions. I'm not entirely sure whether we actually managed to get that money out of him. We were a growing business. Our head count was increasing quite quickly. And we were very cash hungry as a business to keep ourselves solvent and move forward. He had already said yes to two loans. Of course, as I mentioned previously, this chap was supposedly wealthy and I believed him to be wealthy, from --

Q. You say the business was cash hungry. You and Mr Russell-Murphy were also cash hungry, weren't you?

A. Well, yes, I'm an entrepreneur. I try and create business --

Q. The fourth one down [page 2], Steve asks: "... what would be the plan for the cash?" And you say: "50 me. 20 JRM. 130 company."

You were planning that 50 of Spencer's 200 would be for you personally, weren't you?

A. Yes, I'm a start-up entrepreneur and I've built many businesses from the ground up to over 100 staff, over tens of millions of pounds in revenue. That comes with its own risk. The risk is, you put your own money in, your own sweat and energy, and you get paid as an entrepreneur on success, not the time you spend or, indeed, the hours you work. Of course I would probably have not been paid for a long time so the opportunity to pay down some of the debts I probably would have incurred, or indeed other issues I would have had personally, would have been very welcome.

Q. Can we look at --

MR JUSTICE MILES: Sorry, just before you do, I'm not sure, actually, you answered the question that was asked. I know that you were providing some evidence, but the question that was asked was about the idea of repaying the loan by halving the commissions.

A. Yes.

MR JUSTICE MILES: Leave aside for a minute whether in fact this loan was advanced, which is what you then started to discuss.

Mr Robins, do you want to ask the question again, leaving that point to one side?

MR ROBINS: Yes, absolutely.

You must have thought at the time, if he gives you a loan personally and you're repaying it by taking less money from LCF, you thought that he was the owner of LCF?

A. So, my answer to that is simple: reducing comms was a great way for me to explain to someone how I was going to pay them back. And I think you're inferring here that I would have paid -- that he would have taken the other commissions from LCF or something along those lines. I can't be sure what I'm saying there. But I do feel like that was a great way for me -- it worked previously. When I asked him for loans previously for my cash flow, he's agreed, and when you ask for money, you really need to give the person, you know, how -- "How much money do you want? Over what period of time? How will you pay me back?" I think that's what I am trying to tell him, or what I'm trying to tell Steve I told him.

Q. We saw from the previous one, it wasn't that you get 25 per cent and give him half, it was that you get 12.5 per cent?

A. Right.

Q. So you must have thought that he was the beneficial owner of LCF?

A. If I was certain that Spencer Golding was the beneficial owner, entirely he owned that business or was a big part of it, I would have said day one, but I wasn't sure, and it is the certainty that you are saying the question with which is difficult for me to agree to, because it was not certain. I knew he was involved in LCF. It was -- you know, it is not something which -- it was there. Andy appeared to own it. And he did appear to own it. Although we used Spencer to unstick things early on, that was really down to the nature of the early relationship and how we were introduced to Andy Thomson.

Q. You keep trying to get out of answering the question by saying you couldn't be certain, you weren't 100 per cent sure, so let me rephrase it again in a way I have tried previously. You thought he was probably the owner, you were operating under the assumption that he was the owner?

A. Again, I don't want to be difficult, and if you would prefer a "yes" or "no", I will give you no, because it was not probable he was the owner. He could well not have been the owner too. It wasn't something then that we considered as a problem. It was, he was the guy who introduced us, he had a lot of money, he was clearly funding them to get up and running, he helped us with some cash flow when we were growing. It is difficult for me now, nine years later, or eight and a half years later, to stand here with any certainty and say, "I'm sure he was a probable owner at that point".

Q. Let's look at the email I think you were alluding to earlier, <SUR00131168-0001>. It is an email from Kerry to you on 25 January 2016. Right at the bottom, penultimate paragraph, it says:

"Andy stated that he owns LC&F. He said 'Spencer does not have ownership at all, I have a symbiotic relationship with Spencer we assist each other and we are vital to each other but he does not own LC&F. Please stop communicating key information without me. In a meeting last week Paul communicated information about GCEN and your objections to how it works to Simon Hume-Kendall, he is my customer and it is inappropriate for you to have disclosed the working of my business to him ...'."

Kerry says:

"There has been a misunderstanding, we have been led to believe that whilst you are officially the business owner as registered at Companies House, Spencer is a drive force behind LC&F and a key

decision maker. You really need to take this up with Spencer because he has presented himself to us as the big chief at LC&F and he invited Simon to the meeting ..."

Over the next page, Kerry comments to you in the second paragraph:

"So you understand the tone, Andy wasn't really complaining or annoyed, he was just trying to express to me a frustration that he mustn't be left out because actually it's his business and he wanted to make it clear that if we think Spencer is a controlling partner/owner, he is not."

Kerry says:

"This is contrary to what we have been led to believe all along. I was surprised so I double-checked. I said:

"Did you come up with the concept of SAFE ..." He said that others were involved but it was his concept. Then she comments to you:

"I don't know what to believe?!? Is this a bit like if I said yes this is my business, nothing to do with Paul, check at companies house. Companies house would just show me but we all know Paul is the visionary and I just create systems to action the practicalities." So Andy had said that, but Kerry wasn't convinced that he was telling the truth and suggested you weren't convinced either?

A. Mr Robins, can I see the initial bit? I beg your pardon, the first part that you read out of Kerry's email?

Q. Right at the bottom, on the left. The final two paragraphs.

A. Yes, okay. Thank you.

Q. So, first, what Kerry says there is a fair reflection at the time, isn't it, if we look at the bottom on the left, you had been led to believe that Spencer was the driving force behind LCF and the key decision maker?

A. Mmm, yes.

Q. Spencer has presented himself to you as the big chief at LCF?

A. Yes, I think this is emblematic of the situation: confusing, and not at all clear. It takes Kerry in their office -- I presume she was at their offices in Tunbridge Wells -- to establish more clarity on what was going on. But you can see from this it wasn't particularly clear. Exactly as I said, Spencer was the driving force behind LCF, and he was, very early on, making decisions that we would refer to. So I think that's a fair comment.

Q. But Kerry didn't believe Mr Thomson, did she? She thought this was very surprising and possibly not true?

A. Where does it say that, Mr Robins?

Q. On the right-hand side, she says:

"I don't know what to believe?!? It is a bit like if I said yes this is my business, nothing to do with Paul, check at Companies House. Companies House would just show me but we all know Paul is the visionary and I just create systems to action the practicalities." She wasn't convinced by what Mr Thomson said to her by any means, was she?

A. I don't think so, no. Reading that, I don't think so. I actually -- what Kerry wrote at the beginning I kind of go with, "I don't know what to believe" would be a great summary of my position at that time.

Q. You weren't persuaded by what Mr Thomson said either?

A. Well, he didn't say it to me at this point, but I think he may have said it to me when he came to our offices once. I mean, I know right now this is an enormous part of the case against all of the defendants, but back then it wasn't something with that level of detail that we scrutinise like we are now, so I can't -- this is why -- and it is nine years ago. It is very difficult for me to be, without condemning someone, or whoever, and I don't think it is fair to -- it was clearly muddled. It was clearly confusing. And I think this is emblematic of how it started. There were lots of various people in various companies.

Q. This is 25 January 2016.

A. Yes.

Q. In practical terms, although Andy had said this, nothing changed; you carried on meeting with Spencer, liaising with Spencer, knowing that he could get Andy to do what you wanted.

A. That may have -- we may well have tried that two-step again, yes. Actually, whenever we saw Spencer -- I don't know if it is from early 2016, but subsequently, whenever he would come to our offices, which wasn't very frequent, but when he did, it wasn't about LCF, and I don't know what evidence there is to support that, but it was about other products, other bonds and opportunities that he was kind of asking us to look at because we were trying to build Surge up to have more bonds.

Q. But you carried on discussing LCF with him?

A. I may have done.

Q. Let's look at <SUR00080533-0001>. That was January 2016. This is now August 2017. It is an email chain between you, John Russell-Murphy and Kerry about the draft contract between LCF and Surge.

A. Yes.

Q. At the top, John Russell-Murphy said: "Thanks Kerry. I should have responded earlier but I was travelling, I think we should be harder with Andy on the points raised. They need us, we can flourish without them. The contract should be in our favour. "Again, Paul and I can discuss this with Spencer on Tuesday and get him to squeeze Andy if required." You said at the top of the page, "Okay". So you were meeting Spencer on Tuesday?

A. Yes.

Q. And John was proposing to discuss the LCF contract with him?

A. Yes.

Q. And your understanding was that you could get Spencer to squeeze Andy?

A. Yes. So, looking at this -- again, I haven't seen this one for many years -- it appears to me -- I mean, so -- to give some more context here, John Russell-Murphy was the main sort of person who would speak to Spencer. Kerry and I spoke predominantly to Andy. I think this is also true that it seems to be

a carry-on from what I suggested earlier, which is, he's clearly the person that unsticks things, and if we had an issue, we might ask him to assist us.

I think it is also worth looking at the context of who he was: he was a big-cheese businessperson who is allegedly worth a lot of money and was very wise and great at business and he sort of took on a slight guru-y style sort of position where people would -- you know, just because he was sort of doing quite well. So there was an element of that, but, yeah, and --

Q. This is a contract between Surge and LCF and you're going to be discussing it with Spencer without Andy?

A. I don't know if it was without Andy, but yes.

Q. Well, if you're going to a meeting with Spencer saying, "We want you to squeeze Andy", I'm assuming you're not envisaging Andy is going to be there?

A. I don't know:

"Again, Paul and I can discuss this with Spencer ... and ... squeeze Andy if required."

Can we rephrase the word "squeeze" with "influence" and perhaps it takes on a slightly less nefarious --

Q. No, "squeeze" means make him accept your position, doesn't it? It doesn't mean influence. It means make him accept?

A. We would certainly have used Spencer in that way. We did. He set the whole thing up. But I don't see this -- apart from the fact we're in a court discussing the point in question, I don't see it as nefarious. I just don't.

Q. That wasn't my question.

A. Sorry.

Q. You keep coming back to whether it was nefarious or whether you could be 100 per cent certain?

A. Yes.

Q. Your understanding at the time was, if there was going to be a contract between Surge and LCF, you could discuss that with Spencer and you could get him to make Andy accept your position?

A. Well, it's certainly what John's writing there. I don't think it's fair to say, if Andy didn't want to do it, Spencer would make him do it, but I think he had an influence, which is why I say change that word and it doesn't have much -- he had unstuck other things. We were perhaps going back to him to try to unstick this, is what's happening here.

Q. Let's look at <SUR00140352-0001>. John says to Kerry, and you're copied:

"Are you around on Tuesday? It might be a good idea to bring you into the meeting to discuss the service review part with SG."

You were negotiating Surge's contract with LCF with Mr Golding, weren't you?

A. Yes. I think it's fair to say that I wouldn't have negotiated any contract with Mr Golding at all, but -- or anybody.

Q. You understood Mr Russell-Murphy and Kerry were going to be discussing that with him?

A. So, this email is from John Russell-Murphy to Kerry and cc'ing me in. It says:

"Okay, understand. Are you around on Tuesday? It might be a good idea to bring you into the meeting to discuss the service review part with SG." I actually don't even know what the service review is, but I presume it's part of the contract.

Q. Yes.

A. Again, obviously, Kerry will have to give her evidence, but from what I can see here, this looks like another episode of, help Spencer help unstick issues with LCF, to me.

Q. And you --

A. As opposed to him agreeing the contract or perhaps something.

Q. You had monthly meetings with Spencer to discuss LCF business?

A. Early on, we spoke to Spencer a lot. Later on, we spoke to him a lot less. Monthly meetings, I don't recall. I think they were a bit more ad hoc than that. I do recall him coming to our office but nowhere near the level of -- we are talking, over four and a half years, he probably came to our office five times, whereas Andy would have come to our office 50, 40 times. I'm not saying that makes Andy definitely 100 per cent the owner but I'm trying to give you some context --

Q. Roughly, once a month?

A. Potentially. I don't know if that would seem too much. Maybe. Could well have done.

Q. When you say unsticking things, you would actually discuss fairly detailed points of business administration relating to LCF with Mr Golding?

A. Yes, I think we did. I think we would have told him how it was going, would have been the better descriptor.

Q. Let's look at <SUR00082937-0001>. Jo Baldock, this is 7 September 2017, so a month after the last email we were looking at. Jo Baldock emails you: "List for Spencer meeting ...

"Agenda."

She also forwards it to Mr Russell-Murphy. I'm assuming this is more in the nature of an aide-memoire of points for you to raise with Spencer rather than an agenda that you sort of print out and give to him at the beginning of the meeting. Would that be right?

A. So this is an email that I can remember with some clarity. Jo Baldock was John Russell-Murphy's long-standing assistant. They had worked together for many years. When John joined us, we sort of inherited Jo and she was very good. Her role was running the account management team for Surge for both Blackmore and LCF, but predominantly LCF. The reason I make that point is she had a prior relationship, or previous relationship, sorry, with Andy, with Spencer and various other people from John Russell-Murphy's side. I remember this email because it was before a meeting where she came in. I'm afraid to say -- sad to say that Jo, much like Kerry, didn't get on with Andy -- I think we need to make that clear -- at all. For various reasons. Personality wise.

I think any opportunity Jo would have had to have not be kind to Andy, she may well have taken. I remember her coming to see me and saying -- it may not be precise, this, I may have my timeline

wrong, but I remember her saying, "Andy won't respond to this" or "He won't respond to that, "We have issues, we have" -- you know, all of these things, these types of things, where she's trying her best to professionalise Surge for the benefit of LCF. Again, she's gone to Spencer to remove it. This was a meeting she called and she wanted to be it and she wanted to do it. That's how I recall this.

Q. A year and a half after Mr Thomson says, "Don't deal with Spencer, it is not his business, it is my business, deal with me", you knew that was not something to be taken seriously, it wasn't the reality of the position?

A. It wasn't the only time he said it. In answer to your question, no, I do believe Andy owned that company and I do believe that he owned it properly and I do believe he had the best intentions for that company. But I didn't -- I'm talking about what I knew then, not what I knew now, just to be clear.

Q. You're not talking about what you knew then. The email sets out the agenda. There are various gripes about how Andy is not doing a very good job. You take them to Spencer because your understanding was he was still the king pin, he was Andy's boss?

A. I think he did exactly -- she's gone to Spencer in exactly the same way as we all went to him previously. She's pushed this together, she's running this. All of these are issues that she has and she's created and she wants them unstuck, so she's going to the same two-step we went to previously which was, ask Spencer to try and use his commercial nous to unstick Andy from -- you've got to remember, Andy was an allegedly first-time entrepreneur, first-time CEO, whereas Spencer was clearly, you know, seasoned. As I previously said, there was that relationship of a sort of mentor and mentee which seemed to permeate between Spencer and Andy, and indeed lots of other people.

Q. The relationship was that Spencer could instruct Andy what to do, wasn't it?

A. Maybe early on, yes.

Q. Well, in September 2017, you were telling Spencer these things on the basis that he could go and see Andy Thomson and say, "This isn't good enough. You need to pull your finger out, Andy". Spencer would instruct Andy?

A. To be fair to all of the people you have just mentioned, I don't know what the outcome of that was, whether or not Andy would have been resistant or not, but I think those personalities are important and you will hear from Kerry the personalities with Jo and herself with Andy. He was very difficult to deal with with those particular people. I think they're looking like they're trying to unstick it. To be clear, even after Andy said in his email -- sorry, what he said to Kerry and what she put in an email, I still knew, even then, that he was a significant person involved in that business with regards to his ability to make things happen, but I didn't think it was necessarily nefarious, Mr Robins. I think it could have been down to the fact he's worth 40 million quid and was a successful entrepreneur and it could have been to do that. With fraud optics, of course, it looks completely different.

MR JUSTICE MILES: I don't think it's being suggested in these questions that it's nefarious, Mr Careless. I think the questions are just about what you thought at the time.

A. Yes.

MR JUSTICE MILES: I think what's being said is that, in this email, there's a list of points about detailed aspects of the business of LCF where Jo Baldock is saying that these are points to raise with

Spencer. I don't think anyone is suggesting in the questions, at the moment, that there's anything nefarious about that. The question is directed at what role Spencer had, if any, within LCF.

A. Well, in answer to your question, then, Mr Robins, based on what my Lord has just said, this email, Spencer would not have had a clue about all of it at all, and, in my view, looking at it now afterwards, this is Jo not being very polite to Andy, and she is -- he is not listening to her, for personality reasons, and she is going to go back onto that two-step with Spencer and do it. But there's no way Spencer would have, you know, these types of things. I just don't believe that he would have understood most of them. I don't even know if he knew what series 10 was, for example.

But, yes, so that's how I remember it.

MR ROBINS: Well, he did have a sufficiently detailed knowledge of LCF's business. Otherwise, there would have been no point whatsoever trying to explain these things to him.

A. I think he had -- I don't know how much -- I think the detail that Spencer would have known was what the inflows were, so, you know, what the monthly receipts were from bondholders; I think he would have known generally how -- he would have kept an eye on us because I think, you know, he felt like he had assisted us sort of getting off, and I think he, you know, would have had a view on sort of keeping an eye on us with regards to that. But -- yes.

Q. Even if he hadn't known the detail before you explained it to him, the purpose of explaining it was so that he could then go and get Andy to do what you wanted?

A. Yeah, I mean, it's clear that that was something we did previously, and Jo is here trying do that yet again.

Q. I just want to take you to one more. Can we now go to July 2018. It is <MDR00160744>. We have seen 2015, 2016 and 2017, this is 2018. If we go to the bottom, you can see that Jo Baldock is emailing Katie Maddock to say that there have been two dissatisfied clients regarding their transfers. These are ISA transfers. And she sets out the names of the clients and the problems.

Then, if we look next at <D7D9-0007547>, at the bottom half of the page, you ask "Why is this happening?" and she replies:

"The admin system for ISA transfers is terrible, they run it all on an Excel spreadsheet which is not updated at all and often has mistakes which also affects our numbers and invoices. I have suggested many times we take it over so everything is in one place and we can offer a better service to the clients but it always falls on deaf ears."

Then if we go to <D7D9-0007542>, Mr Russell-Murphy emails you to say:

"The transfers will be dealt with by us very soon. Spencer is instructing Andy to pass the work to our office next week."

It was, in fact, transferred, wasn't it? The ISA transfer process was something that your office took over responsibility for?

A. I'll take your word for it, yes, probably. Again, this looks -- it doesn't look -- it looks exactly as I -- you know, Spencer was the guy to go to if Andy was -- or needed some help unsticking issues, and I --

Q. It wasn't help unsticking issues. He was doing it incompetently. Jo Baldock had said, "Why don't you transfer it to us?" He had said no. So the answer was, "Well, Spencer is instructing him to transfer the work to your office". It was overriding him, wasn't it?

A. It certainly reads like that, Mr Robins, yes:

MR ROBINS: My Lord, I see the time. I don't know if that would be a convenient moment?

MR JUSTICE MILES: Yes, we will take the break now.

(3.13 pm)

(A short break)

(3.19 pm)

MR ROBINS: Can we go to <C2/3>, page 12. This is from your witness statement. You say in paragraph 62.5, halfway through the paragraph:

"Surge helped RPDigitalServices Limited set up a comparison sate to allow us to market our products on in around 2016/2017. This is because Surge wanted comparison sites specifically to rank products by interest rate, as comparison sites tended not to rank by interest rate, but by other factors."

RPDigital was a company that had been started by your friend Ronak Patel; yes?

A. Yes, sir.

Q. But it came to be controlled by you and Steve Jones?

A. Yes, sir.

Q. Steve became a contractor of RPDigital?

A. Yes, sir.

Q. And you got control of the bank account?

A. Yes.

Q. This new website you were going to create was actually going to be used to push people through an online application for LCF, wasn't it?

A. No, it was not.

Q. If we look at <SUR00002138-0001>, please. Ryan Holdaway emails you and others:

"We are going to be building a website that lists 10 or so accounts where a person can put their savings, like a comparison website. This will be used to push people through an online application for LCF." That was the intention from the outset, wasn't it?

A. So, yes, it was to be used by us as a method to promote our clients.

Q. Well, it was to be used to push people through an online application for LCF, wasn't it?

A. So, if you were top of a savings website, you won't be able to -- you would have to click from there to the website, and you would do your application on the website. So that's strictly not true. But, yes, I understand your general point.

Q. Is the answer to my question "yes" or "no"?

A. The answer to your question is, no, this will not be used to push people through an online application for LCF. It would be correct to say it would get clicks to LCF's website and they would go through LCF's application process.

Q. Would it be used to push people through LCF's online application process? Is it something with the order of the words that's confusing you here?

A. No, but it's advertising, so I presume, you know -- the idea was to get clicks for our client's website and allow them to go through their application form.

Q. It was used to get people to go to LCF's website?

A. Correct.

Q. He set out some possible names. I think you liked the name best-savings-accounts.co.uk, didn't you?

A. Possibly, yes. Some context here, Ryan Holdaway was my chief marketing officer. He used to work at Google. He was very good. I took his advice. He was very good at things like this.

Q. Eventually, you chose the name best-savings-rate.co.uk, I think?

A. Yes.

Q. Do you remember the high level of interest being paid by LCF became problematic when you were constructing the BSR website?

A. No, I do not.

Q. Can we look at <SUR00129471-0001>. Kerry sends an email -- you are one of the recipients. The subject is "Content for BSR". She says:

"NB:

"1. You will note that LCF is only listed in the 1-year bond option.

"2. The rate is 2.7 per cent.

"3. The minimum balance is £2k.

"Why?

"1. We currently sell the two-year bond for 8.5 per cent the average two-year bond in the comparison table offers 2 per cent. I was faced with a dilemma: I could not put 8.5 per cent next to 2 per cent and remain credible. I could not offer a two-year option close to 2 per cent because any client going to the LCF website would see that it is being marketed at 8.5 per cent. Therefore we will only offer the two-year bond via an assisted sale for 8.5 per cent (business as usual) we will only offer a one-year bond (the 2.7 per cent) via the hands free online sale." The point you would have understood her to be making is 8.5 per cent in that market wasn't credible?

A. Was incredible?

Q. Wasn't credible.

A. That's not true. There were lots of other sites offering similar details. I could find them for you later and bring them tomorrow, if you like, by using the way back --

Q. She says:

"I could not put the 8.5 per cent next to 2 per cent and remain credible."

It was not a credible offering, was it?

A. LCF's coupon for that was high, but it wasn't -- if we put some context around this, it was a low-interest-rate environment, there was a rise and rise of money-lending companies in the unregulated space, some of whom were quite big and doing very similar to what LCF was, and actually their rates were not too dissimilar. Some were more, some were less, but they changed. A lot of bonds were issued, closed, reissued, it was quite a kinetic market place. But there were lots of products out there doing roughly the same.

Q. Kerry has put a table together for the website to rank the best products by interest rates. Let's look at the attachment. <SUR00129472-0001>, page 2, please. We have got a fourth column, "Interest rates". We have: Kent Reliance, 2.1 per cent; Aldermore, 2 per cent; LCF, she's put 2.7 per cent, we know why; National Counties Building Society, 1.81 per cent; Post Office, 1.76 per cent; Tesco Bank, 1.95 per cent. She was right to say 8.5 per cent would have stood out like a sore thumb in that table?

A. As a bond, yes, she's right, yes.

Q. Would you have agreed that you couldn't put 8.5 per cent next to those rates and remain credible?

A. No, you would want to put other similar style returns, I think.

Q. Well, LCF was paying 8.5 per cent at this time, wasn't it?

A. I believe so, yes.

Q. And you knew that at the time?

A. Yes.

Q. That's not what Kerry's put in this table. She's put 2.7?

A. Yes.

Q. Because she wants something in line with the competition?

A. Yes.

Q. She thought that 8.5 per cent would stand out like a sore thumb next to 2 per cent?

A. Yes.

Q. Seeing her email, you must have thought, "That's a good point, LCF is not credible"?

A. Sorry, could you ask me the question again?

Q. Let's put it a different way: revealing the true position to members of the public would have been undesirable to you because you thought members of the public would look at that and say, "This can't be right. How can something be offering 8.5 in a market of 2 per cent?"

A. I don't think the 8.5 per cent was for one year. I think that was a five-year bond, Mr Robins.

Q. It was for a two-year bond, 8.5 per cent per annum?

A. Oh, it was a two-year, right.

Q. And putting --

A. Are you sure about that, Mr Robins? I think perhaps, as I recall, I think their one-year bond was as seen here. I seem to think the three-year bond was 6.5.

Q. That was later, the second series, after the end of 2015, beginning of 2016, and you have one year 3.9; two years 6-point-something; and three years, 8 per cent. But at this time, it's a two-year bond, 8.5 per cent per annum. Kerry is right, isn't she? You can't put that in a table among 2 per cent and remain credible?

A. It is our job to market our client and we want to put them at the best possible chance of getting a click through to their website, so we are going to try and put their best product forward.

Q. They didn't have a 2.7 per cent bond. Kerry was saying they need to create one to remain credible?

A. I beg your pardon. Right. Then, yes. So, part of our role as marketeers would have been to advise them on the market. That's what marketeers do. We have a good view of the types of products, types of bonds, alternate and unregulated products from funding circle all the way down to bonds that just launch. It is our job to try and make our clients know the market, stay competitive and make recommendations among those lines.

Q. Staying competitive would normally involve paying more interest than the competition, wouldn't it?

A. Not necessarily. I think -- well, could do. I think it will come down to a number of things. Whether or not they have FSCS, depending on the rate, depending on the type of product. I think there are a lot of things. If it was as simple as the highest rate converts people into running -- into investors, I think -- I just don't think -- you know, you want to have a good rate, of course you do. If you want to be competitive and attract income -- inflows.

Q. But, here, your advice to your client was, "You're paying too much. 8.5 per cent is not credible. It stands out like a sore thumb"?

A. Right.

Q. So you thought LCF was not credible?

A. I don't think I wrote that. I think Kerry wrote that. But, yes. I think, in this matrix that you presented here, I don't think it does -- I don't think it would convert very well, frankly, to have 8.5 per cent. You would want some more competitive products alongside it.

Q. You don't think it would convert very well because people would look at that and think 8.5 per cent is not credible, this is too good to be true?

A. But at the time in the market, Mr Robins, there were quite a number of products, products which are household names were --

Q. Kerry has done a table for a website, Best Savings Rate. These were the best rates available at the time, weren't they?

A. I'm not sure if -- we would have gone through an enormous amount of iterations on these sites. At one point, there was an algorithm that sort of did things as well. But -- I'm sorry, are you inferring that we were telling them what percentage we should have done to be competitive?

Q. No, what I'm asking is, you knew that the 8.5 per cent per annum offered by LCF was not credible?

A. I disagree with that. I mean, the market at the time had a plethora of products offering similar rates in various guises.

Q. If you had known about the different rates, wouldn't you have put them on your website, Best Savings Rates?

A. Some of them, yes, but not all of them. It was down to -- our job as marketers was to get people to click onto their website and Google and -- I used to come from a price comparison background, as I mentioned earlier. Price comparison is an exceptionally good way to present things in a list. I know you have described these as fake websites, but things which were not fake about them -- and indeed, when we were dealing with the Advertising Standards Authority, we ensured (inaudible). The rates were correct that we saw using our algorithm, the sort of type of product and security there, we were trying to get our clients into the eye of the consumer for the term "best interest rates" and "investment rates" and other --

Q. I think you mentioned a moment ago one of the benefits of setting up this website was that people would be able to sign up hands-free, directly into LCF. They could click through and fill out an application form?

A. Yes, I mean, statistically, that was, I think, more of a pipe dream. I think our statistics ran at -- there might be evidence to support this, but it was low, single-digit percentages of people who would just invest without speaking to someone, which is why we had to build out a team of individuals that we called account managers who -- although they worked for Surge, they represented the brands, both - - whatever it is called -- Blackmore and London Capital & Finance, and they would have rung up predominantly to speak to an account manager and get more information.

Q. Also, I mean, if people didn't sign up hands-free, the first part of the process on BSR was name and contact capture, wasn't it?

A. Yes.

Q. So if a customer left and was on a hands-free sale, then an account manager could phone them back?

A. I think that might have been a single iteration or a number of smaller iterations that that website would have gone through and it would have gone through a lot because we would have used the data to work out what was the best and most efficient way to drive clients to our client's website.

Q. Another anticipated benefit of BSR was that it would be there for members of the public to find if they searched for LCF on Google or any other internet search website?

A. Yes, that's correct.

Q. You thought that was something that would enhance trust and, therefore, sales?

A. Yes, so reputation management and trying to get our website on obviously Best Savings Rates and anywhere, which would assist them with buy signals, credibility. So, yes, other people's websites,

these websites, you know, the newspapers, of course, direct on Google, that was our job, Mr Robins, we were marketeers.

Q. If we go to <MDR00022976>. You can see that you are sending an update to Mr Thomson, "BSR overview", and you set out the position. But at this point, it is early days. Under "Funnel", number 4 is:

"Converting hands-free to date is zero."

A. Right.

Q. Below that, you say, third bullet point at the bottom: "All leads were then contacted by Jo Baldock as data is captured as stage one and acting in her role as LCF account manager, Jo answered questions and assisted with product information."

If someone dropped out and didn't go all the way to a hands-free sale, Jo would phone them up and try to convert the lead?

A. Yes, I think, early on, that was one of our first iterations, but it didn't last particularly long. It is also interesting to note, you are correct, converting -- this very early on, 2015, and of course we were finding our way with the advertising. But it is also interesting to note that very few people converted systematically. They would like to speak to a human being. That was an advantage that LCF gained over time because many bonds just didn't have that kind of process.

Q. You were encouraged. You thought this route to market was potentially huge?

A. Yes. I mean, like I say, I've come from a price comparison background. Moneyexpert.com was the second largest price comparison site in 2007. I understood it well and I thought it was the greatest way to build a suite of websites specifically targeting that because it would allow us to have multiple clients. Economically, if you have got two clients on there -- if you have ten, instead of putting them top of Google for the term "best interest rate", where you have two of your sites top and you're paying for two clicks -- please bear in mind we're paid on the success -- it is much better to have one click and put them on there. It also gave us a marketing tool to enable us to go and build in time -- my vision was to build another price comparison collection and get other clients to go on there.

Q. You thought this could drive fairly large numbers for LCF?

A. Yes, I think it was a good way for us to get users to the site. But, as you can see here, getting people to a website, whether it is from a price comparison site or from Google or, indeed, from just someone telling you in the pub or being in the Financial Times, it is not enough, I'm afraid. The fundamental precis is a business needs to deserve to have the money in, which is why conversions very early on were not as good as they were later on when it had its audits from the two large accountancies.

Q. We will come to them in due course. But focusing on this, November 2015, by the time Jo got in touch with the people who dropped out of the sales funnel, she found that the sale had already been done just by the nature of the BSR site and its perceived independence, along with its association with the strong and renowned brands listed on it. That was the experience at this time, wasn't it?

A. Yes.

Q. Her feedback to you was that, by the time she got in touch with them, the customer was already sold on the product?

A. Right.

Q. But the BSR site wasn't independent, was it?

A. Well, it depends what your definition of "independent" was. LCF didn't own it. Blackmore didn't own it. RPD owned it.

Q. Independent would mean owned by someone who doesn't have a financial stake in LCF's success, wouldn't it?

A. No, it would not.

Q. Can we look at some examples of BSR, please. <MDR00227293>. This is what BSR looked like, isn't it?

A. Yes, sir.

Q. Let's have a look at another example. <MDR00227294>. I think the layout and the logo changed occasionally, but it was broadly along these lines, wasn't it: people could click one-year, two-year or three-year along the top?

A. Broadly, yes. I think it did go through enormous amounts of iterations, but keeping it simple with most list sites tends to work better. I am surprised not to see Bowmore on there at all -- Blackmore is not -- is it on there or is it at the bottom? Could you scroll down? It should be second. Blackmore would have been in the number 2 spot, unless --

Q. I'm not sure --

A. It was this one which was --

Q. This is a two-year bond. I'm not sure.

A. Ah, that would be why, I think, because Blackmore only had a three-year and a five-year bond.

Q. You changed the rankings around sometimes, didn't you? It wasn't always LCF at the top and Blackmore second?

A. No, sometimes it was Blackmore first and LCF second.

Q. The ranking depended on which of your products you wanted to boost at that particular point in time?

A. Yes.

Q. So it wasn't based on any sort of objective evidence, it was just what you thought suited the needs of your business at any particular point in time?

A. Well, yes. I mean, my job was to market my client's website. So, I can either pay to go top of moneysupermarket, money.co.uk or various other sites, or, if I'm going to build a marketing company, it makes more sense for me to do it myself and attract more clients, which is what happened.

Q. But if, for example, having Blackmore in second place meant that a lot of traffic was going to Blackmore but not converting, you would keep LCF at the top, but put Blackmore down the ranking so that all the traffic going to Blackmore but not converting would go to LCF instead?

A. Yes. Ultimately, the reason LCF converted better than Blackmore is because it was a better product, and so it would have been a higher conversion to get more clicks to that site than it would have been to send them to Blackmore's site.

Q. Working out the best ordering of products on the site to drive the highest level of commissions to Surge was something that you and your team focused fairly closely on, wasn't it?

A. Yes, marketing -- I mean, we spent £26 million on marketing and the vast majority of that was on Google. There were small amounts on other search engines and in national newspapers. But, predominantly, it was Google, yes.

Q. But you were setting the ranking on the site to optimise conversion rates?

A. Yes, that's correct.

Q. If we look at <SUR00093119-0001>, for example, you talked earlier about using the data in the best and most efficient way to drive sales?

A. Yes.

Q. We are looking here at an email from Ryan Holdaway to Manuel and copied to you. He wants -- he says a current test. He wants information in the following format. A current test is LCF ISA position one, he wants a conversion rate, LCF bond position two, a conversion rate, BM bond position 4, and a conversion rate, and he wants the stats before the test and he sets it out. So you were looking very closely at what conversion rate was produced by different orderings on the website and trying to optimise it?

A. Yes, that would have been Ryan's job, yes.

Q. So a member of the public, looking at this comparison website, would be misled if they thought it was based on any objective evidence about what would be best for them. It was just about what was best for Surge?

A. I don't know about the word -- I mean, I have extensive experience in comparison sites, and, with respect, Mr Robins, the way it works on comparison sites, very briefly, is this: if you went to the UK's number one Money Saving Expert -- sorry, Money Saving Expert, moneysupermarket.com and was looking for a loan and insurance product or credit card, you are not going to see, top of Money Supermarket, the product that perhaps is the best rate or credit card. You're going to see the one, Mr Robins, that pays to go top. Indeed, that's how Google, which is the ultimate search engine, works itself. If you want to appear top of Google for being the best lawyer, you would pay to go top. That's how it works. What comparison sites do for us, being Surge, is allows us to be able to attract more products, it allows us to have a cost-effective way -- so rather than -- so we normally would have two of our companies on there and so we would pay one click and we would get eyeballs on it.

But I think it is also worth noting -- and you have seen that in some evidence you put there -- where you see a product from, it does have some bearing, of course, but, for example, people weren't more likely to convert because it was on the Financial Times. A product still has to deserve funds to go into it and I think this is a fundamental sort of part of this to understand when you're looking at these price comparison sites.

If you put something up there -- and, indeed, you can see that with LCF. When LCF had its first audit, you will see, by PricewaterhouseCoopers, it made an enormous impact and indeed people -- because

it's a good product, people are comfortable they are going to get their money back because a Big Four auditor has said this company is solvent and in good condition. So that's --

Q. LCF weren't paying to go to the top of BSR, were they?

A. Well --

Q. You were getting 25 per cent of commissions to LCF and that's why you wanted to optimise their position in the ranking?

A. Yes, sir.

Q. It didn't say on BSR "LCF is in number one position because we get 25 per cent of anything you invest", did it?

A. I think we went through this earlier, and my view is, to try and be helpful, to write down that would -- as I mentioned earlier, using, you know, barristers as an example, you go to their website, you see their details, but you don't see the cost of how much a barrister costs, and clearly that's material to a person making a decision, and there's no difference here at all. It is essentially a way for you to get someone over, in your case, or in the case of barristers it would go to the clerk and the clerk would go through it, and in LCF it would go to LCF. LCF would convert on its own merits. That's a fundamental premise. For a product to convert to client, the product needs to be good enough to deserve the funds in.

Let's put it this way: if PwC had not provided that audit, I would not be sat here today.

Q. I wasn't asking anything about PwC.

A. You were talking about conversions.

Q. You set up BSR in such a way as to encourage members of the public to think that LCF had been independently and objectively ranked, didn't you?

A. So --

Q. Yes or no?

A. Yes.

Q. But it hadn't been independently and objectively ranked, had it?

A. Splitting those two terms up: "independently". I'm not LCF, I'm not Blackmore. They are my clients. I'm a marketing company. It is my job to get clicks to their website.

Q. You are getting 25 per cent of all monies into LCF. Do you seriously say you were independent?

A. On that basis, Mr Robins, no comparison site is independent at all because they all take money for ranking people. It is more money to rank number one on Money Supermarket than it is to rank number two or subsequently down the list.

Q. Do you say that those people pay 25 per cent of all their commissions to get ranked by Money Supermarket? 25 per cent of all their investor money coming in, is that what you're saying they're paying to Money Supermarket?

A. No, Money Supermarket run a-pay-per-click model --

Q. So, they are not paying 25 per cent of all their investor money coming in to get ranked on Money Supermarket, are they?

A. No, sir.

Q. But here you are getting 25 per cent of all monies into LCF. You weren't independent of LCF, were you?

A. I was independent of LCF. Why was I not independent of LCF? Because I worked for them? Sorry, I'm not meant to ask questions. I was independent. I was a marketing company. It was my job, as a marketing company, to get clicks to my client's website. This was the most efficient and, frankly, best way to do it.

Q. So you say that setting up this website and putting LCF in a position to maximise your commissions was something that members of the public would have understood when looking at this website and clicking through on it?

A. I don't think any financial product that lists on a comparison site would -- you know, if you are doing life insurance, it pays about 40 per cent commissions, it doesn't say, "If you click on this link, we are going to get a 40 per cent commission of what you spend". It is not -- you know, that's not how a price comparison site works.

In fact, Google is a price comparison site, isn't it? Because if you put "best interest rates" or "best investment rates" into Google, who is going to appear top? Sorry, that's rhetorical. The answer is: who paid the most to be there. And that doesn't necessarily mean they were the best investment rates, but I think it is a mischaracterisation of the bondholders to suggest -- because they would have gone from there to the site, they would have spoken to people at the site and they would have made their decision over a two-week or three-week period. There were some people who would have converted straight away, but, predominantly, people would have taken their time and looked at the product. As I said, what converts isn't -- anything better converts than a good product.

Q. If someone saw LCF on BSR and then went to the Investment Experts and asked a question about it, someone like John Russell-Murphy would then call them up and try to sell them the LCF bond. He wouldn't disclose that he was working for a company that got 25 per cent commissions from selling the LCF bond, would he?

A. No, I don't think he would have done that, no, absolutely not.

Q. You knew that at the time?

A. Yes.

Q. Can we go to <C2/3>, page 10, please. This is your witness statement. Paragraph 54:

"The percentage of net profit made was not extravagant. It was proportionate ... Surge made a modest net profit in 2015-16 and that net profit increased each year through to 2018."

Is that your honestly-held view, that it was not extravagant, it was modest?

A. Yes, it is.

Q. It was proportionate, was it?

A. Yes, it was.

Q. Can we look at <SUR00129430-0001>, please. At the bottom is your email to Mark Partridge, September 2015: "£100,000 in commissions early next week. Steve and I reckon we will deliver £200,000 in comms minimum in September and with £50,000 to £60,000 in outgoings." That's a profit of £140,000 to £150,000 in a single month, isn't it?

A. Yes, sir.

Q. That's not a third of revenue, is it? That's three-quarters of revenue?

A. Yes, in this snapshot, that's correct, it is.

Q. This proved to be an underestimate, didn't it? You thought, later on in that month, you might hit £200,000 profit for your first full month of selling for LCF?

A. Yes.

Q. You thought, well, £200,000, when we are embryonic, is very encouraging?

A. Yes.

Q. So you've gone from running on fumes to £200,000 a month. You knew that 25 per cent commissions was huge. It was insane. This was a ridiculous level of profit for month 1?

A. So, I don't agree with that. I have had businesses prior to this which were profitable, making, you know -- Money Expert made between 5 and 8 million quid a year of profit, not revenue. With a business, the way it works is this, at the beginning -- in my view, and having built a few startups over the years, there was the sunken cost, time and effort and sweat of building a business. If you can connect the dots in a system and do it via a process, then, of course, you do make profit. That's the endeavour of the business, to make profit for its shareholders. We -- Kerry and I -- believed we had built one of the most professional, best processes to onboard clients properly and we were looking to roll that out. One of our -- in various times we made various amounts of profit but I did put an enormous amount back into the company to grow -- especially the tech team, which is the coders who built the system, because we wanted to roll this out. I had visions of building a fairly substantial business.

Q. This is the first month of trading. £200,000 profit for the month. You knew that the 25 per cent commission was incredibly generous?

A. It was market rate.

Q. It was insane, wasn't it?

A. It was market rate. The same market rate that's happening today. I'm not going to name and put everyone under the bus, but there are many litigation -- that's really what people are using them for now. It used to be money lending and SME lending and property, but predominantly now it's for litigation funding. So I could send you a contract today that I was sent very recently from a very substantial company paying precisely 25 per cent for funding cases much -- well, probably not like this, but big cases of litigation. I'm afraid to say it is the standard rate.

Q. We will come on in due course to the argument you have constructed about market rate, but just for the record, I don't accept what you say about that. By the end of January 2016, Surge had made a profit of over £350,000, hadn't it?

A. Yes, sir.

Q. It had just been selling LCF for a few months?

A. I think it might be worth pointing out we had two products at that point. If you look at our overall revenue between 2014 and 2019, it was 71 million, I believe, in Surge Financial. From Blackmore Estates Bond and from London Capital & Finance.

Q. LCF was always the most successful part of that business, wasn't it?

A. Yes. I think it was 61 million for LCF and 10 million for Blackmore Bonds.

Q. For February 2016, you thought you'd go for a million pounds in commission revenues, £650,000 in profit?

A. Yes. Quite possibly. I was renowned for setting fairly lofty goals.

Q. Let's look at <SUR00131245-0001>. At the top of the page:

"FYI Pops.

"£180k cash in bank.

"£140,000 certain next week.

"£350,000 probably next week.

"Feb we go for £1 million revenues and £650,000 net profit."

That would be an LCF sales target of 4 million, wouldn't it?

A. Yes, possibly.

Q. You thought LCF was your cash cow?

A. If Blackmore had the same quality of product as LCF, it would have been Blackmore. But, yes, it was a better product and, therefore, attracted more inflows.

Q. It was your cash cow?

A. If you say so, Mr Robins.

Q. Well, I'm asking what you say. It was your cash cow?

A. I don't say that, Mr Robins, no. I say it was a good product and therefore, of course, it attracted the most inflows.

Q. If we look at <SUR00021045-0001> --

A. This is where I've said "cash flow", isn't it, or whatever I've said?

Q. Mr Russell-Murphy emails you. He says: "Thanks for the update, my main focus as always will be to push LCF, this is our cash cow and I won't stop until the 4 million target is hit."

At the top of the page you say, "I'm with you". You thought LCF was your cash cow, didn't you?

A. Well, the reason I said "no" is because it is not a term I would use -- well, maybe I would use it, but I don't remember.

Q. Well, what --

A. Yes, it was -- if you want to use the colloquial term of a cash cow, it was a cash cow, Mr Robins. But it was also a good business and it deserved -- that's why it was growing.

Q. Let's not use Mr Russell-Murphy's term. Let's put it in your own words. You thought you were "making a fucking fortune", didn't you, Mr Careless?

A. That's more like me.

Q. That's what you thought at the time, isn't it?

A. Yes, apart from -- I probably did use fruity language like that, yes.

Q. <SUR00026965-0001>, please. This is a WhatsApp exchange between you and Steve Jones. You are "Device owner". If we look at page 2, we can see there's an exchange between you and Steve Jones. In the middle of the page, you say:

"Dude, we are making a fucking fortune." Do you see that?

A. Yes, sir.

Q. What you were referring to is just above that. You said:

"56k comms.

"One fucking day."

Do you see that?

A. Yes, I do.

Q. I took you earlier to your witness statement where you say the percentage of net profit made was not extravagant, it was modest. It was proportionate. That's not true, is it?

A. It is true because I think what you are doing here is you're conflating my excitement with a business which is breaking through to product market fit. My excitement to do it with the fact that I think that, overall, the business was proportionate. It was proportionate. It built at scale. I had over -- you know, Surge Financial employed between -- well, the group had over 100 staff but it had a lot of staff. It had big offices, big overheads. I had invested an enormous amount in building something substantial. And I can make no apology for being happy or excited that the hard work had paid off and we were connecting the dots.

Q. You weren't thinking any of that. You were saying, "We are making a fucking fortune" because you were thinking, "We are making a fucking fortune". That's the truth, isn't it?

A. What I said prior to that is the truth, Mr Robins.

Q. Well, if you had been making profit that wasn't extravagant, was proportionate, was modest, you wouldn't be saying, "56k comms. One fucking day. Dude, we are making a fucking fortune", would you?

A. Well, I'm afraid to say I would because I have done it with multiple other businesses which I have scaled. And I'm afraid, you know, putting aside my salacious language, I am, of course, happy that I am starting to build a process and system that is working. But that doesn't make it a fraud.

Q. But you thought the commission was huge, Mark had told you it was insane, and now you're "making a fucking fortune"?

A. Mr Robins --

Q. You knew all those things, didn't you?

A. Sorry, I beg your pardon. Sorry, I interrupted you. Could you say that again?

Q. You knew all those things, didn't you? You'd said the commission was huge, Mark said it was insane. Now you're "making a fucking fortune". Those were the thoughts going through your mind, weren't they?

A. Yes, they were.

Q. Do you remember when Des Bailey sent an email saying that he'd begun to question the integrity of LCF?

A. I don't.

Q. Let's look at that. <SUR00002372-0001>. He emails John Russell-Murphy and you, September 2015: "I had a call from a client investing in LCF ... which has made me begin to question the integrity of this investment."

If we look down the page, he says in the third paragraph from the end:

"John can I ask you what due diligence you have carried out on LCF? Clearly we as an organisation should have set procedures in place for checking providers and any organisation we sell for or act as an intermediary for. Ultimately if we are telling potential clients we carry extensive due diligence surely we should not only carry that out but have full supporting documentation to substantiate our findings?" As a general sentiment, you would agree with that, I'm sure?

A. Yes, I agree with the entirety of the email.

Q. You hadn't carried out any due diligence at this point, had you?

A. I'm not sure if "any" is a fair description and I'm not sure I would have been the person doing it either, frankly.

Q. Well, you hadn't, Kerry hadn't, Mark hadn't, Steve hadn't?

A. Well, I think the omission of it being written down on an email is probably not entirely evidence that we didn't. I don't know what -- unless you can show me that we didn't.

Q. At this point, you were relying on the fact that John Russell-Murphy said that he'd conducted due diligence, weren't you?

A. No, not -- I can't recollect that, that it would be the only DD we'd done. I mean, we would have been -- so, when it comes to due diligence of bonds, and the reason that perhaps I wrote things which were quite cynical about other bonds, is the majority of bonds or the unregulated space didn't have sufficient security in order to raise money, whereas we were -- we felt that LCF did have better security than -- well, it certainly had better than Blackmore and various other products we were looking at. And of course the security does increase over time.

Q. Are you saying that by 23 September 2015, you had carried out due diligence on LCF security? Is that your evidence?

A. I can't -- I cannot recollect what we did in September 2015 regarding due diligence.

Q. You hadn't carried out any by this point, had you?

A. I'm afraid that I would reject that, that we would have done some due diligence.

Q. Well, it depends what you mean by due diligence. Kerry had Googled the names?

A. Yes.

Q. Is that what you're referring to? Is that the extent of it?

A. No, I would have expected Kerry to have done more than that.

MR JUSTICE MILES: Sorry, can I just ask who Mr Bailey was?

A. He was an account manager for both the bonds.

MR JUSTICE MILES: Right.

A. So he worked for Surge, my Lord.

MR ROBINS: So you said you agree with everything in the email. He says at the end:

"I would ask that you provide a response as a matter of urgency as I have a number of large deals in the pipeline from people I have built relationships with and have a duty of care towards. Also I am extremely loyal to our company and would not like us to be jeopardising our extreme efforts to build a ... successful organisation."

You recall him expressing these concerns?

A. I actually don't recall it particularly, no. It is nine years ago. But I know Des and he's a very upstanding gentlemen and I presume he was looking out for us and our best interests.

Q. Let's look at Mr Russell-Murphy's response which you have recently disclosed, <SUR00159541-0001>. What he says to Des, third paragraph from the end: "With regards to the product itself, when SAFE originally launched their bond I carried out an enormous amount of DD at their office, which also involved BM Law as well. The important things like the security and contracts were disclosed and confirmed suitable by BM Law which then led on to BM Law being happy to be involved as their custodian."

This is the email we looked at earlier in the final paragraph:

"In addition to this the major shareholder of LCF has been a client of mine for over 15 years and is worth over 40 million, he would certainly not get involved in any scams as he doesn't need to."

You hadn't carried out any due diligence yourself at this point. You were just relying on the fact that Mr Russell-Murphy said he'd carried out due diligence?

A. I would -- well, it is for Kerry to explain in her own words, but I would expect Kerry to have looked into this side of it for me and indeed Surge.

Q. When you saw this from Mr Russell-Murphy, you thought it was a great response?

A. Possibly.

Q. Let's look at <SUR00159543-0001>. You say, "Great response". So you thought it was a great response, didn't you?

A. Yes.

Q. We will come to it in due course when I am asking the questions. At this point, 23 September 2015, you, Kerry, Mark, Steve, hadn't carried out any due diligence, had you?

A. I'm afraid I couldn't agree with that comment because I would presume, knowing Kerry, as I do, and her nature, that she would have done so.

Q. Mark Partridge hadn't carried out any due diligence, had he?

A. I don't know. When it comes to due diligence, the main person who would have carried out due diligence, and it would have been self-initiated, not by me sort of -- it would have been Kerry. She was diligent and she was -- she would have looked into it and I would have trusted her to do so.

Q. Mark Partridge was rather suspicious of Spencer and LCF, wasn't he?

A. Mark Partridge would have been suspicious of the Dalai Lama, Mr Robins.

Q. Well, you were having a drink with him at a pub in October 2015 and he told you Spencer was Madoff, didn't he?

A. Yes, I have seen that in the discovery, I didn't -- until I saw it recently, yes.

Q. So, he's previously said the commission is insane and unsustainable because, on a flat rate, the fund would have to grow by 55 per cent in two years to pay the commission and the interest; now he's saying Spencer is Madoff. This is the man you trust implicitly, isn't it?

A. Yes.

Q. You didn't want to be put off by what Mark was saying because you were making too much money?

A. No, that's not true. I mean, Mark and I had a colloquial -- a friendship, a colloquial friendship, and we would -- you know, there was still humour around, back in those days, and we would laugh and joke. I'm afraid the industry was very -- you know, there was an ingrained cynicism in all of us, but, you know, obviously, especially Mark, about the industry and about all products, all bonds, no matter how big they were and if they were on TV or not or whatever. Of course, Mark was at the vanguard of that cynicism.

But I wouldn't read too much -- I didn't read too much into it.

Q. You wanted to brush it to one side because you were making £250,000 commission per month at that point?

A. No, that's just simply not true.

Q. You wanted to fill the coffers and ease your cash flow difficulties?

A. No, that's also not true. I wanted to build a proper business, a good business, a solid business, one that I could be proud of.

Q. You talk about how there was a lot of cynicism due to sort of operators in the industry. You would have thought at the time that it was important to carry out due diligence if you wanted to satisfy yourself that the company you were dealing with was not a scam?

A. Well, yes, that's correct.

Q. If your trusted advisor, Mark, said Spencer was Madoff, that's surely something you would take seriously?

A. No, that's something I would not read too much into. Albeit we had a professional relationship, we also had a personal relationship, and I'm afraid you are taking a throw-away, joking comment as a serious allegation, and they are not the same.

Q. Let's look at <SUR00129710-0001>, page 4. This is the WhatsApps between you and Mark. This isn't from a transcript of a conversation between you and Mark in the pub. This is you passing on to Steve what Mark has said. Middle of the page:

"Mark thinks Spencer is Madoff."

There is no indication there that this is some funny joke, is there?

A. I know it's difficult in this solemn situation we find ourselves in today, but I'm afraid I didn't take it as a genuine, "He thinks he's Madoff".

Q. You did. Mark has said "Spencer is Madoff", and you are sufficiently concerned about that to pass it on to Steve?

A. I don't think -- it wasn't a case of I was concerned --

Q. Where is the laughing emoji?

A. Sorry?

Q. Where is the laughing emoji?

A. With respect, I wouldn't necessarily have done it. I'm afraid I don't accept that characterisation that Mr Partridge, Mark, has called -- I think Madoff must have been in that year in the press or something, or whatever. The industry was awash with, you know, unusual products which didn't have any security, weren't using PwC, didn't have barristers from Lewis Silkin who worked at the regulator for a decade. None of that. It was just full of chancers. We had to -- we believed in this product and, if there was cynicism, that cynicism, indeed with Mark, would have left the second the first audit came in. As I said to you previously, although he calls him Madoff, it is a throw-away, joking comment.

Q. The reason you proceeded with this product is not because you believed in it but because you were getting 25 per cent of all monies into it?

A. There were lots of products paying 20/25 per cent. I needed to choose the best product, Mr Robins.

Q. That's not true. This was the only product. It was huge, it was insane. That's the reason you set ambitious targets and worked hard to sell bonds for LCF?

A. Well, although you say it, and I'm sure you believe it, I'm afraid you are patently wrong. At that time, there were lots of products -- and indeed there still are today, and I have told you and I would be happy to disclose them, should you require -- that charge 25 per cent that are substantial businesses, predominantly litigation funding. And I know this doesn't -- you can't accept that, but I'm afraid it is the truth.

Q. At this time, you thought there was a real risk that LCF was a Ponzi scheme, didn't you?

A. No. So I'm joking around the word "Ponzi", I presume, is what I've said?

Q. No, I'm asking a question. At this time, you thought there was a real risk LCF was a Ponzi scheme, didn't you?

A. No, I did not.

Q. You know that Madoff ran a Ponzi scheme, don't you?

A. Yes, I do.

Q. Mark also thought there was a real risk that LCF was a Ponzi scheme?

A. Yes, I think his cynicism would have made sure it wasn't.

Q. He also thought there was a real risk that LCF was a Ponzi scheme? Is your answer "Yes"?

A. My answer is, I can't remember, and if you would like to refresh my memory, I would welcome an opportunity to read it.

Q. It is there in the middle of the page. He is not joking around. He is expressing the view there is a real risk that LCF is a Ponzi scheme?

A. What, with the "Mark thinks Spencer is Madoff".

Q. Yes, he is expressing the view to you in the pub, you are passing it on to Steve. He thinks there is a real risk LCF is a Ponzi scheme?

A. I don't agree with the characterisation that this is serious. This is at the pub, having a beer, laughing and joking, and to utilise this as a signal that he was like Madoff I think is unfair, and a wrong characterisation of what happened.

Q. You said he's a blunt individual. He's at the pub. You are talking about your business and he says, "Look, I need to tell you, I think LCF could well be a Ponzi scheme"?

A. I mean, we would have had these conversations, Mark and I. We would meet up fairly frequently for a beer. And we would have had these conversations all the time, the way mates do in a pub. Sometimes, of course, you might say things which are not entirely right or true or whatever, but you have a few beers. It wasn't the view that I held, or indeed Mark held. In fact, I think the best way to explain it is this: Mr Robins, if PwC's audit had have come back and there was no security, then Mark Partridge would have been the first person to come to me and say, "Paul, you've got to drop these. There isn't any" --

Q. LCF hasn't been audited by PwC at this point.

A. No, I'm saying, when that happened --

Q. But I'm asking about October 2015. Mark says to you in the pub, in his blunt way, "Look, I think there is a real risk that LCF could be a Ponzi scheme"?

A. Not like that.

Q. And you pass it on to Steve that Mark thinks Spencer is Madoff?

A. Not like that.

Q. It wasn't a joke, was it? It was a real concern that you had at the time?

A. It was not.

Q. Can we look at <SUR00003547-0001>. We are back to BSR. We can see what's listed at this point: LCF, 8 per cent; Landbay, 4.4 per cent; Axis Bank 2.5 per cent; Vanquis high-yield bond is 2.4 per cent; Aldermore, 2.3 per cent [sic]. At the top of the page, she says in an email that is sent to various people we see set out there, including you:

"LCF pays a significantly higher interest rate by comparison to these. Could be a positive and could be a negative."

You understood where she's saying "could be a negative", that could be because people would think this is too good to be true and then they would refuse to invest in it?

A. I think she's talking about the conversion rates of the clicks, whether people would click through to the website because it was 8.5 per cent versus the competitors, who were below. Sorry, could you ask me your question again, Mr Robins?

Q. She's saying the higher rate could be a negative and you would understand her to mean -- some people would think that this LCF thing is too good to be true and they wouldn't go ahead with it?

A. Yes, I think that could be a fair comment.

Q. You knew from the enquiries that you received from The Investment Experts that a lot of people were beginning to ask about LCF, asking are these figures too good to be true?

A. Yes, presumably:

Q. Let's look at <SUR00004092-0001>. Someone is asking: "How safe is your money in an investment bond, such as those offered by London Capital & Finance? They are offering 8 per cent per annum on a three-year fixed rate bond. Are these figures too good to be true?" You say "Very interesting". That's the sort of thing that you would have drawn to Mark's attention, isn't it?

A. I'm not sure. Possibly. We would have got a few of those in various guises, by phone and here by emails. I think people would have said various things.

Q. Let's look at <SUR00004095-0001>. You are forwarding one of these enquiries --

A. Right.

Q. -- to Mark?

A. Yes.

Q. That's because he's said the commission is not sustainable, he's said it might be a Ponzi scheme, and you're now forwarding to him a concern people are raising that LCF might be too good to be true?

A. Yes, potentially, I could have been asking him to look at it, yes.

Q. The thing he must have been interested in is, how on earth are they generating returns that are vastly in excess of rates offered elsewhere on top of the commission that they're paying to us?

A. Just to address the first part again, Mr Robins, they were not stand-alone at 8.5 per cent. There were lots -- not lots, but there were a number of other products out there which offered similar returns because, you know, it was -- that was the environment back there, that's how people were doing it.

Q. If you had known of other products and you were running a website called Best Savings Rate, you would have put the other products on the website if you were being honest and straightforward about these things?

A. I did -- first of all, I don't agree I was dishonest by not putting them on there. We wanted more clients, we did. The problem was not -- there were so many out there which weren't -- I met lots of products, lots.

Q. Most of the people on the site were not clients of yours. They were not paying any commission?

A. Correct. Correct.

Q. If you had known of other bonds, products, out there that were offering rates better than the rates we have just seen in that email, then you would have listed them on the site, wouldn't you?

A. Yes, I would have, and I was engaging with a number of them to -- I had meetings with various other products with the intention of doing just that.

MR JUSTICE MILES: Did you say earlier on -- I may have misunderstood your evidence, but I thought earlier on you said there were other products but not bonds, but maybe I misunderstood that evidence.

A. My Lord, the industry back there was called the nonregulated industry. It consisted of, essentially, the peer-to-peer -- you may recall that, peer-to-peer industries. They were not regulated. They often lent monies to businesses for bridging loans and property loans. Second were bonds. Of course property, litigation funding, anything which took a long period of time -- five years to develop property, litigation five years. Then the last one was loan notes. So very specific, for a purpose. And so the bonds which -- the products which were similar to bonds but not identical to LCF would have included Wellesley, they would have included Funding Circle, they would have included -- I beg your pardon, I can't remember all of them, but there was a decent set of products out there.

MR JUSTICE MILES: With comparable interest rates?

A. Yes.

MR JUSTICE MILES: Okay.

MR ROBINS: You say, even though you knew of those, you didn't put them on your website, Best Savings Rates.

A. No, because I would have tried to negotiate a deal first.

Q. If you knew of them but didn't put them on the website, it can only have been because you were trying to mislead the public into thinking LCF was the best when it wasn't?

A. No, that's incorrect.

MR JUSTICE MILES: Why did you need to have a fee from them before they would go on to the website?

A. Well, I didn't necessarily need to have a fee from them. I know we are talking about LCF's business model, but I had my own business model with Surge that we sort of built out. Our vision was to build a technology platform to allow bonds to accept money online -- a lot of them did it by paper -- modernise them in a compliant way, including all the AML and all the other checks. Part of that was to provide them with the marketing to drive people to their sites, which was the comparison sites,

and then their sites would convert. The reason Blackmore didn't do as well as LCF is, simply put, it wasn't as good as LCF. The security wasn't as good, the proposition wasn't as good. Does that answer your question, sir?

MR JUSTICE MILES: Well, it is your answer, so thank you.

MR ROBINS: Could we go back to <SUR00003547-0001>. You weren't taking any fee for listing Landbay, were you?

A. No.

Q. You weren't taking any fee from Axis Bank?

A. No.

Q. You weren't taking any fee from Vanquis?

A. No.

Q. Or Aldermore?

A. No.

Q. Or Leeds Building Society?

A. No.

Q. You accept that, through The Investment Experts, you received a very large number of queries from members of the public asking if LCF was too good to be true?

A. Without trying to split hairs, I'm not sure "large" is the right description. But, yes, we definitely had some.

Q. If these members of the public had been aware of lots of other products offering comparable rates, they wouldn't have been asking those questions, would they?

A. I'm not sure. I mean, obviously, the ultimate comparison site is Google itself, and we were trying to appear for Best Investment Rates, Best Interest Rates, eventually Best ISA Rates when they launched an ISA. It was fairly narrow -- although there was, you know, a decent amount of people looking at it, it was a fairly narrow -- I beg your pardon, I'm digressing. Can you say the question again, please?

Q. If members of the public had been aware of lots of other products offering comparable rates, they wouldn't have been asking if LCF was too good to be true, would they? They would have just thought it was comparable with other things in the market?

A. It is interesting because it wasn't just -- I'm sure, at some point, you're going to address various ways in which people asked this question because it wasn't just through the website where people would ask is it too good to be true. Specifically talking about "too good to be true" and people who were cynical about LCF generally, we would pass a lot of those on to Andy for comment, or to LCF generally for comment.

Q. How do you say you passed them on to Andy? That's not something that we have seen. What we have seen is people asking if these rates are too good to be true and then John Russell-Murphy or someone tries to sell them an LCF bond. Isn't that really how it worked?

A. I mean, you know, you've got to remember, we would probably be talking to hundreds of thousands of people over a five-year period. There are going to be people writing comments online. There are going to be people who write -- because people are generally cynical. But perhaps they'd not -- you know, not seen these products; that's a potential. They had not done more extensive searching on Google, perhaps.

Q. Just pausing there. You keep referring to a five-year period. I'm not sure quite how you are counting that, but if we count middle of 2015, there's 2016, 2017, 2018, it is three and a half years, isn't it?

A. I accept that, yes, it is, sorry. I'm thinking more of --

Q. Okay. A three-and-a-half-year period. I'm really asking about December 2015.

A. Yes.

Q. You have launched Best Savings Rates. There seem to be a very large number of people asking on The Investment Experts if LCF is too good to be true. I think you said earlier that that was in accordance with your memory; is that right?

A. I'm not sure "large", but, yes, we definitely had people ask that question.

MR ROBINS: My Lord, I see the time. I don't know if that is a convenient moment for your Lordship, but I'm happy to pause until tomorrow morning.

MR JUSTICE MILES: We will pause there. Mr Careless, just to remind you of the warning that I gave you earlier on, which I'm sure you have got well in mind.

A. Yes.

MR JUSTICE MILES: We will come back at 10.30 am tomorrow.

(4.31 pm)

(The hearing was adjourned to Tuesday, 30 April 2024 at 10.30 am)

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