

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

B E T W E E N :

- (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


CLAIMANTS' OPENING WRITTEN SUBMISSIONS FOR TRIAL

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A. PROLOGUE

- A1.1 Alan [REDACTED] lived in Teddington. He had a daughter called Chloe. She was involved in a road traffic accident. She was in hospital, in a coma. The Court of Protection was satisfied that Chloe [REDACTED] lacked capacity and appointed Alan to deal with her affairs.¹
- A1.2 The other driver's insurer agreed to pay compensation of £3 million. Alan wanted to use the money to generate a return of £80,000 to £100,000 annually whilst also buying a property for Chloe to live in when she came out of hospital. On 21.01.16, Alan [REDACTED] called up London Capital & Finance plc and spoke to a salesman called Scott Allen who suggested that he should put £1.25 million of the compensation money into a three-year bond, which would yield 8% per annum.
- A1.3 After the call, Scott sent an email to Alan [REDACTED]² Scott explained that LCF was a financial institution which raised funds in order to make loans to UK businesses. Scott told Alan that LCF had a proven track record and had recently issued a series of bonds to help with the growing demand for commercial finance. Scott said that the LCF bonds offered a chance for investors to take advantage of this growing market in a secure way.
- A1.4 Scott also told Alan that LCF had an experienced team who assessed all loan applications and that all loans were made on a secured basis at no more than 75% loan to value.
- A1.5 Scott forwarded this email to D7, who was a senior sales person at D6. Scott explained Alan's situation and suggested that Alan could benefit from a home visit by D7.
- A1.6 D7's visit to Alan was arranged for 05.02.16, a Friday.³ In the meantime, Alan sent a copy of the Court of Protection's order to D7,⁴ who told D5 about it.⁵

¹ D7D9-0004582

² D7D9-0003819

³ MDR00028599; D7D9-0004361; D7D9-0004797

⁴ D7D9-0004581

⁵ SUR00007300-0001

- A1.7 D5 welcomed this news.⁶ He was excited by the thought of the 25% commission that would be payable to D6 (“*Oh by the way if JRM pulls off that 1m Friday then I’ll be buying a 70k car from the comms the week after ... Operation Fuck You Everyone Who Didn’t Believe*”).⁷
- A1.8 Alan agreed to invest £1.25m into a three-year bond.⁸ D7 updated D1 and D3 about this.⁹ D1 was keen to know when this money would be received by LCF.¹⁰
- A1.9 LCF’s payment processor GCEN received £1.25 million from Pennington Manches LLP on 18.02.16 and transferred it (net of GCEN’s fee) to LCF.¹¹ Prior to the receipt of these monies, LCF’s credit balance had stood at £134,021. Afterwards, it was £1,377,771.¹²
- A1.10 Within the next 24 hours, LCF paid £944,000 to Leisure & Tourism Developments (“L&TD”),¹³ which paid £575,000 to D4, £90,000 to D10 and £30,000 to D1.¹⁴
- A1.11 LCF also paid £370,000 to D6.¹⁵ This included 25% commission on the [REDACTED] “deal”¹⁶ in the sum of £312,500.¹⁷ Afterwards, LCF’s credit balance stood at £93,591.¹⁸
- A1.12 Katie Maddock of LCF told D6’s employee Jo Baldock that she had made a payment of £370,000 to D6. Jo Baldock emailed D5 to say, “*Holy cow! Paaaarrtty!*”¹⁹
- A1.13 D7 was in the mood for celebrations: he decided to organise “*drinks (major piss up)*” at the Hotel du Vin in Brighton on 26.02.16, “*paid for by the company*”.²⁰ D5 was excited to report that D4 was planning to attend (“*Spencer’s coming so I predict a riot*”).²¹
- A1.14 D5 decided to use the [REDACTED] commission to fund a “*one-off bonus*”:²² £100,000 for D5 himself;²³ £100,000 for D7 (via his company, D9);²⁴ and £2,000 for Scott Allen (who

⁶ D7D9-0004583

⁷ SUR00007377-0001 page 3

⁸ MDR00030618

⁹ MDR00030621; EB0014371

¹⁰ D7D9-0005365

¹¹ D7D9-0005476; D7D9-0005707; MDR00035764 row 286; MDR00007230 page 15

¹² MDR00007230 page 15

¹³ MDR00007230 page 15; MDR00007231 pages 1-5; MDR00035764 rows 270-285; MDR00215815 pages 31-34

¹⁴ MDR00070774 second sheet; MDR00072440 row 10; MDR00215815 pages 31 and 33

¹⁵ MDR00007231; MDR00035764 row 279

¹⁶ D7D9-0005698

¹⁷ MDR00002851; MDR00031020

¹⁸ MDR00007231 page 5

¹⁹ MDR00226026

²⁰ D7D9-0005810

²¹ D7D9-0005827

²² SUR00009170-0001; D7D9-0005771

²³ MDR00220327 pages 76-77

²⁴ MDR00220327 pages 76-77; D7D9-0005872

had dealt with Alan's initial enquiry).²⁵ D6 also paid £10,000 to D4's son, Lewis, with the reference "*Careless JRM*".²⁶ D5 reported, "*Spencer payment of £10k done*".²⁷

A1.15 Everyone was looking forward to the party ("*Many thanks Steve, see you at the bar on Friday*"; "*Yep, see you there!*").²⁸ Soon, the day arrived. D1 attended²⁹ with D3 and D4.³⁰ D5 and D7 also attended. D3, D4, D5 and D7 booked rooms at the venue to stay overnight. D6 paid for their rooms. D6's total bill for food, drinks and rooms came to £3,400.³¹ Booze flowed in abundance leading to hangovers the next day ("*Hope you had a good day yesterday and did not feel as bad as me this morning!*").³²

A1.16 On the following Friday, D7 went to Teddington to give the bond certificate to Mr [REDACTED],³³ who had no reason to suspect that the entirety of his daughter's money had already been paid away by LCF to the recipients mentioned above.

A1.17 "*In my view,*" said D5, "*the only risk in life, is not taking a risk. No one became successful by waiting*".³⁴ But Chloe [REDACTED] is still waiting. She continues to be the largest individual creditor in LCF's administration.

²⁵ MDR00226028; MDR00226029
²⁶ MDR00220327 pages 76-77; D7D9-0005806
²⁷ SUR00009260-0001 page 2
²⁸ SUR00009501-0001
²⁹ D7D9-0006268

³⁰ D7D9-0011153
³¹ SUR00009972-0001
³² SUR00009679-0001
³³ MDR00031833
³⁴ MDR00040644

B. BACKGROUND

B1 D4

B1.1 D4 was a timeshare salesman.

B1.2 At some point in the mid-2000s, D4 became bankrupt. On 20.12.06, the Tunbridge Wells County Court made a bankruptcy restrictions order which prevented him from acting as a director of a company for a period of ten years.³⁵

B1.3 In breach of that order, D4 became a director of Clydesdale Enterprises Limited (“Clydesdale Enterprises”), which had carried on business as a provider of MOTs.³⁶ D4 began to sell timeshares through Clydesdale Enterprises.³⁷

B1.4 D4 was aware that the card payment processing facility would not have been extended to Clydesdale Enterprises for the sale of timeshares if the merchant account provider had been correctly notified of the change of business. D4 did not notify the merchant account provider of the change of business and instead used the card payment processing facility to take payments for timeshares.³⁸

B1.5 As a result, from 27.08.08 to 14.10.08, the merchant account provider was exposed to unexpected risks in relation to the timeshare business, which ultimately resulted in a loss to the merchant account provider of £57,813.³⁹

B1.6 Clydesdale Enterprises went into liquidation on 07.04.09.⁴⁰

B1.7 D4 failed to provide documentation to its liquidators. As a result, the liquidators were unable to identify (i) the purpose of cheque payments totalling £58,445 and to whom

³⁵ MDR00226310

³⁶ MDR00226310

³⁷ MDR00226310

³⁸ MDR00226310

³⁹ MDR00226310

⁴⁰ MDR00226310

they were paid and (ii) the purpose of payments totalling £111,253, £21,608 and £21,608 to three specific persons.⁴¹

- B1.8 These circumstances resulted in the Secretary of State concluding that D4 was unfit to be concerned in the management of a company. On 04.04.11, D4 signed a disqualification undertaking under the Company Directors Disqualification Act 1986 for a period of eight years with effect from 26.04.2011.⁴²
- B1.9 D4 and his brother Ryan owned various property investments through a company called Clydesdale Property Developments Limited (“Clydesdale Property”).⁴³
- B1.10 The disqualification undertaking meant that D4 could not lawfully act as a director of Clydesdale Property or any other company.
- B1.11 D3 was the director of a small courier company. On or around 31.10.12, D3 agreed to hold the shares in Clydesdale Property on trust for D4 and D4’s brother Ryan.⁴⁴ D3 also became a director of Clydesdale Property on 31.10.12.

B2 Sanctuary

- B2.1 The next part of the background involves the Sanctuary investment scheme.
- B2.2 Sanctuary International Resorts Ltd (“Sanctuary”) was a company incorporated in the Bahamas.⁴⁵ It had three subsidiaries:⁴⁶ Sanctuary International PCC Limited (“Sanctuary PCC”), which was incorporated in Guernsey;⁴⁷ Tenedora 58520 SRL (“Tenedora 58520”), which was incorporated in the Dominican Republic; and Tenedora 98540 SRL, which was also incorporated in the Dominican Republic.
- B2.3 Sanctuary PCC itself had one subsidiary, Inversiones 51588 SRL (“Inversiones”), which had acquired an inland hillside plot in the Dominican Republic known as “The Hill” for

⁴¹ MDR00226310

⁴² MDR00226310

⁴³ EB0139143

⁴⁴ EB0139143

⁴⁵ D7D9-0000294; D7D9-0000295

⁴⁶ D7D9-0000298

⁴⁷ MDR00032736; MDR00209868; MDR00209869

the total sum of £708,752.⁴⁸ (The public deed of sale said that the purchase price was lower but the private deed of sale containing the parties' true agreement dated 07.03.12 provided for a purchase price of £708,752.⁴⁹)

B2.4 Tenedora 58520 had entered into a deed of sale in respect of 38 parcels of land in Magante. These properties were known as "The Beach".

B2.5 Tenedora 58520 had not yet paid the purchase price to the vendors and so had not yet acquired the land. (*"Payable under the contract remains US\$ 3,412,532.40. It further holds 5 options to purchase 5 further parcels with a total 241,707.44 square meters. The total price still to pay on the 5 options is US\$681,500 with US\$38,000 paid"*).⁵⁰)

B2.6 Sanctuary represented that it intended to build villas on these sites. It marketed villas for sale "off plan" (i.e., before the villas themselves had been built). Investors paid deposits pending the construction of the villas. Investors had a contractual entitlement to receive interest on their deposits pending the completion of construction.⁵¹

B2.7 Apex Fractional Property Limited ("Apex Fractional") operated as a sales agent for Sanctuary until that role was taken over by Ecoresorts Sales Limited ("Ecoresorts").⁵²

B2.8 Abitus Limited ("Abitus") provided a timeshare disposal service for clients of Ecoresorts.⁵³ People who wished to dispose of their timeshares would be offered an opportunity to invest in the Sanctuary development.⁵⁴

B2.9 D3 was closely involved.⁵⁵ He was said to be the managing director of Ecoresorts.⁵⁶ Michael Peacock and Mark Ingham were also closely involved.⁵⁷ Mark Ingham became a director of Ecoresorts⁵⁸ and was described as the CEO of Sanctuary.⁵⁹

⁴⁸ MDR00005357; MDR00005358; MDR00005359; MDR00005360; MDR00005361

⁴⁹ MDR00005359

⁵⁰ D7D9-0000298

⁵¹ D2D10-00005096; D2D10-00005099; MDR00010653; MDR00009944; MDR00009945; MDR00009947; MDR00009948; D2D10-00005046; D2D10-00005047; D2D10-00005048; D2D10-00005049; D2D10-00005050

⁵² MDR00009842; MDR00009869; MDR00009794

⁵³ MDR00010067; MDR00010069; MDR00010098; MDR00010185

⁵⁴ MDR00009953; MDR00010098

⁵⁵ MDR00009797; MDR00009806; MDR00009814; MDR00009836; MDR00009837; MDR00009805

⁵⁶ MDR00010061; MDR00010062

⁵⁷ MDR00009842; MDR00009857; MDR00009956; D7D9-0000055

⁵⁸ D2D10-00005256

⁵⁹ D7D9-0000056

- B2.10 D1 was also involved. D1 had been a local manager at the Tunbridge Wells office of the NatWest bank until 2012 when he left.⁶⁰ D1 became involved with Sanctuary and provided information about Sanctuary to D7,⁶¹ who believed that Mark Ingham and D1 were “*the owners of the Sanctuary Dominican Republic*”.⁶²
- B2.11 Sanctuary raised more than £2 million from a total of 284 investors.⁶³ However, the villas were never built. Mark Ingham anticipated that the investors would be angry.⁶⁴
- B2.12 The Financial Services Authority warned the public about Sanctuary.⁶⁵ Ecoresorts attracted the attention of the Enforcement & Financial Crime Division of the Financial Services Authority. D3 told them that it had ceased trading.⁶⁶
- B2.13 It seems that a substantial part of the money from the Sanctuary investors was applied for the ultimate benefit of D1, D2, D4 and D7. More particularly, Sanctuary loaned £982,418.46 to D1’s company, One Monday Limited (“One Monday”), which paid £536,030 to D4’s company, Clydesdale Property; £200,030 to D2’s company, LV Management Limited (“LV Management”); and £100,017.00 to D7.⁶⁷
- B2.14 In an attempt to placate the unhappy investors, Sanctuary PCC agreed to hold the shares in Inversiones on trust for a company called El Cupey Limited (“El Cupey”) for the benefit of the investors.⁶⁸ D1 signed the declaration of trust on behalf of El Cupey. His signature was witnessed by D8. D2 was also involved in these arrangements.⁶⁹

B3 **D2**

- B3.1 In the 1980s, D2 had worked for a shipping company called Common Brothers. On 06.05.85, its shares were suspended from trading.⁷⁰ Subsequently, there was a debt-for-equity swap with the major creditors who waived £19 million of their loans in return for

⁶⁰ MDR00001606 page 2

⁶¹ D7D9-0000293

⁶² D7D9-0000210

⁶³ MDR00014167

⁶⁴ MDR00010499; MDR00010500

⁶⁵ MDR00010499; MDR00010500 page 4

⁶⁶ MDR00014016

⁶⁷ D2D10-00006194; D1-0000521

⁶⁸ MDR00014026; EB0000072

⁶⁹ D2D10-00005667

⁷⁰ MDR00224895

90% of the equity in the company.⁷¹ In its review of the year, *The Times* said that Common Brothers had been the “*worst performer*” of 1985.⁷²

B3.2 Thereafter, D2 became a director of Progressive Shipmanagement Limited, which went into administration on 29.01.96⁷³ and moved to liquidation on 14.07.97.⁷⁴

B3.3 Following the relegation of Crystal Palace football club to Division One,⁷⁵ Mark Goldberg acquired the club which was operating through a company called Crystal Palace FC (1986) Ltd.⁷⁶ D2 became a director of Crystal Palace FC (1986) Ltd, which went into administration on 31.03.99 with an estimated deficiency of almost £9.9 million.⁷⁷ Ultimately, the deficiency to creditors was found to exceed £30 million.⁷⁸ D2 resigned as a director of Crystal Palace FC (1986) Ltd on 18.08.99.⁷⁹

B3.4 D2 also became a director of Stenoak Associated Services plc,⁸⁰ which went into administrative receivership on or around 08.07.02⁸¹ and liquidation on 13.11.02⁸² with a deficiency of £15.4 million.⁸³

B3.5 D2 partnered with Adrian Drewe, the chairman of Stenoak Associated Services plc, to buy Lamberhurst Vineyard.⁸⁴ D2 became a director of Lamberhurst Vineyard Management Limited. He resigned on 18.04.06. Lamberhurst Vineyard Management Limited went into liquidation on 28.03.07 with an estimated deficiency of £481,110.⁸⁵

B4 Lakeview

B4.1 In the autumn of 2012, D2 began to work with D4 in a bid to acquire Lakeview, a holiday park in Cornwall, near Bodmin.

⁷¹ MDR00224897; MDR00224898
⁷² MDR00224899
⁷³ MDR00015645
⁷⁴ MDR00015638
⁷⁵ MDR00224911
⁷⁶ MDR00224911
⁷⁷ MDR00224846 page 5
⁷⁸ MDR00224911

⁷⁹ MDR00224846 page 4
⁸⁰ MDR00224910
⁸¹ MDR00225481; MDR00225475 page 3
⁸² MDR00225474
⁸³ MDR00224846
⁸⁴ MDR00224909
⁸⁵ MDR00224846 page 5

- B4.2 Lakeview had been owned by Mr and Mrs Vernon, who had agreed to sell it to Telos (IOM) Limited (“Telos”), a company incorporated in the Isle of Man, for £1.98 million.⁸⁶ The directors of Telos were Geoffrey Hunt, John Banks and Clive Hilton.⁸⁷
- B4.3 Telos raised £6.4 million from a total of 136 investors for the purpose of paying the purchase price and developing the Lakeview resort.⁸⁸ Telos promised that these investors would have an interest in the Lakeview resort.
- B4.4 However, Telos failed to pay the sums due to Mr and Mrs Vernon under the sale agreement. As a result, the deposit that had been paid by Telos was forfeited.⁸⁹ The Lakeview resort was placed back on the market.
- B4.5 D2 and D4 decided to make an offer to acquire the Lakeview resort. D2 formulated an offer of £4.5 million, consisting of £1 million upfront and £3.5 million deferred over 24 months.⁹⁰ According to D2, this was a “*top-end price*”.⁹¹
- B4.6 The offer was put to the vendors.⁹² D2 was aiming for simultaneous exchange and completion on 23.11.12.⁹³ D2 kept D4 informed throughout.⁹⁴
- B4.7 D2 asked D8 to deal with the conveyancing aspects.⁹⁵ D8 was a solicitor with the firm Buss Murton. Between July 2011 and August 2015, D8 was involving himself and Buss Murton in a dubious investment scheme and causing Buss Murton’s client account to be used improperly as a banking facility contrary to Rule 14.5 of the SRA Accounts Rules 2011 and Principles 6 and/or 8 of the SRA Principles 2011.⁹⁶
- B4.8 D8 also took payments for Abitus through Buss Murton.⁹⁷
- B4.9 At some point in November 2012, D2 formed the view that £4.5 million was “*way in excess of what the property and business are worth*”⁹⁸ and decided to seek a “*price*

⁸⁶ D2D10-00005054; D2D10-00005055

⁸⁷ MDR00010655

⁸⁸ MDR00111742; MDR00111743

⁸⁹ MDR00010655

⁹⁰ D2D10-00005037

⁹¹ D2D10-00005037

⁹² MDR00010011; MDR00010012; MDR00010013; D2D10-00005051; D2D10-00005052

⁹³ MDR00010013 page 3

⁹⁴ D2D10-00005056; D2D10-00005060; D2D10-00005059; D2D10-00005069; D2D10-00005070

⁹⁵ MDR00010014

⁹⁶ D8-0032431 page 9

⁹⁷ MDR00011551

⁹⁸ D2D10-00005103

adjustment".⁹⁹ Accordingly, D2 formulated a revised offer of £2.7 million, payable £135,000 on exchange, £965,000 on completion and £1,600,000 in four six-monthly instalments of £400,000 each.¹⁰⁰ Following negotiations, the parties agreed a revised price of £2.75 million, payable £200,000 on exchange, £950,000 on completion and £1,600,000 in four six-monthly instalments of £400,000 each.¹⁰¹

B4.10 Initially the parties envisaged that exchange would take place on 20.12.12¹⁰² with completion on 28.02.13.¹⁰³

B4.11 Geoffrey Hunt and John Banks, two of the directors of Telos, agreed to provide a loan in the sum of £200,000 to enable exchange to take place.¹⁰⁴

B4.12 On 18.12.12, Lakeview Country Club Limited ("LCCL") was incorporated to act as the purchasing vehicle.¹⁰⁵ D8 sent the incorporation documents to D2. D1 was appointed as a director of LCCL.¹⁰⁶ D8 appointed himself as the company secretary and told D1 and D2 that he had done so.¹⁰⁷ Buss Murton agreed to act for LCCL in respect of the conveyancing on the acquisition of the Lakeview site.¹⁰⁸

B4.13 The share capital of LCCL consisted of a single share. Buss Murton (Nominees) Limited ("Buss Murton Nominees") was the registered shareholder of this single share in LCCL. Buss Murton Nominees agreed to hold the share in LCCL on trust for D4 and his family (71.25%), D10 (23.75%) and D1 (5%).¹⁰⁹ D8 signed the declaration of trust on behalf of Buss Murton Nominees. D1 witnessed his signature.

B4.14 On 20.12.12, the £200,000 from Geoffrey Hunt and John Banks arrived in Buss Murton's bank account.¹¹⁰ D8 instructed the accounts department to pay it to Osborne Clark, who were acting for the vendors.¹¹¹ The final version of the sale agreement was

⁹⁹ MDR00010046

¹⁰⁰ D2D10-00005120; MDR00010155; MDR00010158

¹⁰¹ D2D10-00005127; MDR00010190; MDR00010191;
MDR00010192; MDR00010196; MDR00010187

¹⁰² MDR00010217

¹⁰³ D2D10-00005127

¹⁰⁴ MDR00010324; D2D10-00005141; MDR00010327;
MDR00010351; MDR00010387; MDR00010389

¹⁰⁵ MDR00010405

¹⁰⁶ MDR00010544

¹⁰⁷ MDR00010559

¹⁰⁸ MDR00010181

¹⁰⁹ MDR00224886; D1-0000314; D1-0000315;

MDR00014818

¹¹⁰ MDR00010501; MDR00010506

¹¹¹ MDR00010509

circulated and prepared for execution.¹¹² D1 signed it on behalf of LCCL.¹¹³ It was also signed on behalf of the vendors.¹¹⁴

B4.15 Completion was due to take place on 28.02.13, when a further £950,000 would be payable.¹¹⁵ However, two weeks before the scheduled completion date, D8 told D2 that he had become concerned about the results of recent Land Registry searches.¹¹⁶

B4.16 In light of these discoveries, LCCL made a revised offer.¹¹⁷ Completion was delayed whilst renewed negotiations took place.¹¹⁸

B4.17 D2 and D4 had not yet been able to raise sufficient finance to make the completion payment. D7 had been trying to find a lender who would be prepared to make a bridging loan but his enquiries had not yet borne fruit. Ben Beal, who had received one of D7's enquiries about a bridging loan, told D7 that a prospective lender had "*come back with some questions regarding the finance required for Spencer*".¹¹⁹ D7 forwarded this to D2, who provided him with some of the requested information.¹²⁰ D1 was also involved in the attempts to obtain bridging finance to enable completion to occur.¹²¹

B4.18 On 08.03.13, LCCL made a revised offer which involved a revised price of £1.525 million and a further non-refundable deposit of £150,000 on signing revised terms.¹²²

B4.19 After further negotiations, the parties signed a supplemental agreement which: (i) varied the purchase price to £1,525,000; (ii) provided for LCCL to pay a further deposit of £150,000; and (iii) obliged LCCL to pay additional sums by way of compensation on account of any further delays to completion.¹²³

B4.20 The efforts to obtain bridging finance continued to move forward. Due to the delay in completion, LCCL became liable to pay additional sums to the vendors by way of compensation under the revised terms.¹²⁴ Ultimately, on 05.04.13, LCCL obtained

¹¹² MDR00010568; MDR00010569; MDR00010585;

MDR00010586; MDR00010599

¹¹³ MDR00010600; MDR00010624;

¹¹⁴ MDR00010610; MDR00010612

¹¹⁵ MDR00010673

¹¹⁶ MDR00011028

¹¹⁷ MDR00011079

¹¹⁸ MDR00011098

¹¹⁹ D7D9-0000100

¹²⁰ D7D9-0000100; D7D9-0000101

¹²¹ D7D9-0000119; D7D9-0000121

¹²² MDR00011223

¹²³ MDR00006361; MDR00011368; MDR00011370;

MDR00011371; MDR00011372; MDR00011373;

MDR00011387; MDR00011389; MDR00015182

¹²⁴ MDR00011504; MDR00011732

bridging finance of £800,000 from a lender called Ortus.¹²⁵ The sale of the Lakeview resort to LCCL completed on 05.04.13.¹²⁶ Including the deposits and the additional sums by way of compensation, LCCL had paid a total of £1,609,269.¹²⁷

B4.21 The bridging loan from Ortus was due to expire in July 2013. It was going to be necessary for LCCL to refinance. Joanne Baldock, who worked with D7, emailed a mortgage broker about this.¹²⁸ The mortgage broker asked some questions.

B4.22 Jo Baldock sent these questions to D7, who replied, *“Can you give Andy Thomson a call, he will be able to answer the questions ... He is employed by Spencer and is running Lakeview”*.¹²⁹ Jo Baldock spoke to D1 and reverted to the broker with answers.¹³⁰

B4.23 Ultimate Capital offered to provide a loan to repay Ortus. D8 reported this news to his colleague, explaining, *“I believe that whilst Simon Hume Kendall wants to proceed, Andy Thomson who represents the major shareholder does not”*.¹³¹ Ultimately, the Ortus loan was refinanced by a new loan from Ultimate Capital.¹³²

B4.24 As part of their attempts to raise finance against the Lakeview site, D1, D2 and D4 were involved in instructing Savills to provide a valuation of the Lakeview site.¹³³ Savills advised them on 17.01.14 that the market value of the Lakeview site was £4 million.¹³⁴

B4.25 It seems that all was not well at Lakeview. Murray Baker, formerly of Ecoresorts, told Mark Ingham that D4 was presiding over a *“clusterfuck”* because he had put Lakeview in the operational control of D1 and D2 who were *“like spoilt children arguing over a toy and ... would rather break the toy rather than see the other get any benefit from it”*.¹³⁵ He thought that it was a *“horrendous situation”* and that *“without the total removal of Andy and Simon from the operational side of the business it is destined to fail”*.

¹²⁵ MDR00012401; MDR00012446; MDR00012445;
MDR00012447; MDR00012403

¹²⁶ MDR00012442; MDR00012549

¹²⁷ MDR00013166; MDR00013168

¹²⁸ D7D9-0000215

¹²⁹ D7D9-0000311

¹³⁰ D7D9-0000312

¹³¹ MDR00012906

¹³² D2D10-00005425

¹³³ D2D10-00005688; MDR00014825

¹³⁴ MDR00014615; MDR00014871

¹³⁵ MDR00014819

C. THE STORY OF LCF

C1 SAFE

- C1.1 Although D1 and D2 were involved in numerous attempts to raise finance, we shall focus on the company incorporated on 12.07.12, which was called Sales Aid Finance (England) Limited (“SAFE”) with effect from 18.02.13, before changing its name to London Capital & Finance Limited (“LCF”) on 01.07.15.
- C1.2 D1 became the sole director of SAFE on 15.08.13.¹³⁶ D1 was also the sole registered shareholder.¹³⁷ D1 held the shares in SAFE on trust for D4.¹³⁸
- C1.3 D2 and D4 had a meeting with D7 on 12.08.13 to discuss fundraising by SAFE. D2 emailed D7 afterwards to say, “*This model is expected to raise at least £3,000,000 over the next 12 months and if you are able to achieve the £3,000,000 you will receive a 5% share (or pro rata if you raise less) of the existing two sites we own in the UK and Dominican Republic ... We hope this is in line with what you understood and hope it gets you excited*”.¹³⁹ D2 had shared a draft of this email with D4.¹⁴⁰
- C1.4 D1 was drafting an information booklet for SAFE. The basic proposition was that SAFE would lend money to SMEs to generate a return of 8.5% per annum.¹⁴¹

“The bank of England reported January 2013 in its ‘Trends on Lending’ paper that lending to Business have dropped every year since 2009. At the end of 2011 there were c.370,000 active SME’s in the South East (ex. London) & on average 20% of all SME’s are seeking finance at any one time (i.e. 74,000 SME’s in the South East are seeking finance at any one time). In 2009 the % of SME’s securing finance at the level applied for was 90%, this has dropped to 74% of SME’s in 2012 securing some of the finance sought, there is currently no information available detailing the % of SME’s who have been successful in securing all the finance applied for ... Sales Aid Finance (England) Ltd are aiming to raise funds to provide short term fully secured debt facilities to the SME market place in the

¹³⁶ MDR00013671; MDR00013673

¹³⁷ MDR00013661

¹³⁸ MDR00014315; MDR00014316; EB0000535

¹³⁹ D7D9-0000433; D2D10-00005732

¹⁴⁰ D2D10-00005731

¹⁴¹ MDR00013635; D1-0000326

South East. Currently the directors hold c.£20m of assets which will be charged as security against all bonds. ... The South East has been chosen as the directors have extensive business experience in this area. Together the Directors of Sales Aid Finance (England) Ltd have over 20 years lending/financing experience combined with over 40 years successful business experience. It is proposed this knowledge and experience, backed by relevant professional services (legal, accountancy and surveying etc...), be utilised when assessing credit worthiness ... The bonds offer an interest rate of 8.5% per year on the face value of £100 per bond for the term of the bond. Interest will be paid quarterly in arrears and will be paid 31 March, 30 June, 30 September & 30 December each year until the bonds mature. The bond's will be redeemed either from accumulated capital or the sale of property's securing the bond's. Unless previously redeemed or purchased and cancelled (as further described in 'Key features of the bonds – Early redemption features' on page 7), the bonds will mature on the 30 August 2015 and will be repayable by Sales Aid Finance (England) Ltd at their face value of £100 per bond. The bonds can be purchased through authorised distributors, the minimum initial amount of bonds you may buy is £5,000”.

- C1.5 Subsequently, this document was reviewed and commented on by D8.¹⁴² D8 provided D1 with a draft of a letter from Buss Murton to prospective investors stating that “*all monies raised by way of loan from investors will initially be held in this firm’s client account in escrow until a suitable loan opportunity arises and will only be disbursed when the loan is finalised and included in the loan arrangements will be security over assets which give not less than 150% cover for each loan*”.¹⁴³
- C1.6 D7 also reviewed the draft wording, commenting, “***The problem with what is being suggested is that the money may not be lent out in line with what’s described in the prospectus, i.e. cash for Simon and Spencer etc***” (emphasis added).¹⁴⁴
- C1.7 The SAFE brochure was formatted by Rocky O’Leary, who sent it to Mark Ingham, who forwarded it to D2, adding, “*This is in edit format and has NOT been proofed – very early draft*”.¹⁴⁵ D2 forwarded it to D7 (“*Latest draft in case you didn’t see it*”).
- C1.8 By this point in time, the wording about lending to SMEs had been refined to say:¹⁴⁶

“The Bank of England reported January 2013 in its ‘Trends on Lending’ paper that lending to Business has dropped every year since 2009. SME’s make up 99% of all UK business and yet they continue to be starved of funding by the Banks,

¹⁴² MDR00013699; MDR00013709; MDR00013713;
D7D9-0000448; D7D9-0000443

¹⁴³ MDR00013709; MDR00013710

¹⁴⁴ D7D9-0000453

¹⁴⁵ D7D9-0000468

¹⁴⁶ D7D9-0000469

creating a national shortage of finance and increased demand for SME business lending at enhanced interest margins, for short term credit facilities. The lack of this much needed finance has created a substantial opportunity for private investors to make significant returns by investing in the SAFE bond. ... Since 2007 stock lending has been in sharp decline, in not only the UK but also in the wider global economy. Traditional sources of funding for SME's from the banking sector became scarcer during the initial credit crunch which lead to a double dip recession, which lead to a double dip recession, indeed in the 3 months to May 2013 stock lending dropped by £4.4bn. ... SME's have been widely accepted as the engine room of the UK economy and as the UK rises from the current economic recession, this sector must be financed. This presents a significant lending opportunity for SAFE to fulfill as the Banks cannot service this sector. ... The SAFE bond offering gives consideration to both the individual investor and SME. By utilizing private funding SME's can access much needed funds to grow and stimulate wider economic growth but at the same time the individual investor can benefit from a much enhanced rate of return safe in the knowledge that their funds are secured against valuable property assets ... SAFE will raise funds to provide short-term fully secured debt facilities to the SME market place in the South East. ... It is proposed that all SME financing will be on a fully secured basis (charge over assets at better than 65% loan to value) at terms no longer that 1 year. The initial target market will be SME's with short term cash requirements. All sector lending will be considered, but the SAFE team will predominately focus on the, property, M&A & trade finance sector's ... SAFE are offering to provide asset security to 150% of the value of all monies raised. For every £100 loan note issued, £150 of asset and property security will be held, for a target raise of £3,000,000 no less than £4,500,000 of property and other assets will be charged as security ... Investor funds will be received into an escrow account held at Buss Murton Law LLP and will only be remitted to borrowers when all loan documents and security are in place”.

C1.9 D7 thought it would be an “*easy sell*”.¹⁴⁷ He replied to D2 and Mark Ingham, “*Much better, excellent work!*”¹⁴⁸ Mark Ingham sent the formatted version of the SAFE loan note agreement to D1, D2 and D4.¹⁴⁹

C1.10 On 06.09.13, Mark Ingham forwarded a further version of the SAFE brochure (v8) to D1, D2, D4 and D7.¹⁵⁰ On 10.09.13, Rocky O’Leary sent yet another version (v9) to D1, D2, D4, D7 and Mark Ingham.¹⁵¹

C1.11 Rocky O’Leary set up a website for SAFE. On 10.09.13, he sent the link to D1, D2, D3, D7 and Mark Ingham, explaining, “*This is basically the same info as the brochure*”.¹⁵²

¹⁴⁷ D7D9-0000474

¹⁴⁸ D7D9-0000470

¹⁴⁹ D7D9-0000477; D7D9-0000478

¹⁵⁰ D7D9-0000485

¹⁵¹ D7D9-0000487; D7D9-0000488

¹⁵² D7D9-0000500

- C1.12 D7 forwarded it to Jo Baldock.¹⁵³ D7 and Jo Baldock were the sales people who would be selling the SAFE investment to the public.
- C1.13 Jo Baldock soon achieved her first sale: on 10.09.13, Mr and Mrs C [REDACTED] agreed to invest £40,000 with SAFE in the form of a loan to SAFE.¹⁵⁴
- C1.14 The next day, Jo Baldock emailed D7 to say, “*I have a completed application form and cheque for £40k from some clients ... I have left you a voicemail also so if you could call me back as I wish to discuss the process with new applications etc*”.¹⁵⁵
- C1.15 Monies from investors were to be paid into Buss Murton’s client account on behalf of SAFE.¹⁵⁶ On 13.09.13, Buss Murton received £40,000 from Mr and Mrs C [REDACTED]¹⁵⁷ SAFE issued a certificate to Mr and Mrs C [REDACTED] in respect of their investment.¹⁵⁸
- C1.16 Soon, other investors followed. On 16.09.13, Mrs [REDACTED] agreed to invest £60,515.34 with SAFE.¹⁵⁹ Buss Murton received £60,515.34 from Mrs [REDACTED] on 17.09.13.¹⁶⁰ Mr [REDACTED] agreed to invest £10,000 with SAFE.¹⁶¹
- C1.17 SAFE and D7 entered into an agreement in respect of the selling of SAFE investments. Under this agreement, D7 was entitled to “*such fees as may be agreed from time to time*”. D1 signed the agreement on behalf of SAFE.¹⁶² In practice, SAFE paid commission of 20% of each investment to D7.¹⁶³ D1 emailed Jo Baldock stating, “*I have instructed our solicitor to pay the commissions today from our client account, you should see a credit form Buss Murton into your account later today*”.¹⁶⁴ She told D7 about this.
- C1.18 SAFE did not have to look too far to find its first borrower. Sanctuary PCC was suffering from serious cashflow problems. Richard Marsh, the representative of Sanctuary PCC in the Dominican Republic, emailed D2 and D3 about this on 20.09.13.¹⁶⁵ Richard hoped that these problems would be sorted out “*the next time that Simon/Elten ... come to DR*”.

¹⁵³ D7D9-0000500

¹⁵⁴ MDR00007764; D1-0000329; MDR00007919

¹⁵⁵ D7D9-0000502

¹⁵⁶ MDR00013834; MDR00013837; D7D9-0000505

¹⁵⁷ MDR00013844; MDR00015987.

¹⁵⁸ D1-0000338

¹⁵⁹ MDR00007771; D1-0000339; MDR00007596

¹⁶⁰ MDR00015987

¹⁶¹ MDR00007766; MDR00007595

¹⁶² MDR00007916; MDR00015061; D7D9-0010957

¹⁶³ MDR00007770; D7D9-0000570

¹⁶⁴ D7D9-0000512

¹⁶⁵ MDR00013880

- C1.19 On 23.09.13, SAFE agreed to provide a loan facility of £675,000 to Sanctuary PCC.¹⁶⁶ Michael Peacock signed the facility offer letter on behalf of SAFE.
- C1.20 On 30.09.13, Sanctuary PCC executed a debenture in favour of SAFE.¹⁶⁷ Michael Peacock signed on behalf of SAFE. D1 signed on behalf of Sanctuary PCC.
- C1.21 The problem with this debenture was that Sanctuary PCC did not actually own any property. As D8 reminded D1 on the same day, although Sanctuary PCC was the registered holder of the shares in Inversiones, which in turn owned The Hill, Sanctuary PCC had executed a declaration of trust in respect of those shares in favour of El Cupey for the benefit of the 284 investors who had paid more than £2 million to Sanctuary.¹⁶⁸
- C1.22 Notwithstanding this, SAFE and Sanctuary PCC entered into a loan facility agreement on 01.10.13 in the sum of £675,000.¹⁶⁹ Michael Peacock signed on behalf of SAFE. D1 signed on behalf of Sanctuary PCC. D8 witnessed their signatures.
- C1.23 On the same day, Sanctuary PCC made a drawdown request in the sum of £80,000. Sanctuary PCC asked SAFE to pay the money to D1's company, One Monday.¹⁷⁰ Buss Murton paid £80,000 from the SAFE client account to One Monday.¹⁷¹
- C1.24 On 18.10.13, One Monday paid £5,000 of this money to D2.¹⁷²
- C1.25 D7 and Jo Baldock continued to sell the SAFE investment to members of the public. Mr and Mrs H [REDACTED] invested £20,000.¹⁷³ Mr and Mrs L [REDACTED] invested £100,000.¹⁷⁴ Mr B [REDACTED] invested £20,000.¹⁷⁵ Mr R [REDACTED] invested £15,000.¹⁷⁶ Buss Murton transferred 20% of each of these investments to D7.¹⁷⁷

¹⁶⁶ MDR00007894; MDR00007911

¹⁶⁷ MDR00007895

¹⁶⁸ MDR00014024; MDR00014025; MDR00014026

¹⁶⁹ MDR00007913; D1-0001278

¹⁷⁰ MDR00007910

¹⁷¹ MDR00015987 row 6; D2D10-00008623 row 62; MDR00007919

¹⁷² MDR00224970 page 40

¹⁷³ MDR00007739; MDR00007597; MDR00007601

¹⁷⁴ MDR00007600; D7D9-0000777

¹⁷⁵ MDR00007598

¹⁷⁶ MDR00007599

¹⁷⁷ MDR00014126; MDR00014127; MDR00015987; D7D9-0000786; D7D9-0000787; D7D9-0000788; MDR00015987

- C1.26 Sanctuary PCC continued to make drawdown requests to SAFE. Each time, Sanctuary PCC asked SAFE to pay the loan monies to D1's company, One Monday.
- C1.27 For example: **(i)** On 25.10.13, at the request of Sanctuary PCC, Buss Murton paid £22,412.28 from the SAFE client account to One Monday.¹⁷⁸ **(ii)** On 08.11.13, at the request of Sanctuary PCC, Buss Murton paid £16,000 from the SAFE client account to One Monday.¹⁷⁹ **(iii)** On 25.11.12, at the request of Sanctuary PCC, Buss Murton paid £5,000 from the SAFE client account to One Monday.¹⁸⁰ **(iv)** On 26.11.13, at the request of Sanctuary PCC, Buss Murton paid £10,000 from the SAFE client account to One Monday.¹⁸¹ **(v)** On 13.12.13, at the request of Sanctuary PCC, Buss Murton paid £18,400 from the SAFE client account to One Monday.¹⁸² **(vi)** On 19.12.13, at the request of Sanctuary PCC, Buss Murton paid £48,000 from the SAFE client account to One Monday.¹⁸³ **(vii)** On 03.01.14, at the request of Sanctuary PCC, Buss Murton paid £55,000 from the SAFE client account to One Monday.¹⁸⁴ **(viii)** On 07.01.14, at the request of Sanctuary PCC, Buss Murton paid £40,000 from the SAFE client account to One Monday.¹⁸⁵ **(ix)** On 28.01.14, at the request of Sanctuary PCC, Buss Murton paid £58,209.05 from the SAFE client account to One Monday.¹⁸⁶
- C1.28 On numerous occasions, One Monday transferred some of the monies from SAFE to D2, D4 and D10. For example: **(i)** On 29.11.13, One Monday paid £12,500 to D4 and £5,000 to D10.¹⁸⁷ **(ii)** On 02.12.13, One Monday paid £7,500 to D10.¹⁸⁸ **(iii)** On 07.01.14, One Monday paid £7,500 to D2, £15,000 to D4 and £7,500 to D10.¹⁸⁹ **(iv)** On 31.01.14, One Monday paid £38,000 to D2's company, LV Management.¹⁹⁰
- C1.29 Thus, from the very start of the business later known as LCF, monies from investors were paid to D2, D4 and D10. As D7 had correctly anticipated, monies from investors

¹⁷⁸ MDR00007896; MDR00007919; MDR00015987 row 9; D2D10-00008623 row 67

¹⁷⁹ MDR00007897; MDR00007919; MDR00015987 row 11

¹⁸⁰ MDR00007898; MDR00007919; MDR00015987 row 14

¹⁸¹ MDR00007899; MDR00007919; MDR00015987 row 15; D2D10-00008623 row 110

¹⁸² MDR00007900; MDR00015987 row 21; D2D10-00008623 row 134

¹⁸³ MDR00007901; MDR00015987 row 28; D2D10-00008623 row 140

¹⁸⁴ MDR00007902; MDR00015987 row 38; D2D10-00008623 row 159

¹⁸⁵ MDR00007903; MDR00015987 row 41; D2D10-00008623 row 165; D2D10-00006245; D2D10-00006246

¹⁸⁶ MDR00007904; MDR00015987 row 47; D2D10-00008623 row 199

¹⁸⁷ D2D10-00008623 rows 121 and 122

¹⁸⁸ D2D10-00008623 row 123

¹⁸⁹ MDR00224970; D2D10-00008623 rows 166, 168 and 169

¹⁹⁰ D2D10-00008623 row 204

were “not [being] lent out in line with what’s described in the prospectus” but were instead being used to provide “cash for Simon and Spencer”.¹⁹¹

C1.30 D7 and Jo Baldock continued to have success in selling the SAFE investment. Mr A [REDACTED] invested £15,000.¹⁹² Mr R [REDACTED] invested £15,000.¹⁹³ Mrs S [REDACTED] and Mr and Mrs A [REDACTED] also invested.¹⁹⁴

C1.31 Initially, Buss Murton transferred 20% of each investment to D7.¹⁹⁵ On or around 22.04.14, SAFE agreed to increase D7’s commission to 25%.¹⁹⁶

C1.32 During this period, SAFE was being run on a day-to-day basis by D1 and D2.¹⁹⁷ For example, D7 provided D1 and D2 with updates about pending SAFE investors.¹⁹⁸

C1.33 D4 provided strategic direction. For example, D4 seems to have decided that SAFE should make a special offer to attract new investors, involving repayment of 110% of principal on maturity with interest of 8.5% per annum until then.¹⁹⁹

C1.34 D7 and Jo Baldock continued to sell the SAFE investment product to members of the public throughout the rest of 2014 and into 2015.²⁰⁰

C1.35 Sanctuary PCC continued to make drawdown requests in which it asked SAFE to pay the loan monies to One Monday, including: £22,500 on 24.04.14;²⁰¹ £12,000 on 30.04.14;²⁰² £25,000 on 12.05.14;²⁰³ £15,000 on 16.05.14;²⁰⁴ and £11,250 on 04.06.14.²⁰⁵ As before, Buss Murton paid these sums from the SAFE client account to One Monday,²⁰⁶ which paid some of these monies to D4.²⁰⁷

¹⁹¹ D7D9-0000453

¹⁹² D7D9-0000803; D7D9-0000804; MDR00007603

¹⁹³ MDR00007718; MDR00007604

¹⁹⁴ MDR00007712; MDR00007751

¹⁹⁵ D7D9-0000850; D7D9-0001026; D7D9-0001027; D7D9-0001028; D7D9-0001046; MDR00015987; D2D10-00006245

¹⁹⁶ D7D9-0001224; D7D9-0001225; D7D9-0001232; MDR00015987 row 49

¹⁹⁷ D7D9-0001026; D7D9-0001057

¹⁹⁸ D7D9-0001060; D7D9-0001061

¹⁹⁹ D7D9-0000835; D7D9-0000836; D7D9-0000841

²⁰⁰ MDR00007742; D7D9-0001233; MDR00007612; D2D10-00006814; D2D10-00006818; D2D10-

00006820; MDR00007921; MDR00007723;

MDR00007722; MDR00007920; MDR00007724;

MDR00007704; MDR00007613; MDR00007686;

MDR00007734; MDR00216709; MDR00007735;

MDR00007688; MDR00007698; MDR00007695;

MDR00007696; MDR00007697; MDR00007922

²⁰¹ MDR00007905

²⁰² MDR00007906

²⁰³ MDR00007907

²⁰⁴ MDR00007908

²⁰⁵ MDR00007909

²⁰⁶ MDR00015987; D2D10-00008230

²⁰⁷ MDR00224827

- C1.36 By 30.04.15, Sanctuary PCC owed a total sum of £1,296,628.19 to SAFE.²⁰⁸ However, the facility agreement between SAFE and Sanctuary PCC had a limit of only £675,000.
- C1.37 On 22.10.15, SAFE's accountant, Nick Angel of Oliver Clive & Co, asked D1 various questions. Among other things, Nick Angel asked D1 to provide him with a copy of the facility agreement between SAFE and Sanctuary PCC.²⁰⁹
- C1.38 D1 asked his assistant Katie Maddock to help him to answer Nick Angel's questions.²¹⁰ She provided D1 with a copy of the facility agreement between SAFE and Sanctuary PCC with a limit of £675,000.²¹¹ D1 seems to have realised that this would not be sufficient. He emailed Nick Angel on 23.10.15 to say that he did not have a signed copy of the facility agreement to hand.²¹² He attached an unsigned version of the loan agreement which stated that the loan amount was £2 million.²¹³
- C1.39 At 9.08am on 26.10.15, D1 provided Katie Maddock with a pdf version of the unsigned draft facility agreement between SAFE and Sanctuary PCC dated 02.10.13 (in typescript on the front page) containing a facility limit of £2 million.²¹⁴ The signature blocks anticipated that D1 would sign for both parties.²¹⁵
- C1.40 Katie Maddock sent an email to D1 at 11.15am, stating, "*Please find attached the signed sanctuary loan agreement, please check over the signature page. Does it not need to say Michael Peacock for Sales Aid Finance rather than yourself?*"²¹⁶ The attached document, still dated 02.10.13 in typescript on the front page, had been signed by D1 on behalf of Sanctuary PCC and by Michael Peacock on behalf of SAFE.²¹⁷
- C1.41 D1 then provided her with a further draft, still dated 02.10.13 in typescript on the front page.²¹⁸ This time, however, in the signature panel for SAFE, D1's name had been replaced by the words, "*an officer of the company*".²¹⁹

²⁰⁸ MDR00195285
²⁰⁹ MDR00019239
²¹⁰ MDR00019253
²¹¹ MDR00019260
²¹² MDR00019297
²¹³ MDR00019298

²¹⁴ MDR00019406; MDR00019412
²¹⁵ MDR00019412
²¹⁶ MDR00019429
²¹⁷ MDR00019430
²¹⁸ MDR00019432
²¹⁹ MDR00019433

- C1.42 Katie Maddock sent a further email to D1 at 1.07pm²²⁰ attaching a scanned copy of this document which had now been signed by D1 on behalf of Sanctuary PCC and by Michael Peacock on behalf of SAFE.²²¹ It was still dated 02.10.13 in typescript on the front page. Katie then sent a copy to Oliver Clive & Co.²²²
- C1.43 Accordingly, there can be no doubt that the facility agreement between SAFE and Sanctuary PCC with a limit of £2 million, purportedly signed on 02.10.13, was actually created on 26.10.15 and falsely backdated in order to deceive Nick Angel of Oliver Clive & Co into thinking that there had always been a signed facility agreement covering the total amount of the loan when in reality this had not been the case.

C2 D5 and D6

- C2.1 D5 ran The Investment Experts with his colleagues Kerry Graham and Steve Jones. It had a website, www.investment-experts-online.co.uk.
- C2.2 The basic premise of the website was that members of the public could seek free investment advice from experts.
- C2.3 For example, a retired lady might ask them to recommend an appropriate investment for her.²²³ Or someone with £40,000 to invest might seek advice about spreading the investment across two or three different types of investment in reasonably safe investment products paying the highest returns possible above the rate of inflation.²²⁴ Or someone with £30,000 to invest might ask them to recommend investments to generate a higher rate of return on their money.²²⁵
- C2.4 Each such enquiry was received by D5, Kerry and Steve by email. This was valuable information. Each enquiring member of the public was required to provide their contact information (name, email address and telephone number).

²²⁰ MDR00019475

²²¹ MDR00019476

²²² MDR00019513; MDR00019514

²²³ SUR00000867-0001

²²⁴ SUR00000868-0001

²²⁵ SUR00000869-0001

- C2.5 D5, Kerry and Steve hoped that it would be possible to monetise this information by selling it to financial advisers who earned commission from selling investment products. To them, these were not merely enquiries from the public. Rather, they were “leads”²²⁶ which might result in a sale of a product resulting in payment of commission.
- C2.6 On 17.02.15, Ben Beal of Natural Capital Wealth was trying to put D5 and Kerry in touch with D7, who was selling the SAFE investment product.
- C2.7 Kerry had not heard of D7 before. She asked D5, “Who is John?” D5 responded by sending her a link to D7’s page on D9’s website.²²⁷
- C2.8 Ben Beal managed to set up a meeting for 25.02.15 at The Long Barn, Ashdown Business Park, Gillridge Lane, Crowborough, East Sussex, TN61UP.
- C2.9 Ben emailed D5 and Kerry on 19.02.15 to tell them that D1, D2, D4 and D7 were expected to attend to represent their companies including SAFE and LCCL.²²⁸
- C2.10 Ben said that he would provide D5 and Kerry with “some hard copy information on the SAFE investment bond”. He emailed on 23.02.15 confirming that D3 was also involved, among others.²²⁹ On 23.02.15, Ben also provided the SAFE brochure to Kerry.²³⁰
- C2.11 On 25.02.15, D5 and Kerry attended the meeting with D2, D4 and D7.²³¹ D1 did not attend. Kerry formed the view that D4 was “clearly a key player in the team”.²³²
- C2.12 Ben Beal told Kerry afterwards that D2, D4 and D7 were “totally on the line and want to be reeled in. They would like to start with £1mil leads ASAP. Ben will explain that will be at a cost of £3k i.e. £150 per lead”.²³³
- C2.13 On 05.03.15, D7 provided D5 and Kerry with his contact information and said that he looked forward to receiving an email detailing the next steps.²³⁴

²²⁶ SUR00000867-0001

²²⁷ SUR00158301-0001

²²⁸ D7D9-0010714; SUR00158306-0001

²²⁹ SUR00128938-0001

²³⁰ SUR00128941-0001; SUR00128942-0001

²³¹ SUR00000897-0001

²³² SUR00000913-0001; SUR00000914-0001

²³³ SUR00000913-0001

²³⁴ D7D9-0001769

C2.14 D5 emailed D7 on 12.03.15 (copied to Kerry).²³⁵

“As discussed, we would like you to take a trial of our cash investment leads starting on Tuesday. We will send you c20 leads with an average value of £50k each and a total value of at least £1m but it is likely to be more. We will send you those leads over a two day period, Tuesday 17th and Wednesday 18th though it may spill over to Thursday 19th.

The terms of the trial:

- 1. Leads will be delivered by email to you at jrm@gpi-invest.com and any other address you choose.*
- 2. Leads will be exclusive to you.*
- 3. Leads will be delivered in real-time.*
- 4. Leads will be generated from our website www.investment-experts-online.co.uk (IEO).*
- 5. You can open your conversations with the leads as if you are calling from IEO.*
- 6. Leads will be delivered at any time, as and when they come into the site.*
- 7. We will replace any leads for free that you cannot contact by phone within the trial.*

We do not normally sell leads and our trials are to try and establish a Joint Venture with a fund but for the purposes of covering our costs in lead generation and also to ensure the realisation of the value of our leads we will charge £150 + vat per lead/£3000 + vat for 20. We may over deliver dependent on your contact rate. You will certainly receive at least £1m in contactable investment leads. Any JV partner in the future would only share costs for leads which is much less than the lead price for the trial. Please note we deliver 50 of these leads every day totalling £100m/month.

We would like to know from you your contact rate and the quality of your conversations. That information will help us work out a conversion rate for your sales process in any future relationship. Obviously your fund{s} and their online set-up will hugely influence conversion, though that can be optimised by us should we enter into a deal with you in the future.

If you are happy to proceed on that basis then please confirm which entity is entering into the trial and Kerry will get an invoice raised and sent over for you to settle prior to the trial on Tuesday”.

C2.15 D7 replied to say, *“Further to your last email, we are happy to go ahead with the trial of leads next week, please could you invoice Sales Aid Finance England Ltd, their address is The Long Barn, Ashdown Business Park, Gillridge Lane, Crowborough, East Sussex, TN6 1UP. I look forward to receiving the first batch of leads on Tuesday!”*²³⁶

²³⁵ D7D9-0001771

²³⁶ D7D9-0001772

- C2.16 On 13.03.15, Kerry sent D7 an invoice from D6 to SAFE for the cost of 20 leads at £150 per lead in the total sum of £3,000.²³⁷ (The invoice number was 011. Kerry explained to Steve Jones on 09.07.15, “*This is the one and only invoice we ever sent for Surge. We numbered it No: 011 to make it look like more invoices had been sent*”.²³⁸ She suggested that the second invoice should be numbered 022.)
- C2.17 On 16.03.15, Kerry chased D7 for payment of this invoice.²³⁹ D7 replied, “*I will send a chaser email to Spencer and he’s [sic] team now*”.²⁴⁰ The next day, SAFE paid D6’s invoice.²⁴¹ D7 told D5 and Kerry that D6’s invoice had been paid.²⁴²
- C2.18 On 19.03.15, D5 told D7 that the trial was complete: “*We have sent you 21 leads ... Total declared value of leads is £1.3m*”.²⁴³ It now fell to D7 to ‘work’ the leads in order to convert them into sales.
- C2.19 On 30.03.15, D7 told D5 and Kerry that he was still ‘working’ 19 of the leads and expected to achieve four or five sales during the next 10 days.²⁴⁴ He told them that one of the leads, [REDACTED], had cashed in his Halifax investment and had agreed in principle to invest £200,000 with SAFE.
- C2.20 D5 and Kerry already had some dealings with another investment company, Blackmore, but they considered that it would be profitable for them to enter into a joint venture agreement in respect of the SAFE investment product.
- C2.21 On 23.04.15, D5 emailed D7 in the following terms (copied to Kerry):²⁴⁵

*“As you know we have a very good relationship with Blackmore Global and we are happy to continue with them, however **we have two lead delivering websites, both of which drive £100m in lead value a month.** It is commercially prudent for us to split our baskets and run two separate JVs. After our trials with funds last month we have short-listed two Companies who we think would maximise the value of our proposition. **We want to put in writing our terms and ensure you can accommodate us before we move forward.***
The salient points of the proposed JV are:

²³⁷ D7D9-0001772; D7D9-0001773

²³⁸ SUR00001285-0001

²³⁹ D7D9-0001776

²⁴⁰ D7D9-0001777

²⁴¹ D7D9-0001778; MDR00220327 page 1

²⁴² D7D9-0001781; SUR00000957-0001;
SUR00000962-0001

²⁴³ D7D9-0001783

²⁴⁴ D7D9-0001790

²⁴⁵ D7D9-0001827

Surge Financial will provide:

- 1. Joint ownership over Investment-experts-online.co.uk including all IP and marketing***
- 2. Ability to deliver £100m in cash investment leads each month***
- 3. The build of all online provenance to assist in sales process***
- 4. All sales and marketing materials including new fund websites and brochures***
- 5. 50% of the cost of ongoing lead generation***

New Fund will provide:

- 1. £500,000 on signing of agreement***
- 2. £500,000 on delivery of £5m in cash into the new fund***
- 3. 5% of all funds delivered***
- 4. Full transparency on the sales process***
- 5. A sales team sufficient to convert leads***

We will require a small deposit to secure a 30-day period in which we will finalise the full agreement and cease negotiations with other parties. The success of your trial clearly demonstrates that a JV would be a lucrative venture for both parties. The proposed JV is exactly the one we have in place with Blackmore and therefore we anticipate a simple due diligence from our side as our numbers do the talking” (emphasis added).

C2.22 D7 replied to say that he had “*sent the email on to Spencer and Simon for their consideration and will phone them this evening to discuss this further. I can confirm in principle we are keen to proceed and are taking this opportunity seriously. I will come back to you once I have spoken with the guys*”.²⁴⁶

C2.23 D2 seemed less keen. He told D7 and D4 that this seemed to be “*a rather crude hard sell: ‘you have made it to our short list and if you give me half a bar you might be selected to join the elite when you’ll become a millionaire’*”.²⁴⁷ D2 thought that the website investment-experts-online.co.uk seemed very thin and could not be generating £100 million (let alone £200 million) in leads per month. He was prepared to pay a small deposit but thought that any larger payment should be success-driven. D2 was also concerned that D7 had only achieved one sale of £15,000 from the first batch of leads.²⁴⁸

C2.24 D7 seems to have remained keen to enter into a joint venture. He arranged a further meeting with D2, D3, D4 and D5 for 05.05.15 to discuss the next steps.²⁴⁹

²⁴⁶ D7D9-0001834

²⁴⁷ D7D9-0001834

²⁴⁸ D7D9-0001836

²⁴⁹ D7D9-0001838

- C2.25 D4 was thinking about making a counter-offer to D5 and Kerry, but D5 anticipated that it would be “*far too cash light upfront for us to agree terms to form a JV*”.²⁵⁰
- C2.26 On 11.05.15, D5 told Ben Beal that he had “*decided to go with a different fund partner. Spencer was dragging his heels and wasn’t keen on an upfront payment*”.²⁵¹
- C2.27 D7 did not want to lose the chance to work the leads generated by the websites operated by D5 and Kerry. He could see that there was a huge opportunity to make money.²⁵²
- C2.28 At some point, D7 told D5 that SAFE was paying commissions of 20% and said that he would be prepared to work as D6’s sales director, with D6 selling the SAFE investment product in return for 25% commissions from SAFE,²⁵³ if D5 was prepared to agree that D5 and D7 would receive equal distributions from any profits.²⁵⁴

C3 LCF

- C3.1 On 01.06.15, SAFE’s name was changed to LCF. D7 told D5 about this on 08.07.15.²⁵⁵
- C3.2 D5 wanted to improve LCF’s online presence and branding. He was prepared to charge £10,000 for this work, payable £5,000 upfront and £5,000 on completion of the work.²⁵⁶
- C3.3 On 08.07.15, D5 emailed D7 in the following terms:²⁵⁷

“I have reviewed the documentation and noted that SAFE will now become London Capital & Finance Limited (LCF). I propose the following:

- 1. A rebranded and redesigned online brochure utilising the current content*
- 2. A new website for London Capital & Finance Limited*
- 3. A new logo for London Capital & Finance Limited to be used for business cards, comp slips and letter heads*
- 4. New email signatures created for London Capital & Finance Limited*
- 5. A new application form designed for London Capital & Finance Limited*
- 6. We will also ensure than when London Capital & Finance Limited is Googled that there will be ‘buy signals’ in place*

²⁵⁰ D7D9-0001840; SUR00128954-0001

²⁵¹ SUR00158414-0001

²⁵² SUR00001292-0001

²⁵³ SUR00001292-0001

²⁵⁴ SUR00056027-0001; SUR00056028-0001;
SUR00056031-0001

²⁵⁵ D7D9-0001867; SUR00129022-0001

²⁵⁶ SUR00129022-0001

²⁵⁷ SUR00129022-0001

Due to the fact we intend to immediately engage in selling the London Capital & Finance Limited bond to our clients the above needs to be completed quickly. We will turnaround the above within two weeks from Friday (delivery Friday 24th July).

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 (Friday 10th) and £5k + vat payable on completion (Friday 24th July).

I want us to get £2m a month into their bond. Entirely possible but we will need some good sellers around to help you.

Let me know as soon as you can if they want to go ahead as I will get my team starting on it as its going to be a rush to get it all achieved so quickly. Can you also let me have the details for an invoice too please”.

C3.4 D7 forwarded this to D1, who said (cc D3) that he was “*happy to give these guys the green light, Elten can you confirm you are also in agreement*”.²⁵⁸

C3.5 D7 asked D1 to let D5 know which company to invoice for this work.²⁵⁹ On 09.07.15, D1 emailed D5 (cc D3 and D7) in the following terms:²⁶⁰

“We’ve not met yet, I’m the MD of London Capital & Finance, John Russell-Murphy may have mentioned me. I understand that we are to be moving forward at some pace together which all looks very promising.

To get the ball rolling I understand there is some work needed to be undertaken on our corporate profile and online presence as detailed in your email below. I’m happy to approve this work, if you could invoice London Capital and Finance and email it to me I will see that it’s processed”.

C3.6 Steve Jones emailed D1 on 09.07.15 (with the subject, “*Invoice for Rebranding of London Capital & Finance*”²⁶¹) attaching an invoice for the first payment for the “*work outlined by Paul to improve the corporate profile and online presence for London Capital & Finance*”.²⁶² D1 said that it would be paid promptly and forwarded it to D3.²⁶³

C3.7 Ryan Holdaway of D6 told Kerry that he needed content for the new website.²⁶⁴ Kerry told him (cc D5) that she would get this information and get back to him.²⁶⁵

²⁵⁸ D7D9-0001869

²⁵⁹ EB0004401

²⁶⁰ D7D9-0001923; EB0004428

²⁶¹ EB0004450; EB0004451

²⁶² EB0004450; EB0004451; EB0004453

²⁶³ EB0004450; EB0004451; EB0004458

²⁶⁴ SUR00157268-0001

²⁶⁵ SUR00157268-0001

- C3.8 On 16.07.15, Kerry emailed D7 with the subject, “*Information needed for marketing*”.²⁶⁶ She explained that she needed information about LCF “*to enable the website to go live*”. She said that she was “*trying to build a picture of the success [and] selling points*” and wanted to be able to “*lead with facts and figures as these increase credibility*”.
- C3.9 Kerry also told D7 that it would help to know the answers to the following questions: “*How many (approximate figure) loans to date, how many defaults, type of loan i.e. for what purpose, average term, interest rate (I believe it is arranged according to risk level, please elaborate), Size of companies borrowing?*”
- C3.10 Kerry also said that she wanted case studies and testimonials – “*a paragraph or two with a success story i.e. the company was in great need, the bank wouldn’t lend, the process with SAFE was very easy, it enabled us to buy more stock / expand our premises [sic] and now we have gone from strength to strength, in fact we have increased our turnover by 25% in the 9 months since the loan.... Statement by Mr D Smith, MD of ...*”
- C3.11 D7 replied on 20.07.15 attaching a draft letter from Buss Murton to prospective investors.²⁶⁷ He said that he was seeking the answers to Kerry’s questions from D1.
- C3.12 D5 reviewed the draft letter from Buss Murton. He was concerned about a line in the letter stating that “*the total outstanding loans from investors are 1.1 million pounds*”.
- C3.13 He wanted to remove this line because “[it] *makes the entire operation look very small*”:²⁶⁸ “*I just think it makes the lending book small*”.²⁶⁹ Kerry agreed, adding:²⁷⁰

“I think £1.1mil makes the business sound small and we should remove it. There is a natural expectation that a bond issuer, is a multi-million pound organisation / a lending bank for SME’s. For the same reason I have concerns about the focus in the brochure on the ‘South East’ and ‘local councils’, I believe it would help the business to have a national focus / remit, our investors are national. It would help creates a perception of gravitas”.

²⁶⁶ SUR00001422-0001

²⁶⁷ SUR00129102-0001

²⁶⁸ SUR00129102-0001

²⁶⁹ SUR00129107-0001

²⁷⁰ SUR00129110-0001

C3.14 D7 agreed to remove the line about total lending of £1.1 million from the Buss Murton letter.²⁷¹ He also agreed to discuss her comments with the LCF team.²⁷²

C3.15 Ryan Holdaway of D6 was producing a re-formatted version of the SAFE brochure.²⁷³ Most of the text stayed the same but it referred to “LC&F” rather than SAFE.²⁷⁴ The proposition continued to be that LCF would lend money to SMEs to generate a return:

“The Bank of England reported January 2013 in its ‘Trends on Lending’ paper that lending to Business has dropped every year since 2009. SME’s make up 99% of all UK business and yet they continue to be starved of funding by the Banks, creating a national shortage of finance and increased demand for SME business lending at enhanced interest margins, for short term credit facilities. The lack of this much needed finance has created a substantial opportunity for private investors to make significant returns by investing in the LC&F bond ... Since 2007 stock lending has been in sharp decline, in not only the UK but also in the wider global economy. Traditional sources of funding for SME’s from the banking sector became scarcer during the initial credit crunch which lead to a double dip recession, which lead to a double dip recession, indeed in the 3 months to May 2013 stock lending dropped by £4.4bn. SME’s have been widely accepted as the engine room of the UK economy and as the UK rises from the current economic recession, this sector must be financed. This presents a significant lending opportunity for LC&F to fulfil as the Banks cannot service this sector. The LC&F bond offering gives consideration to both the individual investor and SME. By utilizing private funding SME’s can access much needed funds to grow and stimulate wider economic growth but at the same time the individual investor can benefit from a much enhanced rate of return safe in the knowledge that their funds are secured against valuable property assets ... LC&F will raise funds to provide short-term fully secured debt facilities to the SME market place in the South East ... It is proposed that all SME financing will be on a fully secured basis (charge over assets at better than 65% loan to value) at terms no longer than 1 year. The initial target market will be SME’s with short term cash requirements. All sector lending will be considered, but the LC&F team will predominately focus on the, property, M&A & trade finance sector’s ... LC&F are offering to provide asset security to 150% of the value of all monies raised. For every £100 loan note issued, £150 of asset and property security will be held, for a target raise of £3m no less than £4.5m of property and other assets will be charged as security ... Investor funds will be received into an escrow account held at Buss Murton Law LLP and will only be remitted to borrowers when all loan documents and security are in place”.

C3.16 On 20.07.15, Steve Jones sent an email to D1 and D7 (cc Kerry Graham) to say that the new LCF website, brochure and application form had been completed and were ready

²⁷¹ SUR00129109-0001

²⁷² SUR00129111-0001

²⁷³ SUR00129114-0001

²⁷⁴ SUR00129115-0001

for approval.²⁷⁵ He told them that the address of the website was www.londoncapitalandfinance.co.uk and he provided log-in details. He said that the brochure could be downloaded from the website. He wanted D1 and D7 to approve these materials promptly so that D6 could “*start pushing this product tomorrow*”.

- C3.17 The email chain was forwarded to D3 and D4 on 24.07.15. D3 sent it to D8, who sent it to D2 on 27.07.15.²⁷⁶ The website and the brochure would have been familiar to D2: they were materially the same as the versions that he had seen during August 2013.²⁷⁷
- C3.18 On 21.07.15, Steve Jones provided D1 with the invoice for the balance of the sum payable in the total sum of £6,000.²⁷⁸ He said, “*If you could arrange for payment of this tomorrow morning, we will be able to put the site live in the morning and John and his sales team will be able to start selling to product*”. D1 forwarded this to D3.²⁷⁹
- C3.19 On 24.07.15, D5 and D7 chased D1 for payment of the invoice. D1 forwarded the email chain to D3 and D4 asking them to confirm that the invoice “[was] *being paid today*”.²⁸⁰
- C3.20 D3 forwarded the email chain to D8, telling him, “*When Simon gives you the ok, please can you pay Surge*”.²⁸¹ D8 forwarded the email chain to D2, asking him, “*Can you confirm that I may pay this?*”²⁸²
- C3.21 Sixteen minutes later, D2 replied, “*Fine*”.²⁸³ Accordingly, Buss Murton paid £6,000 from the SAFE/LCF client account with the narrative “*balance of account re website*”.²⁸⁴
- C3.22 D6 continued to work on LCF’s online presence. On 06.08.15, Kerry advised D1, “*Investors tend to Google the brand as a first test, to see what they can find and we need to start creating validation material. We can start by adding LCF to www.best-investment-funds.co.uk at a cost of £1k + VAT*”.²⁸⁵

²⁷⁵ MDR00016475

²⁷⁶ MDR00016477

²⁷⁷ D7D9-0000468; D7D9-0000477; D7D9-0000478;
D7D9-0000485; D7D9-0000487; D7D9-0000488;
D7D9-0000500

²⁷⁸ MDR00016475

²⁷⁹ EB0004855

²⁸⁰ MDR00016475

²⁸¹ MDR00016475

²⁸² MDR00016477

²⁸³ MDR00016477

²⁸⁴ MDR00015987 row 120

²⁸⁵ MDR00016546

C3.23 On 07.08.15, she sent him an invoice for £1,200 for online reputation management.²⁸⁶

C4 The continued role of D4 and D2 in the business of LCF

C4.1 Towards the end of July 2015, D2 and D4 agreed that D2 would manage London Trading & Development Group Limited (“London Trading”) and other companies, which would borrow monies from LCF, whilst D1 would manage LCF, which would raise monies in order to lend them to London Trading and its related companies.

C4.2 On 27.07.15, D8 drafted an agreement with the file name “*Golding SHK Agreement*” which stated, “*Andy Thomson shall be entitled to all the shares in London Capital & Finance Limited which shall enter into an agreement with LTDG to be responsible for all fund raising for LTDG and its group of companies*”.²⁸⁷

C4.3 D2, D3 and D4 signed this agreement.²⁸⁸

C4.4 Michael Peacock was under the impression in August 2015 that D1 was “*solely running [LCF] now*”.²⁸⁹ In late 2016, Kobus Huisamen, who was reviewing LCF’s governance, was concerned that D1 was running LCF by himself (“*The loan decisions are made by, executed by and payment made by Mr Thomson to borrowers. No full creditworthy assessments have been documented and no process has been shown*”).²⁹⁰

C4.5 Notwithstanding this impression, both D4 and D2 continued to play a central role in LCF’s business. However, their roles differed. D4 was in charge: D1 reported to D4 and did what D4 told him to do. D2 played a less central role in LCF’s affairs. He was consulted on LCF’s affairs and took charge when D4 was unavailable.

C4.6 D4’s role is apparent from his involvement in communications regarding LCF. On 09.09.15, Alex Lee provided a spreadsheet relating to the LCF client account to D1, who forwarded it to D7 cc D4 saying, “*There were not [sic] new funds crediting today*”.²⁹¹

²⁸⁶ MDR00016554; MDR00016556
²⁸⁷ D8-0001654; D8-0001655; MDR00016481;
MDR00209861; D1-0000884; D1-0012785
²⁸⁸ EB0139239

²⁸⁹ D2D10-00011442
²⁹⁰ MDR00002308; MDR00065480
²⁹¹ MDR00017238

- C4.7 On 22.09.15, D7 sent D4 an update of LCF’s “*pipeline*” of prospective investors.²⁹² Indeed, this information was provided to D4 before it found its way to D1: D7 forwarded the email to D4, and later that evening, D4 forwarded the information to D1, who forwarded it to Katie Maddock at LCF.
- C4.8 On 15.09.15, Kerry Graham sent an email to D1 saying that she was “*ready to do a minimum order print to provide prospective investors with hard copy brochures*”.²⁹³ D1 forwarded it to D4: “*Hi Spencer, see below, did they mention this to you today?*”²⁹⁴
- C4.9 On 17.09.15, when D1 had drafted a LCF bond prospectus, he sent it to D7 and D4 asking them to review it and to provide their comments.²⁹⁵
- C4.10 On 13.10.15, Kerry sent an email to D5 cc D7 which casts light on D4’s position:²⁹⁶

“As requested, I phoned Spencer. He had a moan about two things:

- 1. He downloaded the brochure on the website and it still has the old management team*
- 2. The website looks ‘sparse’*

I told him that Andy provided new biogs that were not detailed enough to use, I had explained this to Andy who asked me to give him examples of what I wanted, I emailed 4 examples and have chased multiple times but I am still waiting. Andy said he is too busy to get me the pictures to go with the biogs. He asked me to stop chasing him and he will do it ASAP.

I queried what he meant by ‘sparse’ because I think it looks sleek, professional and is concise in an effective way. He said his team would look over it again and give specific feedback on Thursday. I then said there was something I wanted to add but had been awaiting content from Andy since July: real case studies / customer testimonials. Spencer seemed to think this would make a big improvement and said he would chase Andy to get it to us.

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.’”

- C4.11 The continued role of both D4 and D2 is also apparent from the emails regarding a draft reinvestment letter. Some of the loans from early investors to SAFE were falling due for repayment. D1 wanted D7 and Jo Baldock to try to persuade those investors to reinvest. He emailed Jo Baldock on 02.11.15, cc D3 and D7, saying, “*It looks like most of the SAFE clients are wanting to be repaid ... is it something that can be addressed to try*

²⁹² MDR00017630
²⁹³ MDR00017375
²⁹⁴ MDR00017379

²⁹⁵ MDR00017414; MDR00017417
²⁹⁶ SUR00002637-0001

*and stop so many wanting to exit?”*²⁹⁷ On 02.11.15, Katie Maddock circulated a draft letter for clients nearing the end of terms to try to persuade them to reinvest instead of requesting repayment.²⁹⁸ On 10.11.15, Katie emailed D4 and D3, cc D1, saying that she had “*shown the letter to Simon, Elten and John all of whom are happy with it*”.²⁹⁹

C4.12 D4’s role is also apparent from the fact that D5 and Kerry consulted him about LCF’s business without reference to D1. On 11.11.15, Kerry emailed D5 to say that LCF had begun to require investors to complete an “*onerous*” self-assessment test.³⁰⁰ D5 forwarded her email to D4, explaining that “*we are required by your lawyers to have a much harder sign-up process than our (much larger) competitors ... Can we not at the very least match their sign up process for compliance? We will be committing commercial suicide to have a harder sign up than the big brands*”.³⁰¹ The next day, Kerry emailed D3 to thank him for his assistance, saying, “*I understand we can go ahead with our proposed simpler appropriateness test*”.³⁰² D1 was not involved in the conversation and knew nothing about it until after the decision had been made.³⁰³

C4.13 Similarly, when D5 was concerned about LCF’s delay in paying commissions to D6, D5 and D7 understood that D4 was the person who could resolve it. On 16.11.15, D5 asked D7, “*any news from Spencer in releasing all the comms that are tied up?*”³⁰⁴

C4.14 Sometimes D4 was mentioned in the same breath as D1. On 16.11.15, Ashleigh Newman-Jones of D6 (the son of Steve Jones) told D5 cc Kerry and Steve that the revised LCF website was “*ready for approval from Andy/Spencer [sic]*”.³⁰⁵ A proposed change in LCF’s bond rates was “*subject to Spencer and Andy’s approval*”.³⁰⁶

C4.15 At the same time, the documents indicate that D1 was subservient to D4, who had the power to overrule him. On 17.11.15, for example, D1 emailed Kerry to say that the LCF investment memorandum was not sufficiently accessible on the LCF website.³⁰⁷ Kerry forwarded his email to D5, saying, “*We need to override him and speak to Spencer*”.³⁰⁸

²⁹⁷ MDR00019845; EB0007117
²⁹⁸ MDR00019931
²⁹⁹ MDR00020959; MDR00020961
³⁰⁰ EB0007893
³⁰¹ EB0007893
³⁰² EB0007944

³⁰³ EB0007948
³⁰⁴ SUR00129980-0001
³⁰⁵ SUR00003210-0001
³⁰⁶ SUR00002626-0001
³⁰⁷ MDR00021955; MDR00021963
³⁰⁸ SUR00003280-0001

- C4.16 D4's continued role as the directing mind and will of LCF's business is also apparent from the episode relating to compound interest. On 18.11.15, Katie Maddock told D1 that a new investor, Mr [REDACTED] had "*decided to compound the interest on the 2 year term*".³⁰⁹ D1 seems to have told Katie Maddock that LCF had never offered compound interest: she emailed Jo Baldock, Steve Jones and Kerry Graham in those terms (cc D1 and D7) attaching a mark-up of the application form, highlighted in purple and annotated in manuscript with the words, "*WHO AUTHORISED THIS? What is this? We DO NOT do compound interest*".³¹⁰ Kerry replied, "*Re the compounded interest: John Russell Murphy agreed this with Spencer two weeks ago*".³¹¹ Kerry also emailed Scott Allen of D6, cc D7, explaining, "*Don't worry about Katie's comments re compound interest, I know this was agreed between JRM and Spencer and have pushed back on this point*".³¹²
- C4.17 Subsequently, D1 fell into line and proceeded to implement D4's decision: D1 emailed Kobus Huisamen on 16.01.16 to explain that "*we were initially offering simple interest but are now going to be offering compound interest*".³¹³
- C4.18 A similar tale is told by the episode regarding the role of D6's sales team. On 30.11.15, Kerry emailed D5 and D7 ("*Shocking potential issue!*") to raise a "*potential looming problem*".³¹⁴ D1 had told Kerry that D6 should be "*moving away from having a sales team*" in favour of online-only sales without the assistance of a salesperson. Kerry told D5 and D7 that this "*contradicts our last meeting with Spencer when he suggested we expand our sales team to have bigger capacity for face to face meetings*": "*I'm glad we are meeting Spencer tomorrow and can clarify/correct this madness!*";³¹⁵ "*Let's put it down to Andy being Andy and see if it actually gets raised with Spencer tomorrow*".³¹⁶
- C4.19 D4's role is also apparent from the issue of the new logo. D5 emailed D4 on 05.01.16 to say, "*Spencer, 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.** My team all think the original logo is better. Two logos attached, 1 and 2. Please choose which you prefer. Simple. If you want the new logo then we will make the changes to the site ...*" (emphasis added).³¹⁷

³⁰⁹ MDR00022125
³¹⁰ MDR00022130
³¹¹ MDR00022136; SUR00003349-0001
³¹² SUR00130016-0001
³¹³ MDR00027313

³¹⁴ EB0009131
³¹⁵ EB0009131
³¹⁶ SUR00003797-0001
³¹⁷ MDR00025912

- C4.20 The continued role of both D4 and D2 in LCF’s business is also apparent from two further matters. First, when Mark Ingham emailed D1 on 22.01.16 about amendments to LCF’s brochures, he copied the email to D4 and D2.³¹⁸ On 09.02.16, Mark Ingham emailed Rocky O’Leary to explain that D4 had called him about the new LCF brochures, demanding to know when they would be ready (“*Spence called – I said these could (subject to Roc’s confirmation) be got out by the end of the week*”).³¹⁹
- C4.21 Secondly, in early 2016, D4 and D2 were both involved in the discussions with D5 and D7 about the possibility of D6 working exclusively for LCF.
- C4.22 On 03.02.16, D8 provided D2 and D3 with a draft exclusivity agreement.³²⁰ On 05.02.16, D8 provided D2 and D4 with a third draft of the agreement. D2 sent it to D7, saying that it should “*get the ball rolling*”.³²¹ D2 also explained that “*Spence has very bad flu and he has had zero input into this after our initial instruction*”.
- C4.23 The attachment was a draft exclusivity agreement between London Group plc (defined as “*London*”) and D5/D7 (defined as “*Surge*”).³²²
- C4.24 The draft agreement defined “*Financial Products*” to mean “*an investment opportunity bond or other financial instrument issued by LCF and others to a Prospective Client who is introduced by Surge*”. It defined “*Introduction*” to mean “*the provision to LCF of the contact details of a Prospective Client who purchases a Financial Product*”.
- C4.25 The recitals stated:

“*(A) Surge has developed a method of access a large contact base are interested in investing in high quality opportunities*
(B) From proceeds of the Financial Products London is currently obliged to pay an introductory commission of 25%
(C) London has agreed to pay to Surge the sums referred to in this agreement in consideration of Surge acting exclusively for London in introducing contacts as may be agreed between the parties ...”.

³¹⁸ MDR00028240

³¹⁹ MDR00030461

³²⁰ EB0013597; EB0013598; EB0013599

³²¹ D7D9-0004835

³²² D7D9-0004836

- C4.26 Clause 2.1 provided, “*London appoints the Surge to identify Prospective Clients exclusively for LCF and others agreed with London and to make Introductions of such persons on the terms of this agreement*”.
- C4.27 Clause 2.2 provided, “*Surge shall ... act exclusively for London and use its best endeavours to make Introductions of Prospective Clients*”.
- C4.28 Clause 5.1 provided, “*London shall pay to Surge the sum of £40,000 per month together with all approved costs and expenses which are agreed on a quarterly basis*” (in addition to the commission of 25%).
- C4.29 Clauses 5.2 and 5.3 provided that Surge could also obtain 10% of London Group plc.
- C4.30 On 17.02.16, D5 replied to D2 to say, “*Thanks for the agreement and my apologies it has taken so long to reply. Would it be possible for John and I to meet with you and Spencer early next week to discuss it in person?*”³²³
- C4.31 D2 replied (cc D4 and D7) to say he would be happy to meet to discuss it.³²⁴
- C4.32 D5 sent a summary of draft exclusivity terms³²⁵ to D7:³²⁶

1. *SF will provide exclusive marketing to LG for a fixed fee of £40k per month.*
2. *LCF will pay 25% commissions for funds received by SF.*
3. *LCF will pay for 10% for commissions re-broked by SF.*
4. *If SF reach £30m funds or more within 12 months of signing of agreement they will receive 10% shareholding in LG.*
5. *If SF reach £50m funds or more within 12 months of signing of agreement they will receive 20% shareholding in LG.*
6. *SF will pay for all marketing costs of LCF.*
7. *PC has current contractual obligations to Blackmore Group and therefore any current or future arrangement with BG will remain outside of this agreement*”.

³²³ D2D10-00014833

³²⁴ D2D10-00014833

³²⁵ SUR00009048-0001; SUR00009050-0001

³²⁶ SUR00009047-0001; SUR00009049-0001

- C4.33 D5 also sent this to D6’s accountant, Mark Partridge.³²⁷ The draft exclusivity terms were due to be discussed at a meeting between D5 and D2 on 23.02.16.³²⁸
- C4.34 However, there does not seem to have been any agreement in respect of this matter. D5’s “to do” list on 11.04.16 still included “*LCF exclusivity*”.³²⁹
- C4.35 The continued role of both D4 and D2 in LCF’s business is also apparent from the fact that they were routinely consulted by D6 personnel about administrative problems which arose from time to time in connection with LCF’s dealings with investors.
- C4.36 On 07.09.17, for example, Jo Baldock provided D5 with an agenda (which included various LCF delays and administrative problems) for discussion with D4.³³⁰
- C4.37 Similarly, on 19.07.18, when there had been complaints from LCF investors about delays by LCF’s staff in Eridge in dealing with ISA transfers (“*Further to my email this morning we have since had 2 dissatisfied clients regarding their transfers*”), Jo Baldock told Katie Maddock of LCF that D6 would be “*happy to take over the process from here as we have the resources*”.³³¹ Kerry asked D7, “*Worth forwarding to Simon and Elten so they can see first-hand the issues around Eridge being slow? Or perhaps that’s too much of a dig?*”³³² D7 replied, “*Already have*”.
- C4.38 D7 emailed D5, Jo Baldock and Kerry to explain, “*The transfers will be dealt with by us very soon. Spencer is instructing Andy to pass the work to our office next week*”.³³³

C5 LCF’s initial growth

- C5.1 D5 had big ambitions for LCF,³³⁴ but he faced one major obstacle: a lack of money.³³⁵ He wanted to put on a “*growth sprint into LCF*” but he could not afford to pay for it.³³⁶
- C5.2 Accordingly, on 15.08.15, D5 emailed D4 to ask for a loan of £20,000.³³⁷

³²⁷ SUR00009051-0001; SUR00009052-0001
³²⁸ SUR00009378-0001; SUR00009379-0001
³²⁹ SUR00014423-0001
³³⁰ SUR00082929-0001; SUR00082937-0001;
 SUR00082945-0001
³³¹ MDR00160744

³³² D7D9-0007543
³³³ D7D9-0007542
³³⁴ SUR00129311-0001
³³⁵ SUR00001771-0001
³³⁶ SUR00001771-0001
³³⁷ SUR00001783-0001

- C5.3 D5 explained to D4 that a loan of £20,000 would assist D6 to pay for a sales drive: “*We would increase to five sales guys for two weeks, working from our offices in Eastbourne where they can be driven by John. They are normally commission only but we will pay them £1k each for two weeks to push hard and work from our offices. The cash would also allow us to increase their lead volumes from 4 leads a day to 15 a day for that ten day period. During this sprint we would look to put at least £2m into LCF*”.
- C5.4 D4 was “*happy to assist*”.³³⁸ He provided a loan of £25,000 to D6 on 18.08.15³³⁹ and a further loan of £25,000 to D6 on 03.09.15.³⁴⁰
- C5.5 These monies enabled D6 to ramp up its efforts to sell LCF’s bonds, which D6’s personnel pursued vigorously (“*Our immediate focus remains sales into LCF with a sense of urgency ... It is another sprint week; I expect full throttle from everyone ...*”).³⁴¹
- C5.6 D5 hoped to raise more than £1 million for LCF by the end of September 2015 (“*14 days left. You can hit £1m +. I just know it. We need another sales sprint starting Monday. All in, 15 leads per man, per day for three days each. Put a night out on at the end of the month for the boys. Something special*”).³⁴²
- C5.7 D5 told Mark Partridge that D6 would “*break £1.2m into LCF in September*”.³⁴³
- C5.8 D5 set a target of £1.5 million into LCF by the end of November 2015.³⁴⁴ Things were moving quickly; £2 million for that month was becoming “*a distinct possibility*”.³⁴⁵
- C5.9 Kerry continued to help LCF to create the right impression: “*The recurring theme we should present: substantial, safe and secure. Branding and content that ooze Financial Institution, verified by trusted, regulated, independent bodies*”.³⁴⁶

³³⁸ SUR00001810-0001
³³⁹ SUR00001814-0001
³⁴⁰ SUR00001984-0001
³⁴¹ D7D9-0001950
³⁴² SUR00129440-0001

³⁴³ SUR00129441-0001
³⁴⁴ SUR00129785-0001
³⁴⁵ EB0007959
³⁴⁶ MDR00019633; MDR00019634 page 2

- C5.10 Kerry added further email addresses to the contacts page of LCF’s website *“to create the impression that the organisation is larger than it is. This creates gravitas. Prospective investors are more likely to assume the organisation is larger and associate other perceptions with that such as safer, robust, longer term etc”*.³⁴⁷ D1 agreed.³⁴⁸
- C5.11 D5, D7 and Kerry also sought to rely on the involvement of Global Security Trustees Limited (“GST”) to reassure prospective investors that their monies would be safe.
- C5.12 GST was controlled by D8.³⁴⁹ Initially, when GST was known as Global Business Security Limited, there was a security trust deed between LCF and GST (signed by D1 on behalf of LCF and by D8 on behalf of GST).³⁵⁰ Later, after Global Business Security Limited had changed its name to GST,³⁵¹ LCF executed debentures in favour of GST³⁵² which were filed with Companies House on 13.01.16.³⁵³ (The debentures in favour of GST were backdated by D8, who told D1 that he had done this.³⁵⁴)
- C5.13 D6’s sales people used GST’s role to help them to sell LCF bonds. For example, Jo Baldock told prospective investors on 03.12.15, *“All bond holder funds are protected by an independent security trustee who manages the security held for the investor”*.³⁵⁵
- C5.14 Similarly, D7 emailed prospective investors to tell them about the *“third party”* GST³⁵⁶ *“who ensures there is always adequate security in place to protect the bondholders”*.³⁵⁷
- C5.15 D6’s sales people used the same lines when communicating with bondholders.³⁵⁸ For example, Scott Allen of D6 told prospective investors on 13.06.16, *“An independent security trustee, Global Security Trustees Ltd, holds a charge over all LCF’s assets (to include any new security LCF takes for additional loans made) which it holds on behalf of all bond holders”*.³⁵⁹ These statements were included in an LCF fact sheet, which D7 circulated to D6’s sales teams on 04.01.16³⁶⁰ and again on 14.01.16 (*“These assets are*

³⁴⁷ MDR00021862

³⁴⁸ MDR00021867

³⁴⁹ MDR00038869 page 2

³⁵⁰ MDR00000010; MDR00002139; MDR00002146

³⁵¹ MDR00020397; MDR00020398; MDR00020399

³⁵² MDR00002141; D1-0002116

³⁵³ MDR00002140; MDR00002142; MDR00028021

³⁵⁴ MDR00026940; MDR00026941; MDR00026942

³⁵⁵ MDR00023601; SUR00130207-0001

³⁵⁶ MDR00026632; MDR00026697

³⁵⁷ D7D9-0002441; D7D9-0002509; D7D9-0002479

³⁵⁸ D7D9-0002508; D7D9-0002509; D7D9-0002510;

D7D9-0002511; MDR00025991; MDR00027146;

MDR00026924

³⁵⁹ MDR00044477

³⁶⁰ SUR00004744-0001; SUR00004745-0001

*then held in the form of a debenture by Global Security Trustee's, a third party company who ensures there is always adequate security in place to protect the bond holders").*³⁶¹

C5.16 There was a live chat function on LCF's website, staffed by D6's sales people, who told prospective investors about the role of the independent trustee, among other things.³⁶²

C5.17 However, D5 and Kerry became concerned that GST had no provenance or credibility. Kerry emailed D1 on 03.12.15 to say, "*Global Security Trustees Limited don't have a website, I believe they are a new company. This is something that the more research oriented / curious investors will pick up on. It will greatly assist our sales if they build a website so they have an online presence*".³⁶³

C5.18 On 03.05.16, D5 said that he would "*chat with Andy on Thursday about setting up a good online trail of provenance to ensure when Googled it provides comfort*".³⁶⁴

C6 **BSR**

C6.1 To assist with sales of LCF's bonds, D5 set up a fake comparison website, Best Savings Rates ("BSR"), which went live on or about 17.11.15.³⁶⁵ Subsequently, he set up other fake comparison websites, including Best ISA Rates.

C6.2 The rankings of the investment products on these websites were not based on any objective evidence. Instead the websites were manipulated to put LCF in first place.³⁶⁶

C6.3 On 24.05.17, for example, Ryan Holdaway of D6 emailed D5, D7, Kerry and Steve to explain, "*Today we are moving LCF to the top of all three of our comparison websites, and Blackmore will sit in fourth on all three. The traffic that was formally [sic] being driven to Blackmore, but not converting, will now be pushed through LC&F. LC&F will naturally see an increase in traffic, leads and sales*".³⁶⁷

³⁶¹ SUR00005658-0001; SUR00005659-0001
³⁶² MDR00026689; MDR00026692; MDR00026755;
MDR00026769; MDR00026801; MDR00045709;
MDR00048347; MDR00048625; MDR00050219
³⁶³ MDR00023582

³⁶⁴ SUR00018798-0001
³⁶⁵ SUR00129986-0001; MDR00021060; EB0007969
³⁶⁶ MDR00032670; MDR00032671
³⁶⁷ SUR00075090-0001

C6.4 Similarly, on 23.11.18, Jo Baldock emailed D5 and D7 to say, “*I propose we switch LCF back to the top of BIR until the end of November*”.³⁶⁸

C6.5 One benefit of BSR and the other fake comparison sites was that members of the public could “*sign up hands free directly into LCF*” (i.e., by clicking through to LCF’s website and applying online, without any input from D6’s sales people).³⁶⁹

C6.6 Another benefit was that “*Best Savings rates will appear on Google for any search of LCF or its derivative search terms and can also be used as a direct sales aid by the sales team. This will enhance trust and therefore sales*”.

C6.7 George Carlo of D6 told D5 that BSR was a mouthwatering prospect for 2016.³⁷⁰

C7 LCF’s further growth

C7.1 Aided by LCF’s number one ranking on BSR, D6’s sales of LCF’s bonds continued to grow. By February 2016, D5 was hoping for “*70 LCF leads a day starting tomorrow*”.³⁷¹

C7.2 April 2016 was a record month for sales of LCF bonds, with 196 applications totalling £3,441,700 and cleared funds of £2,080,500.³⁷² The number for May 2016 was slightly down, with cleared funds of around £1.8 million.³⁷³

C7.3 By the end of May 2016, D6 had raised almost £7.9 million for LCF.³⁷⁴

C7.4 D5 set a new goal of £4 million per month³⁷⁵ (“*We will hit our 4 million goal, it's achievable and we are on target. Double income, bonuses all round*”).³⁷⁶

C7.5 Jo Baldock emailed her colleagues on 22.07.16 to say that (as a result of “*rinsing every last client*”) the current total of bond collections for June 2016 applications stood at £2,995,800.³⁷⁷ D5 replied, “*That is good work. 3m is a solid number*”.³⁷⁸

³⁶⁸ SUR00114170-0001

³⁶⁹ SUR00002626-0001

³⁷⁰ SUR00130512-0001

³⁷¹ D7D9-0004710

³⁷² MDR00038286

³⁷³ MDR00042549; MDR00042550

³⁷⁴ MDR00042549; MDR00042550

³⁷⁵ SUR00025841-0001

³⁷⁶ MDR00044326

³⁷⁷ MDR00050658

³⁷⁸ MDR00050663

- C7.6 July 2016 proved to be an even better month. On 24.08.16, Jo Baldock emailed her colleagues to say, *“we have had funds in today taking the total [for July] to £3,973,500 which means with Ami’s client Mr Marshall and his £30k we are over the line! Great job everyone”*.³⁷⁹ D7 replied, *“Great work everyone, 4 million!”*.³⁸⁰
- C7.7 August 2016 was even better. On 15.09.16, Jo Baldock emailed her colleagues (on the email address sales@lcaf.co.uk) to say that they were up to £4.7 million for August and might hit £5 million for August by the end of the month.³⁸¹
- C7.8 On 23.09.16, she emailed her colleagues again to say, *“And the scores on the doors this morning for August cash in are £5,007,400. BOOM! Great job everyone”*.³⁸² D5 replied, *“Excellent work, well done”*.
- C7.9 September 2016 was a slightly slower month, but £5 million remained the target for October 2016. Jo Baldock emailed her colleagues on 25.10.16 to say, *“let’s crack on and smash through the very achievable £5m for October”*.³⁸³
- C7.10 On 31.10.16, she added, *“Last day of the month today so massive push please to get those cases over the line ... We currently stand at just over £7m in applications in and £3.2m cash in. £5m is where we want to be , the leads are good and you all have plenty of data to work with”*.³⁸⁴ On 02.11.16, she emailed again, *“This morning’s cash in total £4,046,600.00. Keep up the momentum just under £1m to collect for the big £5m”*.³⁸⁵
- C7.11 January 2017 was another record month. On 25.01.17, Steve Jones told Jo Baldock that they had already hit the target of £5 million of collections for January.³⁸⁶
- C7.12 D5 emailed his team on 31.01.17 to say, *“Today has been our best day on record. January has been our best month on record. As a group, we broke £1m in sales in one day ... I expect to break this record several times in the next 30 days”*.³⁸⁷

³⁷⁹ MDR00055278
³⁸⁰ MDR00055280
³⁸¹ MDR00058126
³⁸² MDR00058991
³⁸³ SUR00051000-0001

³⁸⁴ MDR00063574
³⁸⁵ SUR00052406-0001
³⁸⁶ MDR00072502
³⁸⁷ MDR00073244

- C7.13 D7 replied, “*Great figures, the company is going from strength to strength and we are getting rich buddy!*”³⁸⁸ Jo Baldock said, “*Awesome job !*”³⁸⁹ Kerry said, “*Amazing!*”³⁹⁰
- C7.14 February 2017 was even more impressive. On 10.02.17, Aaron of D6 emailed his colleagues (sales@lcaf.co.uk) and D7 to say that “*funds in this month*” was already more than £2 million.³⁹¹ D7 replied to say that it looked like another record month.
- C7.15 Jo Baldock said, “*Stonking!*”³⁹² In the event, by the end of February 2017, the total funds received in the month stood at £6,359,400.³⁹³
- C7.16 The target for March 2017 was £7 million.³⁹⁴ D5 urged everyone to work long hours to hit this target (“*Let’s push hard*”).³⁹⁵ The target for April 2017 was £8 million.³⁹⁶
- C7.17 D6’s sales continued to grow. D6 was on track to deliver £10 million into LCF during August 2017.³⁹⁷ D5 told Jo Baldock that £12 million was a possibility for that month.³⁹⁸

C8 ISA bond

- C8.1 On 16.08.17, Kerry told Kobus Huisamen about innovative finance ISAs.³⁹⁹ He began to investigate the possibility for LCF and seems to have told D1 about this opportunity.⁴⁰⁰ D1 started the process to launch LCF’s innovative finance ISA bond. By 01.11.17, the process of putting together an ISA bond was well underway.
- C8.2 On 20.11.17, D1 told D7 that HMRC had given the necessary approval and that Lewis Silkin had finalised the ISA bond documentation.⁴⁰¹
- C8.3 The LCF ISA bond was launched at the beginning of December 2017.

³⁸⁸ SUR00062966-0001
³⁸⁹ SUR00062970-0001
³⁹⁰ SUR00062964-0001
³⁹¹ MDR00074636
³⁹² MDR00074637
³⁹³ SUR00066574-0001
³⁹⁴ SUR00069051-0001
³⁹⁵ MDR00081987 page 5

³⁹⁶ MDR00081756; MDR00081987 pages 1-2;
SUR00080244-0001
³⁹⁷ MDR00097952
³⁹⁸ MDR00097609
³⁹⁹ SUR00081389-0001
⁴⁰⁰ SUR00081389-0001; SUR00127756-0001
⁴⁰¹ SUR00086365-0001

- C8.4 D5, D7 and Kerry agreed that the LCF ISA bond would be “*put top of BSR asap*”.⁴⁰² This change was duly implemented.⁴⁰³
- C8.5 The LCF ISA bond was transformative. Sales volumes were substantial. On 04.12.17, Jo Baldock told D5 that they had already hit £1 million in applications for December.⁴⁰⁴ On 07.12.17, Aaron of D6 told Jo Baldock that they had received almost £500,000 into LCF’s payment processor, GCEN, in a single day.⁴⁰⁵ She said, “*Holy shit!*”
- C8.6 Applications for the LCF ISA bond were flooding in. On 07.12.17, Sarah Trigg sent a list of pending applications to Jo Baldock, who replied, “*Holy cow!*”⁴⁰⁶
- C8.7 On 08.12.17, Jo Baldock sent an email update to her colleagues which began with the words, “*Isa Isa baby!*”⁴⁰⁷ She said in her email, “*The scores on the doors after 5 days are: Applications in 632 totalling £4,816,419. Cash in at Gcen £3.3m ... With these figures after one week imagine what can be achieved by hitting the lists and being proactive this could mean a very nice payslip in Jan!*” Her colleague Neil expressed the view that the figures were fantastic. Jo replied, “*Mental!*”⁴⁰⁸
- C8.8 D6 was turbo-charging the LCF ISA bond by launching two new comparison websites: The ISA Experts and The Savings Experts. Chris Barnard of D6 emailed his colleagues including D5 and D7 on 01.01.18 to say, “*We are expecting the imminent launch of The ISA Experts and The Savings Experts. These will be game changers*”.⁴⁰⁹
- C8.9 On 01.01.18, Jo Baldock emailed her colleagues to say that December 2017 had been a record month with total cash in of more than £7.8 million and total applications of more than £11 million.⁴¹⁰ A few days later, she told her colleagues that there had already been a “*massive start to 2018*” with cash in of more than £2.5 million in just a few days.⁴¹¹
- C8.10 By the middle of January 2018 it seemed that LCF was going to hit £12 million to £13 million in new applications by the end of the month.⁴¹² Lead volumes were extremely

⁴⁰² SUR00087698-0001
⁴⁰³ SUR00087843-0001; SUR00087848-0001
⁴⁰⁴ MDR00115788
⁴⁰⁵ MDR00116951
⁴⁰⁶ SUR00088126-0001
⁴⁰⁷ MDR00117436

⁴⁰⁸ MDR00117437
⁴⁰⁹ MDR00119697
⁴¹⁰ SUR00089256-0001
⁴¹¹ SUR00089656-0001
⁴¹² SUR00090354-0001

high. By 21.01.18, the “cash in” figure for January 2018 was already over £8 million.⁴¹³ It seemed that January 2018 was going to be LCF’s strongest month ever.⁴¹⁴ Lead volumes for LCF’s bonds continued to be very high.

C8.11 On 23.01.18, D5 emailed D1 saying, “*I can now confirm that this month is your best yet, the ISA has elevated LC&F to new heights*”.⁴¹⁵

C8.12 This was no exaggeration: Jo Baldock emailed her colleagues on 24.01.18 to say that they had “*hit our best ever month with 5 days to go ... £10.2m cash in. 836 applications. Our target is £12m as a team so let’s sprint to the finish and smash it!*”⁴¹⁶

C8.13 On 05.02.18, she emailed her colleagues again to say that they had finished the month at £13,408,388 cash in.⁴¹⁷

C9 LCF’s continued growth

C9.1 February 2018 was another “*great month*” with cash in of £9.9 million.⁴¹⁸ March 2018 was similar, with total cash in of £9.4 million in the first three weeks.⁴¹⁹

C9.2 April 2018 was another record-breaking month, with total cash in of £19.3 million.⁴²⁰ Jo Baldock commented to her colleagues that she was “*gutted LCF didn’t hit £20m but let’s not complain we have had worse months!*”⁴²¹

C9.3 LCF launched a new five-year bond. The first sale of this took place in early June 2018.⁴²² D5 said, “*Boom!!!*”⁴²³ June also saw significant bond sales.⁴²⁴

C9.4 July 2018 saw 902 new deals totalling £12,657,904.⁴²⁵ August 2018 saw 895 new deals totalling £12,667,400.⁴²⁶ “*Well goodbye August ...it’s been emotional!*”⁴²⁷

⁴¹³ MDR00124217
⁴¹⁴ SUR00090824-0001
⁴¹⁵ MDR00124513; SUR00090972-0001
⁴¹⁶ MDR00124841
⁴¹⁷ SUR00091926-0001
⁴¹⁸ MDR00132443
⁴¹⁹ D7D9-0007183
⁴²⁰ SUR00098075-0001

⁴²¹ SUR00098075-0001
⁴²² SUR00100793-0001
⁴²³ SUR00100807-0001
⁴²⁴ MDR00153475
⁴²⁵ MDR00169135
⁴²⁶ MDR00169135
⁴²⁷ MDR00169135

C9.5 September and October 2018 also saw substantial sales. D7 told D1 on 24.10.18 that *“the completed cash in figure for the month will be nearly double compared to this time last year. We’ve come a long way, although 10m is our minimum target these days”*.⁴²⁸

C9.6 On 09.10.18, Chris Barnard of D6 told his colleagues that *“there is no reason why we cannot smash through the £10m mark ... A big push today is needed, make every call count”*.⁴²⁹ On 30.11.18, he reported that they had hit £10.5 million for the month.⁴³⁰

C10 FCA intervention

C10.1 On the morning of Monday, 10.12.18, FCA officials, accompanied by police officers, raided LCF’s premises.⁴³¹ The FCA served LCF with a supervisory notice requiring LCF to withdraw the marketing materials in respect of the LCF ISA bond.⁴³²

C10.2 The problem was that, to avoid the need for a prospectus, LCF had provided for the ISA bonds to be non-transferable. However, this feature meant that they did not qualify for tax-free status under the ISA Regulations. The FCA explained in the supervisory notice:

“In order for bonds to be qualifying investments for an innovative finance ISA they have to meet certain conditions, including that they are transferable (Regulation 8A(2) and (4) of the Individual Savings Account Regulations 1998/1870). LCF’s website makes clear that its Bonds are non-transferable. It therefore appears that LCF’s Bonds do not qualify to be held in an ISA account and that investors are being misled by being told the interest they earn will be tax free”.

C10.3 The FCA demanded information including a *“list of all individuals, firms and/or legal entities to whom LCF has provided loans”*.⁴³³

C10.4 Katie Maddock prepared a list of LCF’s borrowers and their loan balances.⁴³⁴ The total amount of LCF’s loan book stood at £236,419,277.⁴³⁵

⁴²⁸ MDR00180887
⁴²⁹ MDR00185274
⁴³⁰ MDR00192682
⁴³¹ MDR00001606 page 1

⁴³² MDR00195123
⁴³³ MDR00195096
⁴³⁴ MDR00195308; MDR00195607
⁴³⁵ MDR00195610

- C10.5 The FCA asked D1 if he had received anything back from any of the borrower companies by way of remuneration or financial benefit. D1's response to the FCA was a "*Categorical NO*".⁴³⁶ This was a lie.
- C10.6 D7 contacted D5:⁴³⁷ "*I will let you know when Andy calls*", "*Spencer didn't pick up*". That evening, D7 met with D1 and D4 to discuss the situation ("*I'm with Spencer and Andy*"). D2 was also involved in the discussions ("*SHK is discussing a matter*").
- C10.7 The FCA asked LCF to sign a voluntary requirement or VREQ. D7 sent a copy of the VREQ to D5, adding, "*We might need to transfer money out of Surge Financial and RPD in case the accounts are frozen. Both companies are noted in the document*".⁴³⁸

⁴³⁶ MDR00195589 page 6; MDR00195783 page 7
⁴³⁷ D7D9-0008147

⁴³⁸ D7D9-0008152 page 3

D. PONZI SCHEME

D1 Introduction

- D1.1 In the period after the FCA’s raid on LCF’s premises, Lewis Silkin helped LCF to deal with the FCA’s enquiries. Graham Reid of Lewis Silkin thought that the FCA considered LCF to be a Ponzi scheme.⁴³⁹ Graham Reid advised that LCF would need to provide the FCA with information about borrowers in order to address these concerns.⁴⁴⁰
- D1.2 On 07.01.19, Graham Reid was seeking further information. He wanted to understand what was payable to LCF by borrowers (and when) in order to deal with the FCA’s concern that LCF was a Ponzi scheme.⁴⁴¹ He emailed D1 to ask for an explanation.⁴⁴²
- D1.3 Katie Maddock of LCF provided Graham Reid with information on 22.01.19.⁴⁴³ She told him that she was “*working through the information requested by the FCA*”.
- D1.4 She made clear that repayments by borrowers to LCF, which LCF then used to make redemptions to bondholders, “*were funded by the borrowers refinancing their obligations by way of a drawing on their loan facility*”.⁴⁴⁴ In other words, the FCA’s suspicions were right: LCF was operating as a Ponzi scheme.
- D1.5 This was no recent development. LCF had been a Ponzi scheme from the outset. LCF advanced monies to its borrowers, which those borrowers then repaid to LCF in order to enable LCF to repay principal and pay interest to bondholders.
- D1.6 A considerable amount of detail in respect of the Ponzi scheme has been set out in: (i) the first witness statement of David Hudson dated 3 December 2021 (“Hudson 1”); (ii) the second witness statement of David Hudson dated 9 December 2021 (“Hudson 2”);

⁴³⁹ MDR00196287

⁴⁴⁰ MDR00196384

⁴⁴¹ MDR00200234; MDR00200238

⁴⁴² MDR00200451

⁴⁴³ MDR00205993

⁴⁴⁴ MDR00206074

and (ii) the third witness statement of David Hudson dated 19 May 2023 (“Hudson 3”). The following provides merely a high-level summary, with some examples.

- D1.7 D1 and D2 both knew that it was wrong to use new investors’ monies to pay returns to existing investors. This is clear from their dealings in respect of the bond issued by Lakeview UK Investments Limited (“LUKI”), a company which had used the Lakeview resort for the purpose of raising monies through a bond issue.
- D1.8 For example, on or around 29.05.15, D1 and D2 both assured Lee Smith of Project Kudos that the interest on the LUKI bond “*was being paid from outside sources and not from new investment funds which is a very important element for us to be assured on, naturally*”.⁴⁴⁵ Similarly, on 22.09.15, again in connection with the LUKI bond, Vanessa Welsh of Hypa Management asked D1 and D2 to “*confirm that the interest payments are being made out of existing profit generated by the Borrowing Company, and not through the utilisation of any new subscription monies*”.⁴⁴⁶
- D1.9 However, throughout LCF’s existence, interest and redemption payments to existing bondholders were made from new investment monies.

D2 Ponzi scheme through L&TD

- D2.1 For a substantial part of LCF’s early history, the Ponzi scheme was conducted through L&TD. (The shares in L&TD were owned by D1 on trust for D4.⁴⁴⁷)
- D2.2 As explained below, LCF loaned substantial sums to L&TD. Most of those monies were paid to D1, D3, D4 and D10 under the Lakeview SPA. A smaller part of the monies loaned by LCF to L&TD was returned to LCF as part of the Ponzi scheme.
- D2.3 On 02.10.15, D7 provided Katie Maddock and D3 with bank details for redemption payments that LCF was due to pay to Mr [REDACTED] and Mrs [REDACTED].⁴⁴⁸ On 06.10.15, LCF used monies from new investors to pay a total of £100,000 into L&TD’s Metro

⁴⁴⁵ EB0003234
⁴⁴⁶ MDR00018086

⁴⁴⁷ EB0000562; EB0000568; EB0000569; EB0000581;
EB0000582; EB0000590; EB0000591; EB0077171;
EB0139146; D2D10-00038963
⁴⁴⁸ EB0006322

account.⁴⁴⁹ L&TD immediately repaid £11,744.24 and £60,585.80 of this to LCF with the reference [REDACTED] and another £27,660 with the reference [REDACTED].⁴⁵⁰ LCF paid these monies to Mr [REDACTED] and Mrs [REDACTED] in redemption of their investments.⁴⁵¹

D2.4 Similarly, on 13.10.15, Katie Maddock chased D3 for an update on the sum of £40,111.78 which was payable by LCF to Mr and Mrs [REDACTED].⁴⁵² D3 replied, “Please ask SG & AT”.⁴⁵³ On 14.10.15, Jo Baldock emailed Katie Maddock, D1 and D4 (cc D7) about the payment to Mr and Mrs [REDACTED] which was late (“redemption was due yesterday”).⁴⁵⁴ On 16.10.15, LCF used monies from new investors to pay a total of £61,000 into L&TD’s Metro account.⁴⁵⁵ L&TD immediately repaid £40,139.73 of this to LCF with the reference [REDACTED].⁴⁵⁶ LCF then paid this money to Mr and Mrs [REDACTED].⁴⁵⁷

D2.5 Again, on 11.01.16, LCF paid monies from new investors in the total sum of £105,000 to L&TD, which repaid £100,000 to LCF with the reference [REDACTED]. LCF then paid this money to Mr [REDACTED] in redemption of his investment.⁴⁵⁸

D2.6 On 14.01.16, LCF paid monies from new investors in the total sum of £50,000 to L&TD, which repaid £17,000 and £10,070.78 to LCF with the reference [REDACTED] Repayment, and £16,604.79 with the reference [REDACTED] Repayment. LCF used these monies to pay £16,604.79 to Mr [REDACTED] with the reference Repayment and £23,000 and £4,070.68 to Mr [REDACTED] with the reference Repayment.⁴⁵⁹

D2.7 On 18.01.16, LCF paid £26,000 from new investors to L&TD which repaid £16,604.79 to LCF with the reference [REDACTED] to enable LCF to repay Mr [REDACTED].⁴⁶⁰

D2.8 The position regarding Mr [REDACTED] was similar, although the payments took place in a different order. LCF paid £3,400 in interest to Mr [REDACTED] from its operational account,

⁴⁴⁹ MDR00023557 page 4

⁴⁵⁰ MDR00023557 page 4; MDR00027104 rows 125-126

⁴⁵¹ MDR00027104 rows 125-126; MDR00034171 rows 280-284.

⁴⁵² MDR00018679

⁴⁵³ MDR00018681

⁴⁵⁴ MDR00018732

⁴⁵⁵ MDR00023557 page 5; MDR00027148 rows 207-210.

⁴⁵⁶ MDR00023557 page 5; MDR00027104 rows 112-113

⁴⁵⁷ MDR00027104

⁴⁵⁸ MDR00007224 page 9; MDR00027148 rows 11-15; MDR00031389 page 4; MDR00027104 rows 7-10; MDR00034171 rows 165-168; MDR00215815 page 45

⁴⁵⁹ MDR00007224 page 15; MDR00031389 pages 4-5; MDR00034171 rows 152-153 and 156-159

⁴⁶⁰ MDR00007225 page 1; MDR00031389 page 5; MDR00034171 rows 146 and 149; MDR00215815 page 42

before paying new investor monies in the sum of £3,400 to L&TD on 19.01.16 to enable L&TD to refund £3,400 to LCF on the same day.⁴⁶¹ Katie Maddock of LCF explained the position in this regard to D3, saying, “██████████ reinvested their funds and they just wanted their interest paid to them. We paid this out of the LCAF ops account and until today hadn’t had the money back from LTD to cover the payment”.⁴⁶²

D2.9 On 19.01.16, Katie Maddock told D1 and D3 that payments were outstanding for Mr ██████████ Mr ██████████ and Mrs ██████████.⁴⁶³ On 26.01.16, LCF paid £50,000 from new investors to L&TD, which repaid £33,244.52 to LCF with the reference ██████████ and £11,081.51 with the reference ██████████. LCF used these monies to pay £33,244.52 to Mrs ██████████ and £11,081.51 to Mr ██████████.⁴⁶⁴ On 28.01.16, LCF paid a total of £185,000 to L&TD, which repaid £33,272.47 of this to LCF with the reference ██████████. LCF used this money to pay £33,272.47 to Mr ██████████ with the reference Repayment.⁴⁶⁵

D2.10 Similarly, on 27.01.16, LCF paid £115,000 from new investors to L&TD which repaid £38,777.12 to LCF with the reference ██████████. LCF paid this sum to Mr ██████████ with the reference Repayment.⁴⁶⁶ Again, on 05.02.16, LCF paid £90,000 from new investors to L&TD which repaid £16,615.27 of this to LCF with the reference ██████████. LCF paid this money to Mr ██████████ with the reference Repayment.⁴⁶⁷

D2.11 LCF became liable to pay further redemption sums to investors called Mr ██████████ and Mr ██████████. Katie Maddock emailed D3 on 10.02.16: “***Both of these clients have called in today screaming. Andy has confirmed to me that he is happy to lend the funds to make the repayments ... With what’s going on behind the scenes at the moment we’re keen not to receive a complaint***” (emphasis added).⁴⁶⁸

D2.12 On the same day, LCF paid £70,000 from new investors to L&TD which repaid £49,856.30 to LCF with the reference ██████████ and £8,800 to LCF with the reference

⁴⁶¹ MDR00007225 page 7; MDR00031389 page 5; MDR00034171 row 144; MDR00215815 pages 42-43

⁴⁶² EB0012610

⁴⁶³ EB0012599

⁴⁶⁴ MDR00007226 page 1; MDR00031389 page 6; MDR00034171 rows 137-141; MDR00215815 page 41

⁴⁶⁵ MDR00007226 pages 13-14; MDR00032009 page 1; MDR00031389 page 7; MDR00034171 row 129; MDR00215815 page 39

⁴⁶⁶ MDR00007226 pages 3-7; MDR00031389 page 6; MDR00034171 rows 132-133; MDR00215815 page 41

⁴⁶⁷ MDR00007229 pages 5-7; MDR00034170 rows 261-263 and 266; MDR00058093 page 1; MDR00215815 page 37

⁴⁶⁸ MDR00030596

██████████. LCF used these monies to pay £49,856.30 to Mr ██████████ and £8,800 to Mr ██████████⁴⁶⁹ A further redemption payment was due and payable by LCF to Mr ██████████
On 17.02.16, LCF paid £30,000 of new investor monies to L&TD which repaid £27,697.95 to LCF which transferred this money to Mr ██████████⁴⁷⁰

D2.13 On 19.02.16, LCF paid £200,000 from new investors to L&TD which repaid £88,558.90 to LCF with the reference ██████████ LCF then transferred this sum to Mr ██████████ with the reference Repayment.⁴⁷¹

D2.14 Although redemption payments were normally addressed on an individual basis, interest payments came to be handled on a bulk basis. On 24.02.16, D1 emailed D3 to say that it “*would be useful to have an idea of the funds you will need for month end to ensure we have it covered*”.⁴⁷² On 30.03.16, Katie Maddock of LCF emailed Nicky Thomson cc D3 to say that she had just transferred £93,442.82 to L&TD,⁴⁷³ and to ask L&TD to return £39,055.07 with reference S2 Mar 16 Int, and £27,922.38 with reference S5 Mar 16 Int.⁴⁷⁴ Nicky arranged for L&TD to make these payments back to LCF,⁴⁷⁵ which used the monies to make interest payments to existing bondholders.⁴⁷⁶

D2.15 Redemptions continued to be dealt with on an individual basis. The same pattern continued in respect of redemptions payments to Mr ██████████ on 27.04.16,⁴⁷⁷ Mr ██████████ and Mr ██████████ on 27.10.16,⁴⁷⁸ and Mr ██████████ on 31.10.16.⁴⁷⁹

D3 Ponzi scheme through other entities

D3.1 The Ponzi scheme was also conducted through London Oil & Gas Limited (“LOG”), as explained in Hudson 1, at [15]-[25].

⁴⁶⁹ MDR00007229 page 15; MDR00007230 page 1; MDR00034170 rows 234-236 and 241; MDR00058093 page 1; MDR00215815 page 36
⁴⁷⁰ MDR00007230 page 11; MDR00034170 rows 208-209; MDR00215815 page 35; MDR00007343 p 7
⁴⁷¹ MDR00007231; MDR00034170 rows 186-193; MDR00215815 page 33; MDR00007343 pages 7-9
⁴⁷² MDR00031584; MDR00031586
⁴⁷³ MDR00034034
⁴⁷⁴ MDR00034040

⁴⁷⁵ MDR00034044; MDR00215815 pages 22-23; MDR00034151 page 2
⁴⁷⁶ MDR00052127 rows 290-334
⁴⁷⁷ MDR00036691; MDR00037946; MDR00007241 page 15; MDR00007242 pages 1-2; MDR00215815 page 16; MDR00037692 row 2; MDR00037946
⁴⁷⁸ MDR00007281 pages 13-15; MDR00007282 page 1; MDR00006849 pages 3-4
⁴⁷⁹ MDR00007282; MDR00006849 page 5

- D3.2 Further, the fact that LCF was conducting a Ponzi scheme via LOG was discussed in connection with a new draft facility agreement between LCF and LOG. D8 explained that “*at the moment when there are redemptions these are funded by further drawings. If no drawdowns are available, it might be difficult to make the redemption*” (emphasis added).⁴⁸⁰ D8 forwarded this email to D2.⁴⁸¹ D1 also saw it.⁴⁸²
- D3.3 By the middle of 2017, LCF was also conducting the Ponzi scheme through Global Resort Property plc (“GRP”) (formerly known as London Group plc) and Sands Equity Capital Limited (“Sands Equity”) (a company controlled by D2 and D3). In summary, LCF paid monies from new bondholders to GRP, which transferred them to Sands Equity, which repaid some of these monies to LCF in order to enable LCF to make interest and redemption payments to existing bondholders.⁴⁸³
- D3.4 On 20.07.17, D3 explained to Mark Ingham cc D2 that a payment of £300,000 to Sands Equity was for interest, redemption and bond settlements.⁴⁸⁴
- D3.5 The Ponzi scheme was also conducted through Global Advance Distributions Limited (“GAD”), a company under D8’s control,⁴⁸⁵ as explained in Hudson 1, at [26]-[34]. The bank statements confirm that LCF was paying monies from new bondholders to GAD which repaid some of those monies to LCF,⁴⁸⁶ as explained in more detail in Hudson 1.
- D3.6 The pattern changed again after September 2018, when D1 set up additional GCEN accounts for individual borrowers.⁴⁸⁷ This is explained in Hudson 1, at [35]-[45]. During October 2018, for example, LCF paid monies from new investors to each individual borrower’s account with GCEN, which returned the monies to LCF to enable LCF to make redemption and interest payments to existing bondholders.⁴⁸⁸

⁴⁸⁰ MDR00000570
⁴⁸¹ MDR00000570
⁴⁸² MDR00162231
⁴⁸³ MDR00215792
⁴⁸⁴ D2D10-00030691

⁴⁸⁵ D2D10-00040407; D2D10-00040186
⁴⁸⁶ D2D10-00000503 page 6; D2D10-00000680
⁴⁸⁷ MDR00173140; MDR00175074
⁴⁸⁸ MDR00177940; MDR00179934; MDR00181608

E. LAKEVIEW SPA

E1 Introduction

- E1.1 As explained above, LCCL had acquired the Lakeview resort for a total price of £1,609,269⁴⁸⁹ using borrowed monies.
- E1.2 The shares in LCCL (which had been held originally by Buss Murton Nominees) were transferred to D1 (76.25%) and D10 (23.75%). D1 held most of the shares registered in his name on trust for D4 and D4's family who together owned 71.25% of LCCL.⁴⁹⁰

E2 Sale of LCCL for £2,105,263.15

- E2.1 By 27.07.15 at the latest, D2 and D4 had decided to sell 100% of the shares in LCCL to a company controlled by themselves which would borrow money from LCF in order to pay the purchase price.⁴⁹¹ In this way, D1, D4 and D10 would receive monies from LCF.
- E2.2 The purchaser of LCCL was to be London Trading (formerly known as Leisure & Tourism Management Limited). D1 and D2 were directors of London Trading.
- E2.3 The "Golding SHK Agreement" circulated on 27.07.15 provided that London Trading would buy LCCL from the existing shareholders (clause 2) and that LCF would be responsible for all fundraising for London Trading (clause 6).⁴⁹²
- E2.4 D1 told D8 on 28.04.15 (cc D2 and D3), "*The SAFE funds will need to be formerly [sic] lent to L&TD before they can be utilised. When I am in the office tomorrow, I can draw up the required paperwork*".⁴⁹³ (As set out below, it was not drawn up until much later.)

⁴⁸⁹ MDR00013166; MDR00013168
⁴⁹⁰ EB0000596; EB0000597; EB0000610; EB0077171;
EB0139146; D2D10-00038963; EB0067777

⁴⁹¹ EB0139239
⁴⁹² EB0139239
⁴⁹³ EB0002372

- E2.5 The shares in London Trading were owned by International Resorts Partnership LLP (“IR Partnership”), which held them on trust for D4 (7,125 shares), D2 (2,375 shares) and D1 (500 shares).⁴⁹⁴ By selling the shares in LCCL to London Trading, the shareholders of LCCL would effectively be selling to themselves.
- E2.6 There was initially some talk of the price for the shares in LCCL being £6.75 million payable in 8 years’ time.⁴⁹⁵ However, during mid-July 2015, it was decided that the price should instead be £2,105,263.15.⁴⁹⁶
- E2.7 The total price of £2,105,263.15 would be divisible in accordance with the percentages mentioned above, with the result that D4 would receive £1,500,000, D10 would receive £500,000 and D1 would receive £105,263.15.⁴⁹⁷
- E2.8 On 22.07.15, D8 told D1 and D2 (cc D3 and D4) that he would “*send ... the various documents so that these can be printed out in readiness for completion*”.⁴⁹⁸
- E2.9 These included the draft SPA between D1/D10 and London Trading for the sale of the shares in LCCL in return for loan notes in the total sum of £2,105,163.15,⁴⁹⁹ the draft board minutes of LCCL and London Trading approving the transaction,⁵⁰⁰ and the loan note instrument with loan note certificates of £2,105,163.15.⁵⁰¹
- E2.10 On or around the same day, these documents were signed. They included the SPA between D1/D10 and London Trading for the sale of the shares in LCCL in return for loan notes in the total sum of £2,105,163.15,⁵⁰² which was signed by D1 and D10 as the vendors and by D2 on behalf of the buyer, London Trading.⁵⁰³
- E2.11 The loan notes were issued. D8 confirmed to D1 that the price of £2,105,263.15 under the Lakeview SPA had been “*satisfied by the issue of Loan Notes issued by LTDG*”.⁵⁰⁴

⁴⁹⁴ MDR00002220; EB0002053; EB0004189; EB0004190; EB0004242; EB0004246; EB0072043; EB0132731

⁴⁹⁵ D8-0000501; EB0003027

⁴⁹⁶ D8-0001352; EB0004601; D8-0001354; D8-0001355

⁴⁹⁷ EB0004601; D8-0001354; D8-0001355

⁴⁹⁸ EB0004763

⁴⁹⁹ D8-0001462; D8-0001463

⁵⁰⁰ EB0004765; EB0004768; MDR00016435

⁵⁰¹ EB0004770; EB0004771; EB0004799; EB0004800

⁵⁰² D1-0001994 pages 1-45

⁵⁰³ D1-0001994 page 45

⁵⁰⁴ MDR00016700; D8-0001722

E2.12 D8 later confirmed to D1 and D2 on 03.09.15:

*“At the end of July 2015 we carried out the first part of the restructuring of the group. The shares Lakeview Country Club Limited (LVCCCL) which owns the site at Lakeview in Cornwall were sold to London Trading & Development Group Limited (LTDG) for £2,105,263.15; this consideration was settled by the issue of Loan Notes to the Sellers”.*⁵⁰⁵

E2.13 It is not clear how the price of £2,105,163.15 could be justified.

E2.14 LCCL owned the Lakeview resort, which it had acquired for £1,609,269. Savills advised on 17.01.14 that the market value of the Lakeview resort was £4 million⁵⁰⁶ and confirmed on 17.01.15 that the market value was still £4 million.⁵⁰⁷

E2.15 GVA advised Ultimate Capital on 29.01.15 that the market value of the Lakeview resort was £2.6 million on the assumption of a sale period not exceeding 90 days.⁵⁰⁸

E2.16 GVA advised International Resorts Group plc (“IRG”) on 11.04.15 that the market value of the Lakeview resort for balance sheet purposes was £7.15 million.⁵⁰⁹ GVA also said in the same valuation report that the value would increase to £12.4 million on the completion of the redevelopment plan,⁵¹⁰ but that plan had not yet been implemented.⁵¹¹

E2.17 At the same time, however, LCCL’s liabilities included £1.4 million to Ultimate Capital and at least £3.9 million to LUKI, as well as other debts.⁵¹²

E2.18 Accordingly, if the true value of the Lakeview resort had been located at the lower end of the range set out above, the shares in LCCL would have been worthless.

E2.19 Further, and in any event, LCCL ceased to own the Lakeview resort. On 27.07.15, LCCL transferred the entirety of the Lakeview resort, with the exclusion of a plot known as the development land, to LV Resorts Limited (“LV Resorts”), which in turn transferred it to Waterside Villages plc (“Waterside Villages”).⁵¹³

⁵⁰⁵ MDR00017071; MDR00017068; MDR00017070;
MDR00017071; MDR00005885

⁵⁰⁶ MDR00014615; MDR00014871

⁵⁰⁷ MDR00016309

⁵⁰⁸ MDR00015672; MDR00016248; D2D10-00010793

⁵⁰⁹ MDR00016310; MDR00016313

⁵¹⁰ MDR00016310; MDR00016313

⁵¹¹ D2D10-00010793

⁵¹² D2D10-00010793

⁵¹³ MDR00026597; EB0014453; EB0014454

- E2.20 The development land, which became LCCL's sole asset, was charged to LUKI as security for the repayment of the money that had been loaned to LCCL by LUKI.⁵¹⁴ The sum owed by LCCL to LUKI ultimately rose to £5,531,800.⁵¹⁵ However, the development land was worth somewhere between £1 million and £1.5 million.⁵¹⁶
- E2.21 Accordingly, with effect from 27.07.15 at the latest, LCCL was insolvent on a balance sheet basis and the shares in LCCL were accordingly worthless.

E3 Draft price increase mechanism; start of payments

- E3.1 Notwithstanding (i) the fact that completion of the Lakeview SPA had already occurred on 22.07.15, when London Trading issued loan notes of £2,105,163.15, and (ii) the fact that LCCL had disposed of the Lakeview resort (with the exception of the development land) on 27.07.15, there was subsequently discussion during August 2015 about *increasing* the price payable by London Trading for the shares in LCCL.
- E3.2 On 18.08.15, D8 emailed D2 and D3 (cc D1 and D4) about the possible price increase, saying, *"I think that the major question about this is whether we amend the price being paid by LTDG for the shares in Lakeview Country Club Limited. If we are going to change that figure then I ned [sic] to know as soon as possible"*.⁵¹⁷
- E3.3 They decided not to increase the price at this point and instead sought to introduce a mechanism by which the price could be increased in future. D8 emailed D1, D2 and D3 (cc D4) on 19.08.15 to say, *"Further to discussions the other day I have amended the contract for the sale of shares in Lakeview to include provision for an uplift in price in the event of successful settlement of either the Telos matter or the Time Share leases. I attach the revised contract and would draw your attention to clause 3.4"*.⁵¹⁸ He attached a revised Lakeview SPA containing a new clause 3.4 in the following terms:⁵¹⁹

⁵¹⁴ MDR00026597; EB0014453; EB0014454; MDR00032488; MDR00053314
⁵¹⁵ MDR00055593; D2D10-00020284; D2D10-00020285; MDR00055726; MDR00059603; MDR00059602; MDR00177369

⁵¹⁶ D2D10-00029829; D1-0003194; MDR00068562; MDR00068563; MDR00068564; D8-0008149; D2D10-00028426; D2D10-00029829
⁵¹⁷ EB0005518; D8-0001740
⁵¹⁸ EB0005581
⁵¹⁹ EB0005583

“The parties acknowledge that there is a potential value in the Telos Claim and the Time Share Claim which cannot be quantified until they are each settled. Upon the settlement of each claim the parties will negotiate in good faith to agree a fair figure for the increase in the Purchase Price ...”

- E3.4 The term “*Telos Claim*” was defined to mean “*any claim made against the former directors of Telos (Isle of Man) Limited as a result of the collapse of that company*”.
- E3.5 The term “*Time Share Claim*” was defined to mean “*any claim against the owners of the time share club at Lakeview regarding the leases of Lakeview Title Limited*”.
- E3.6 The revised draft SPA containing this new clause 3.4 was not executed at this time. The subsequent history of this clause is picked up again below.
- E3.7 In the meantime, London Trading’s subsidiary, L&TD, began to borrow monies from LCF in order to make payments under the first version of the Lakeview SPA.
- E3.8 On 02.10.15, LCF paid £70,000 to L&TD’s Metro Bank account.⁵²⁰ L&TD immediately transferred this money to D4 with the reference Share Payment.⁵²¹
- E3.9 On 06.10.15, D8 prepared a further version of the Lakeview SPA, with an expanded version of clause 3.4. Whereas the first version had referred to “*the Telos Claim and the Time Share Claim*” (as set out above), this new version referred to “*the Megante Asset, the Telos Claim and the Time Share Claim*”. The term “*Megante Asset*” was defined to mean “*the agreement with Sanctuary PCC whereby the Company agreed to fund the development of a site at Megante in the Dominican Republic in consideration of a share in the proceeds of sale of that site*”.⁵²² It is unclear whether any such agreement ever existed. It does not seem to have been disclosed by any party. In any event, Sanctuary PCC had sold the shares in Tenedora 98520 on 31.08.15.⁵²³ Thus, even if Tenedora 98520 were to acquire the land in the Dominican Republic known as The Beach, it is unclear why LCCL or Sanctuary PCC would have had any involvement.

⁵²⁰ MDR00225602 pages 9-10; MDR00027148; MDR00215820 page 15

⁵²¹ MDR00072440; MDR00215820 page 15; MDR00224827 page 53; EB0007464 page 3; EB0067848 page 2

⁵²² MDR00018231

⁵²³ MDR00058041

E4 Increase of the price to £3.5 million

E4.1 In the event, the further revised draft Lakeview SPA (containing a price of £2,105,163.15 and the expanded version of clause 3.4) was not executed.

E4.2 Instead, the parties decided to amend the original sale price from £2,105,163.15 to £3,500,000. The expanded version of clause 3.4 would also be included to create the possibility of increasing the purchase price even further in the future.

E4.3 D8 emailed D2 and D3 (cc D1 and D4) on 07.10.15:

“Further to our discussions yesterday I understand that it has been agreed that the price payable for the sale of the Lakeview shares to LTDG be increased to £3,500,000 in total with the provision that the price can be further adjusted depending on the outcome of the Magante sale, the Telos Claim and the Timeshare Claim.

This means that the proceeds for each shareholder (subject to later adjustment) shall be

- 1. SG £2,493,750*
- 2. HHK £831,250*
- 3. MAT £175,000”.*⁵²⁴

E4.4 However, the revised Lakeview SPA was not immediately executed in these terms. Instead, L&TD continued to borrow monies from LCF in order to make payments under the first version of the Lakeview SPA.

E4.5 On 09.10.15, LCF advanced £50,000 to L&TD, which paid £25,000 to D4 (with the reference Share Payment) and £5,000 to D10 (with the reference Share Payment).⁵²⁵

E4.6 On 18.11.15, LCF advanced a total of £125,000 to L&TD, which paid £100,000 to D4.⁵²⁶ The total sum paid under the Lakeview SPA now stood at £200,000.⁵²⁷

⁵²⁴ EB0006449; D2D10-00011772; D8-0001903
⁵²⁵ MDR00023557 page 4; MDR00027148;
MDR00070774; MDR00072440; MDR00215820
page 13; EB0007464 page 2; EB0067848 page 3

⁵²⁶ MDR00027148; MDR00224827 page 56;
EB0067829 page 3

⁵²⁷ MDR00072440

- E4.7 In early 2016, D8 was keen for the parties to execute the revised version of the Lakeview SPA as soon as possible. He emailed D1 (cc D3 and D4) to this effect on 03.01.16.⁵²⁸
- E4.8 In his email, D8 suggested that the draft clause 3.4 could be expanded even further to include the possibility of LCCL realising value in future from the development of land in Cape Verde. By this time, a company called CV Resorts Limited (“CV Resorts”) had signed a contract with Paradise Beach – Aldeamento Turistico Algodoeiro SA (“Paradise Beach ATASA”) in respect of land in Cape Verde, as set out below.
- E4.9 The only obstacle to the implementation of this proposal was that LCCL did not have any interest in CV Resorts. D8 explained that this obstacle could easily be overcome, because a transfer of the shares in CV Resorts to LCCL could be backdated:

*“If we were to add CV Resorts as a subsidiary of this company then this would enable us to increase the purchase price further ... there should be no problem in including CV Resorts as a subsidiary of LVCCL. This could have happened at the end of March 2015 before the contract with Paradise Beach was entered into and when the company had no value”.*⁵²⁹

- E4.10 The suggestion was not taken up. Instead, at some point before 14.01.16, D1, D2 and D10 signed a revised version of the Lakeview SPA containing (i) a price of £3.5 million (in the form of loan notes issued by London Trading) and (ii) the version of clause 3.4 which referred to *“the Megante Asset, the Telos Claim and the Time Share Claim”*.⁵³⁰ Although this revised version of the Lakeview SPA was signed at some point between 03.01.16 and 14.01.16, it was backdated to 27.07.15 on the front page to make it seem that the price payable by London Trading had always been £3.5 million and that the Lakeview SPA had always contained the price adjustment mechanism in clause 3.4.

E5 L&TD facility agreement

- E5.1 Another document that needed to be signed was the facility agreement between LCF and L&TD covering L&TD’s borrowings. Although LCF had already advanced substantial sums to L&TD, there was still no signed facility agreement between these companies.

⁵²⁸ MDR00025728

⁵²⁹ MDR00025728

⁵³⁰ EB0012080; EB0012103; D2D10-00013930

- E5.2 Alex Lee of Buss Murton sent a draft of this document to D1 on 15.01.16 accompanied by a draft debenture and draft board resolutions.⁵³¹ On 20.01.16 he sent copies of the draft facility agreements to D8,⁵³² who forwarded them to D2 and D3.⁵³³
- E5.3 Notwithstanding the absence of any signed facility agreement and any security, LCF continued to advance monies to L&TD to fund payments to D4 and D10.
- E5.4 On 28.01.16, LCF paid £180,000 to L&TD.⁵³⁴ On 29.01.16, L&TD used these monies to pay £60,000 to D4 (with the reference Share Payment) and £20,000 to D10 (with the reference Share Payment).⁵³⁵ The total amount of payments under the Lakeview SPA now stood at £280,000.⁵³⁶
- E5.5 On 12.02.16, LCF paid £80,000 to L&TD.⁵³⁷ L&TD immediately paid £30,000 to D4 (reference Share Payment) and £10,000 to D10 (reference Share Payment).⁵³⁸ The running total of such payments was £320,000.⁵³⁹
- E5.6 On 18.02.16 and 19.02.16, LCF paid a total of £944,000 to L&TD.⁵⁴⁰ This had come from Pennington Manches LLP on behalf of Alan ██████'s daughter, Chloe, who was in hospital in a coma. L&TD used it to pay £575,000 to D4, £90,000 to D10 and £30,000 to D1.⁵⁴¹ This was the first time that D1 had received anything from L&TD. The total sum paid under the Lakeview SPA now stood at £1,015,000.⁵⁴²
- E5.7 There was still no signed facility agreement between LCF and L&TD. Further, LCF had no security for any of the monies that it had loaned to L&TD.⁵⁴³

⁵³¹ MDR00027236 to MDR00027239; MDR00027246 to MDR00027262; MDR00027263 to MDR00027279; MDR00027297 to MDR00027300

⁵³² MDR00028014 to MDR00028016

⁵³³ MDR00028022 to MDR00028024

⁵³⁴ MDR0007226 pages 13-15; MDR00215815 page 39; MDR00035764

⁵³⁵ MDR00031389 page 7; MDR00215815 page 39; EB0067853 page 3; MDR00070774

⁵³⁶ MDR00072440

⁵³⁷ MDR00215815 page 36; MDR00035764

⁵³⁸ MDR00070774; EB0067853 page 4; MDR00215815 page 35

⁵³⁹ MDR00072440

⁵⁴⁰ MDR00035764; MDR00215815 pages 32-34

⁵⁴¹ EB0067853 page 5; MDR00070774; MDR00220286 page 196; MDR00072440; MDR00215815 pages 32 and 34

⁵⁴² MDR00072440

⁵⁴³ MDR00031582; MDR00031767; MDR00031774; MDR00031837 to MDR00031841; MDR00031960; MDR00031961

- E5.8 On 01.03.16, LCF paid £75,000 to L&TD.⁵⁴⁴ On 04.03.16, LCF paid a further £38,926.17 to L&TD.⁵⁴⁵ L&TD immediately paid £60,000 to D4 (reference Share Payment) and £30,000 to D10 (reference Share Payment).⁵⁴⁶ The total payments under the Lakeview SPA were now £1,105,000.⁵⁴⁷
- E5.9 On 16.03.16, LCF paid £194,630.87 to L&TD.⁵⁴⁸ On 18.03.16, L&TD paid £73,681.49 of this to D4 (reference Share Payment) and £36,900 to D10 (reference Share Payment).⁵⁴⁹ The running total of payments under the Lakeview SPA now stood at £1,215,581.49.⁵⁵⁰
- E5.10 There was still no signed facility agreement between LCF and L&TD and no security. The documents were still being drafted.⁵⁵¹ Alex Lee said on 04.03.16, “*I gather some drawdown has already taken place and they should be treated as being so drawn down pursuant to the terms of the documents attached*”.⁵⁵² D8 forwarded the draft facility agreement and the draft debenture to D2 and D3.⁵⁵³
- E5.11 On 15.03.16, D8 told D2 and D3 that D1 was keen for them to agree and execute these documents.⁵⁵⁴ They did not do so immediately, although, by 24.03.16, D2 was said to have “*undertaken to execute the Facility Agreement in substantially its current form*”.⁵⁵⁵
- E5.12 On 30.03.16, D8 asked Alex Lee to prepare a final version for execution.⁵⁵⁶ Alex Lee sent the final versions to D8 (cc D1 and D2) on 30.03.16 “*for signature*”.⁵⁵⁷
- E5.13 D2 signed the documents on the same day although he asked D8 to hold them in escrow for a short while to give him an opportunity to check that he was happy with them.⁵⁵⁸

⁵⁴⁴ MDR00007232 page 7; MDR00215815 page 29; MDR00035764

⁵⁴⁵ MDR00007233; MDR00034152 page 4

⁵⁴⁶ MDR00070774; MDR00224827 page 69; EB0067814 page 3; MDR00215815 pages 27-28

⁵⁴⁷ MDR00072440

⁵⁴⁸ MDR00007234 pages 9-11; MDR00034152 page 3; MDR00215815 pages 26-27; MDR00035764

⁵⁴⁹ MDR00070774; MDR00215815 page 25

⁵⁵⁰ MDR00072440

⁵⁵¹ MDR00032258; MDR00032341 to MDR00032344

⁵⁵² MDR00032341

⁵⁵³ MDR00032356; EB0015296

⁵⁵⁴ EB0015970

⁵⁵⁵ MDR00033761; MDR00033792

⁵⁵⁶ MDR00033977

⁵⁵⁷ MDR00034010 to MDR00034013

⁵⁵⁸ MDR00034014; EB0017004

E6 L&TD security

- E6.1 The facility agreement between LCF and L&TD, which was signed by D2 on 30.03.16 (and by D1 subsequently), contained a total commitment of £25 million.⁵⁵⁹ It was accompanied by a debenture from L&TD⁵⁶⁰ and a guarantee from London Group plc.⁵⁶¹
- E6.2 However, there were insufficient assets to support L&TD's existing borrowing, let alone the maximum commitment under the facility of £25 million.
- E6.3 D8 had recorded in a note that he sent to D2 and D3 on 12.02.16, "*The major assets owned by the group consist of: (a) Lakeview Country Club in Cornwall; (b) Two undeveloped potential resorts in the Dominican Republic; (c) The rights to acquire the majority of a partly developed resort in the Cape Verde Islands*".⁵⁶²
- E6.4 But these were not assets of sufficient value. As explained above, the value of the Lakeview resort was said to lie somewhere between £2.6 million and £7.15 million.
- E6.5 The two "*undeveloped resorts in the Dominican Republic*" were The Hill and The Beach. But these were not valuable assets which could be charged in support of L&TD's borrowing. The former was held on trust for El Cupey for the benefit of the investors.⁵⁶³ The latter had not yet been acquired. As Mark Ingham reminded D1 on 15.04.16, "*we don't own land at Magante – Tenedora just has a contested purchase agreement*".⁵⁶⁴
- E6.6 The "*rights to acquire the majority of a partly developed resort in the Cape Verde Islands*" were also incapable of securing L&TD's borrowing from LCF. Although CV Resorts had entered into an agreement with Paradise Beach ATASA on 13.04.15 to acquire the partly-built Paradise Beach resort for €57 million,⁵⁶⁵ Savills had advised that the market value of this resort was only €40.55 million.⁵⁶⁶ D1 thought that CV Resorts was "*overpaying by quite a margin*".⁵⁶⁷ That conclusion was plainly correct.

⁵⁵⁹ MDR00034517

⁵⁶⁰ MDR00040911; MDR00034012

⁵⁶¹ MDR00034013

⁵⁶² EB0014453; EB0014454

⁵⁶³ D2D10-00005667 to D2D10-00005669

⁵⁶⁴ MDR00035933

⁵⁶⁵ MDR00005376; MDR00009585; D2D10-00012920; D2D10-00012921

⁵⁶⁶ MDR00017747; MDR00017750; MDR00005198; MDR00017752; D1-0000892; D1-0001122; MDR00007482; MDR00005504; MDR00007452; MDR00005372; MDR00022762; D1-0001760; MDR00024299; MDR00024302

⁵⁶⁷ EB0004668

E6.7 All that CV Resorts really owned, therefore, was an opportunity to incur an instant loss by paying €57 million for something with a market value of only €40.55 million.

E6.8 Unsurprisingly, CV Resorts failed to pay the sums due to Paradise Beach ATASA, which complained about this default.⁵⁶⁸ This dispute continued into early 2016.⁵⁶⁹

E7 Continued payments under the Lakeview SPA

E7.1 Notwithstanding the lack of assets of sufficient value to support L&TD's borrowing, LCF continued to lend monies to L&TD to make payments under the Lakeview SPA.

E7.2 On 01.04.16, LCF paid £53,144.18 to L&TD.⁵⁷⁰ On 04.04.16, L&TD paid £10,000 of this to D4 (reference Share Payment) and £10,000 to D10 (reference Share Payment).⁵⁷¹ The running total of such payments now stood at £1,235,581.49.⁵⁷²

E7.3 On 08.04.16, LCF paid £68,120.81 to L&TD,⁵⁷³ which paid £125,000 to D4, £35,000 to D10 and £10,000 to D3 on the same day.⁵⁷⁴ The reference for each payment was Share Payment. This was the first payment to D3, who began to receive payments under the Lakeview SPA notwithstanding the fact that he was never said to have been a beneficial owner of any shares in LCCL and was not a party to the Lakeview SPA. The running total of payments under the Lakeview SPA was now £1,405,581.49.⁵⁷⁵

E7.4 On 27.04.16, LCF paid £97,315.44 to L&TD.⁵⁷⁶ On 28.04.16, LCF paid a further £583,892.62 to L&TD.⁵⁷⁷ On 28.04.16, L&TD paid £30,000 to D4 and £20,000 to D10.⁵⁷⁸ The reference for each payment was Share Payment. The running total of payments under the Lakeview SPA was now £1,455,581.49.⁵⁷⁹

⁵⁶⁸ EB0008909; EB0008910

⁵⁶⁹ EB0014784; EB0014785; EB0014904

⁵⁷⁰ MDR00007237 pages 3-5; MDR00034858; MDR00215815 pages 21-22

⁵⁷¹ MDR00036871; EB0067793 page 3; MDR00070774; MDR00215815 pages 21-22

⁵⁷² MDR00072440

⁵⁷³ MDR00007238 pages 9-11

⁵⁷⁴ MDR00036871; EB0067793 page 3; MDR00215815 pages 19-21

⁵⁷⁵ MDR00072440

⁵⁷⁶ MDR00007242 page 1; MDR00215815 pages 15-16

⁵⁷⁷ MDR00007242 pages 9-11; MDR00215815 page 15

⁵⁷⁸ MDR00215815 page 15;

⁵⁷⁹ MDR00072440

- E7.5 On 13.05.16, L&TD paid a further £20,000 to D4 with the reference Share Payment, bringing the running total to £1,475,581.49.⁵⁸⁰
- E7.6 On 27.05.16, L&TD paid £20,250 to D4, £6,750 to D10 and £1,500 to D3.⁵⁸¹ The reference for each payment was Share Payment. The running total was £1,504,081.49.⁵⁸²
- E7.7 Until now, the payments under the Lakeview SPA had been funded by drawings by L&TD. In early June 2016, however, LOG made a drawdown request under its facility agreement with LCF in order to fund further payments under the Lakeview SPA.
- E7.8 More particularly, on 07.06.16, D2 authorised a drawdown request by LOG in the sum of £437,919.46, payable to London Group plc.⁵⁸³ On the same day, LCF paid this sum to London Group plc.⁵⁸⁴ This increased LOG's loan balance to £1,982,818.80.⁵⁸⁵
- E7.9 London Group plc then paid £50,000 of these monies to L&TD,⁵⁸⁶ which paid £20,000 to D4 and £20,000 to D10, each with the reference Share Payment.⁵⁸⁷ The running total of payments under the Lakeview SPA was now £1,544,081.49.⁵⁸⁸
- E7.10 On 24.06.16, LCF paid £201,500 to L&TD,⁵⁸⁹ which paid £99,000 to D4, £33,000 to D10 and £7,000 to D3, each with the reference Share Payment, bringing the running total to £1,683,081.49.⁵⁹⁰
- E7.11 On 28.06.16, LCF paid £152,250 to L&TD.⁵⁹¹ On 04.07.16, L&TD paid £182,000 to D4, £74,000 to D10, £12,000 to D3 and £12,000 to D1.⁵⁹² The reference for each payment was Share Payment. This was the first payment for D1 since the initial payment from the Darrah monies on 19.02.16. These brought the running total of payments under the Lakeview SPA to £1,963,081.49.⁵⁹³

⁵⁸⁰ MDR00042084; MDR00215815 page 12; MDR00072440

⁵⁸¹ MDR00055328 page 42; MDR00070774; MDR00224827 page 77; MDR00215815 pages 9-10

⁵⁸² MDR00072440

⁵⁸³ MDR00043609

⁵⁸⁴ MDR00007250 page 13

⁵⁸⁵ MDR00043998; MDR00044047

⁵⁸⁶ MDR00215815 page 9

⁵⁸⁷ MDR00055328 page 38; MDR00070774; MDR00215815 page 9

⁵⁸⁸ MDR00072440

⁵⁸⁹ MDR00007255 pages 1 and 5; MDR00215815 page 5

⁵⁹⁰ MDR00055328 page 31; MDR00070774; MDR00215815 page 5; MDR00072440

⁵⁹¹ MDR00007256

⁵⁹² MDR00055328 pages 26-27; MDR00070774; MDR00220286 page 225; MDR00088779; MDR00215815 pages 1-2

⁵⁹³ MDR00072440

E7.12 On 06.07.16, LCF paid £551,000 to L&TD, which paid £270,000 to D4, £90,000 to D10, £20,000 to D3 and £20,000 to D1.⁵⁹⁴ Again, the reference for each was Share Payment. The running total of payments under the Lakeview SPA was now £2,363,081.49.⁵⁹⁵

E8 Increase of the price to £6 million

E8.1 As explained above, during this period, LCF was raising £2 million to £3 million per month from the sale of bonds. As a result, there was plenty of money available in LCF's bank accounts to fund payments to D1, D3, D4 and D10 under the Lakeview SPA.

E8.2 Payments to D1, D3, D4 and D10 already totalled more than the price of £2,105,163.15 which was payable under the first version of the Lakeview SPA. But the payments to D1, D3, D4 and D10 were becoming larger and more frequent. The revised price of £3.5 million in the second version of the Lakeview SPA would soon be reached.

E8.3 In order to ensure that payments to D1, D3, D4 and D10 could continue beyond the sum of £3.5 million in the second version of the Lakeview SPA, it was agreed that the purchase price would be increased further to £4.5 million.

E8.4 On 13.07.16, D8 emailed D1 and D10 (cc D2 and D4) to say, "*I am instructed that it has been agreed that the initial price paid for your shares in Lakeview should be £4,500,000 subject to further adjustment depending on the any profits on the sale of IRG, the timeshare and Telos claims*".⁵⁹⁶ He attached a further draft of the Lakeview SPA with an initial purchase price of £4.5 million.⁵⁹⁷ Clause 3.4, facilitating a future uplift above and beyond this amount, remained unchanged, in the terms set out above.

⁵⁹⁴ MDR00007259 page 9; MDR00058496 page 8; MDR00048485; MDR00055328 page 25; MDR00070774; MDR00215810 page 38; MDR00088779 page 21; MDR00220286 page 226; MDR00072440

⁵⁹⁵ MDR00072440
⁵⁹⁶ D2D10-00018954
⁵⁹⁷ D2D10-00018955; MDR00195208

- E8.5 On 15.07.16, LCF paid £398,750 to L&TD,⁵⁹⁸ which paid £200,000 to D4, £67,000 to D10, £15,000 to D3 and £15,000 to D1.⁵⁹⁹ The reference for each was Share Payment and the running total of payments under the Lakeview SPA was now £2,660,081.49.⁶⁰⁰
- E8.6 As explained above, LCF was raising ever-increasing sums of money. It must have seemed that even an increased price of £4.5 million would soon be exceeded.
- E8.7 D1, D2 and D4 agreed that the price under the Lakeview SPA should be increased to £6 million. D8 emailed D1 and D2 (cc D4) on 20.07.16 to say, “*I understand that it has been agreed to increase the sale price to £6,000,000*”.⁶⁰¹
- E8.8 The further draft of the Lakeview SPA contained a price of loan notes of £6 million.⁶⁰² Clause 3.4, facilitating a future uplift above and beyond this amount, was again included.
- E8.9 D1 signed the documents on 20.07.16. D8 emailed D2 and D10:⁶⁰³

“Andy has signed the contract and the transfer. I attach the two signature pages that still need to be signed. Helen can you sign both and Simon can you sign on behalf of London Trading & Development Limited the contract signature page”.

- E8.10 D2 and D10 signed as well. The documents were backdated to 27.07.15 to make it seem as if the purchase price under the Lakeview SPA had always been £6 million.⁶⁰⁴

E9 Payments under the Lakeview SPA continue

- E9.1 On 20.07.16, LCF paid £242,875 to L&TD,⁶⁰⁵ which paid £117,500 to D4, £22,500 to D10, £5,000 to D3 and £5,000 to D1.⁶⁰⁶ The reference for each was Share Payment. These brought the running total of such payments to £3,260,081.49.⁶⁰⁷

⁵⁹⁸ MDR00007261; MDR00215810 page 37
⁵⁹⁹ MDR00051159; MDR00055328 page 20;
MDR00088779 page 22; MDR00220286 page 227;
MDR00215810 page 36-37
⁶⁰⁰ MDR00072440
⁶⁰¹ MDR00050334; D2D10-00019278; MDR00050335
⁶⁰² MDR00049432
⁶⁰³ MDR00050415; MDR00050416; MDR00050417;
D2D10-00019413; D2D10-00019414; D2D10-
00019467; D2D10-00019468

⁶⁰⁴ MDR00005903; MDR00005908; MDR00225501;
MDR00225502; MDR00225503
⁶⁰⁵ MDR00007262 pages 7-11; MDR00058498 pages
7-11; MDR00215810 page 33-34
⁶⁰⁶ MDR00051159; MDR00055328 page 18;
MDR00088779 page 23; MDR00220286 page 228;
MDR00215810 page 33
⁶⁰⁷ MDR00072440

- E9.2 On 22.07.16, LCF paid £246,500 to L&TD,⁶⁰⁸ which paid £51,250 to D4, £33,750 to D10, £7,500 to D3 and £7,500 to D1, each with the reference Share Payment⁶⁰⁹, bringing the running total to £3,360,081.49.⁶¹⁰
- E9.3 On 27.07.16, LCF paid another £246,500 to L&TD.⁶¹¹ On 28.07.16, LCF paid £145,000 to L&TD.⁶¹² On 28.07.16, L&TD paid £285,000 to D4 with the reference Share Payment⁶¹³, bringing the running total to £3,645,081.49.⁶¹⁴
- E9.4 On 09.08.16, LCF paid another £246,500 to L&TD,⁶¹⁵ which paid £20,000 to D4, £115,000 to D10 and £21,111.10 to D3.⁶¹⁶ On 10.08.16, L&TD paid £21,111.10 to D1.⁶¹⁷ Each payment had the reference Share Payment. The running total of such payments now stood at £3,822,303.71.⁶¹⁸
- E9.5 On 12.08.16, LCF paid another £246,500 to L&TD,⁶¹⁹ which paid £168,750 to D4, £56,250 to D10, £12,500 to D3 and £12,500 to D1.⁶²⁰ Each had the reference Share Payment. The running total was now £4,072,303.71.⁶²¹
- E9.6 On 19.08.16, LCF paid £500,250 to L&TD,⁶²² which paid £270,000 to D4, £90,000 to D10, £20,000 to D3 and £20,000 to D1, again with the references Share Payment⁶²³, bringing the running total to £4,472,303.71.⁶²⁴
- E9.7 On 26.08.16, LCF paid another £246,500 to L&TD,⁶²⁵ which paid £168,750 to D4, £56,250 to D10, £12,500 to D3 and £12,500 to D1, each with the reference Share

⁶⁰⁸ MDR00007263 pages 1-5; MDR00058502 pages 1-3; MDR00215810 pages 31-32

⁶⁰⁹ MDR00051159; MDR00220286 page 228; MDR00088779 page 23; MDR00215810 page 31; MDR00055328 page 18

⁶¹⁰ MDR00072440

⁶¹¹ MDR00007263 pages 13-16; MDR00007264; MDR00058502 pages 7-9; MDR00007264; MDR00215810 page 30

⁶¹² MDR00007264 pages 1-3; MDR00058502 pages 9-10

⁶¹³ MDR00224827 page 86; MDR00215810 page 28

⁶¹⁴ MDR00072440

⁶¹⁵ MDR00007267; MDR00058503; MDR00215810 pages 25-26

⁶¹⁶ MDR00054567; MDR0005532; MDR0007077; MDR00215810 page 2; MDR0007244; MDR00072440

⁶¹⁷ MDR00007267; MDR00058503; MDR00054567; MDR00088779; MDR00215810 page 24; MDR00220286 page 233

⁶¹⁸ MDR00072440

⁶¹⁹ MDR00007268; MDR00058503; MDR00215810 pages 22-23

⁶²⁰ MDR00054567; MDR00088779; MDR00220286 page 233; MDR00055328; MDR00070774; MDR00215810 pages 22-23; MDR00072440

⁶²¹ MDR00072440

⁶²² MDR00007269; MDR00058505; MDR00215810 page 21

⁶²³ MDR00055328; MDR00057297; MDR00088779; MDR00215810 pages 21-22; MDR00220286 page 234

⁶²⁴ MDR00072440

⁶²⁵ MDR00007271; MDR00058506; MDR00215810 pages 19-20

Payment.⁶²⁶ The running total of payments to D1, D3, D4 and D10 under the Lakeview SPA now stood at £4,722,303.71.⁶²⁷

E9.8 On 30.08.16, LCF paid £148,625 to L&TD.⁶²⁸ On 31.08.16, L&TD paid £118,125 to D4, £39,375 to D10, £8,750 to D3 and £8,750 to D1, each with the reference Share Payment.⁶²⁹ The running total was now £4,897,303.71.⁶³⁰

E9.9 On 02.09.16, LCF paid £199,375 to L&TD,⁶³¹ which paid £20,000 to D4 and £20,000 to D10.⁶³² Again the reference for each payment was Share Payment. The running total under the Lakeview SPA now stood at £4,937,303.71.⁶³³

E9.10 On 08.09.16, LCF paid £250,125 to L&TD,⁶³⁴ which paid £135,000 to D4, £45,000 to D10, £10,000 to D3 and £10,000 to D1, each with the reference Share Payment.⁶³⁵ The running total under the Lakeview SPA was now £5,137,303.71.⁶³⁶

E9.11 On 09.09.16, D1 sent a text message to D3 to say that he had “*just looked at the overnight collections report*” and would “*be able to send over £200,000-ish this afternoon*”.⁶³⁷ D1 sent another text message to D3 to say that he would “*send just £203,000 in total today*”.

E9.12 On the same day, LCF paid £203,000 to L&TD,⁶³⁸ which paid £135,000 to D4, £45,000 to D10, £10,000 to D3 and £10,000 to D1.⁶³⁹ The reference for each was again Share Payment and the running total of such payments now stood at £5,337,303.71.⁶⁴⁰

⁶²⁶ MDR00057297; MDR00088779; MDR00220286 page 235; MDR00070774; MDR00072440; MDR00215810 pages 18-19
⁶²⁷ MDR00072440
⁶²⁸ MDR00058506 pages 9-10; MDR00057297 pages 9-10; MDR00215810 pages 18-19
⁶²⁹ MDR00057297; MDR00088779 page 31; MDR00220286 page 236; MDR00070774; MDR00215810 page 17
⁶³⁰ MDR00072440
⁶³¹ MDR0007273; MDR00215810 page 16
⁶³² MDR00057297; MDR00070774; MDR00215810 page 15

⁶³³ MDR00072440
⁶³⁴ MDR0007274; MDR00215810 page 15
⁶³⁵ MDR00059523; MDR00088777 page 3; MDR00220286 page 239; MDR00070774; MDR00215810 page 15
⁶³⁶ MDR00072440
⁶³⁷ EB0028747
⁶³⁸ MDR0007274; MDR00215810 pages 13-14
⁶³⁹ MDR00059523; MDR00088777 page 3; MDR00220286 page 239; MDR00070774; MDR00215810 pages 13-14
⁶⁴⁰ MDR00072440

- E9.13 On 16.09.16, LCF paid £659,750 to L&TD,⁶⁴¹ which paid £303,750 to D4, £101,250 to D10, £22,500 to D3 and £22,500 to D1.⁶⁴² Again the references were Share Payment. The running total was now £5,787,303.71.⁶⁴³
- E9.14 On 23.09.16, LCF paid £402,375 to L&TD.⁶⁴⁴ On 26.09.16, L&TD paid £199,125 to D4, £66,375 to D10, £14,750 to D3 and £14,750 to D1.⁶⁴⁵ Again, the references were Share Payment.
- E9.15 These brought the total sum paid under the Lakeview SPA to a grand total of £6,082,303.71.⁶⁴⁶ Thus, within just over two months of the amendment of the Lakeview SPA to increase the initial purchase price to £6 million, the payments to D1, D3, D4 and D10 had broken through that figure.
- E9.16 There had been no subsequent increase in the purchase price under clause 3.4 of the Lakeview SPA and therefore there was nothing that could even ostensibly justify any further payments. But still the payments to D1, D3, D4 and D10 continued.
- E9.17 On 30.09.16, LCF paid another £203,000 to L&TD,⁶⁴⁷ which paid £135,000 to D4, £45,000 to D10, £10,000 to D3 and £10,000 to D1.⁶⁴⁸ Again the references were Share Payment. The running total now stood at £6,282,303.71.⁶⁴⁹
- E9.18 On 07.10.16, LCF paid £380,625 to L&TD,⁶⁵⁰ which paid £168,750 to D4, £56,250 to D10, £12,500 to D3 and £12,500 to D1.⁶⁵¹ Again the reference was Share Payment. The running total of such payments to D1, D3, D4 and D10 now stood at £6,532,303.71.⁶⁵²

⁶⁴¹ MDR00007275; MDR00007276; MDR00058565; MDR00215810 page 13

⁶⁴² MDR00059523; MDR00088777 page 5; MDR00220286 page 241; MDR00070774; MDR00215810 page 13

⁶⁴³ MDR00072440

⁶⁴⁴ MDR00215810 page 12

⁶⁴⁵ MDR00059523; MDR00088777 page 6; MDR00220286 page 242; MDR00070774; MDR00215810 pages 11-12

⁶⁴⁶ MDR00072440

⁶⁴⁷ MDR00007277 pages 7-9; MDR00215810 page 9

⁶⁴⁸ MDR00063029; MDR00088777 page 7; MDR00220286 page 243; MDR00070774; MDR00215810 page 9

⁶⁴⁹ MDR00072440

⁶⁵⁰ MDR00007279 page 3; MDR00215810 page 6

⁶⁵¹ MDR00063029; MDR00220286 page 245; MDR00088777 page 9; MDR00070774; MDR00215810 page 6

⁶⁵² MDR00072440

- E9.19 On 14.10.16, LCF paid £395,125 to L&TD,⁶⁵³ which paid £270,000 to D4, £90,000 to D10 and £20,000 to D3, followed by £20,000 to D1 on 17.10.16.⁶⁵⁴ The reference for each was again Share Payment and the running total now stood at £6,932,303.71.⁶⁵⁵
- E9.20 On 21.10.16, LCF paid £300,875 to L&TD.⁶⁵⁶ On the same day, L&TD paid £202,500 to D4, £67,500 to D10, £15,000 to D3 and £15,000 to D1, each with the reference Share Payment.⁶⁵⁷ The running total of such payments now stood at £7,232,303.71.
- E9.21 By this point in time, LCF had paid a total of £13,905,010 to L&TD.⁶⁵⁸ In other words, as matters stood at the end of 21.10.16, a little over half of the total amount paid by LCF to L&TD had been transferred by L&TD to D1, D3, D4 and D10.
- E9.22 On 04.11.16, LCF paid £750,375 to L&TD,⁶⁵⁹ which paid £211,040.01 to D4, £166,000 to D10 and £22,388.89 to D3, each with the reference Share Payment,⁶⁶⁰ bringing the running total of such payments to £7,631,732.61.⁶⁶¹
- E9.23 On 11.11.16, LCF paid £507,500 to L&TD,⁶⁶² which paid £270,000 to D4, £270,000 to D10, £30,000 to D3 and £30,000 to D1, each with the reference Share Payment,⁶⁶³ bringing the running total of such payments to £8,231,732.61.⁶⁶⁴
- E9.24 On 18.11.16, LCF paid £940,350 to L&TD,⁶⁶⁵ which paid £360,000 to D4, £360,000 to D10, £40,000 to D3 and £40,000 to D1, each with the reference Share Payment.⁶⁶⁶ The running total of such payments to D1, D3, D4 and D10 now stood at £9,031,732.61.⁶⁶⁷
- E9.25 On 16.12.16, LCF paid £630,750 to L&TD.⁶⁶⁸ On 19.12.16, L&TD paid £100,000 to D4, £100,000 to D10 and £15,000 to D3, each with the reference Share Payment.⁶⁶⁹ These payments increased the running total of such payments to £9,246,732.61.⁶⁷⁰

⁶⁵³ MDR00007280 page 1; MDR00215810 page 5
⁶⁵⁴ MDR00063029; MDR00088777 page 11;
MDR00070774; MDR00220286 page 247;
MDR00215810 page 5
⁶⁵⁵ MDR00072440
⁶⁵⁶ MDR00007280 page 15; MDR00215810 page 4
⁶⁵⁷ MDR00070774; MDR00220286 page 247;
MDR00088777 page 11; MDR00215810 pages 3-4
⁶⁵⁸ MDR00063033
⁶⁵⁹ MDR00007283 page 13; MDR00215809 page 22
⁶⁶⁰ MDR00070774; MDR00215809 pages 21-22
⁶⁶¹ MDR00072440

⁶⁶² MDR00007284 page 13; MDR00215809 page 20
⁶⁶³ MDR00070774; MDR00088777 page 15;
MDR00220286 page 251; MDR00215809 page 20
⁶⁶⁴ MDR00072440
⁶⁶⁵ MDR00007286 page 3; MDR00215809 page 18
⁶⁶⁶ MDR00070774; MDR00220286 page 251;
MDR00088777 page 15; MDR00215809 pages 17-18
⁶⁶⁷ MDR00072440
⁶⁶⁸ MDR00007290 page 11; MDR00215809 page 9
⁶⁶⁹ MDR00215809 page 9
⁶⁷⁰ MDR00072440

- E9.26 On 22.12.16, LCF paid £228,375 to L&TD.⁶⁷¹ On 03.01.17, L&TD paid £20,000 to D4 and £20,000 to D10, each with the reference Share Payment,⁶⁷² bringing the running total to £9,286,732.61.⁶⁷³
- E9.27 On 05.01.17, LCF paid £598,125 to L&TD.⁶⁷⁴ On 06.01.17, LCF paid £210,250 to L&TD,⁶⁷⁵ which paid £261,000 to D4, £261,000 to D10, £29,000 to D3 and £44,000 to D1, each with the reference Share Payment,⁶⁷⁶ bringing the running total of such payments to £9,881,732.61.⁶⁷⁷
- E9.28 On 10.01.17, LCF paid a further sum of £195,750 to L&TD.⁶⁷⁸ By this point, LCF had paid a total of £19,617,285 to L&TD.⁶⁷⁹
- E9.29 Under the terms of the facility agreement, L&TD's liability to LCF was grossed up to include the 25% commissions paid to D6 and LCF's lending fee of 2%.
- E9.30 The gross sum owing by L&TD to LCF stood at £27,055,547.⁶⁸⁰ This was significantly in excess of the limit of £25 million in the facility agreement between LCF and L&TD.
- E9.31 Notwithstanding this, LCF paid a further £645,250 to L&TD on 13.01.17.⁶⁸¹ L&TD used this money to pay £254,250 to D4, £254,250 to D10, £28,250 to D3 and £28,250 to D1 on the same day, each with the reference Share Payment,⁶⁸² bringing the running total of such payments to £10,446,732.61.⁶⁸³

E10 Backdated L&TD facility increase letter

- E10.1 On 16.01.17, D1 sought to address the fact that L&TD had significantly exceeded its facility limit. He provided D8 with a draft letter from L&TD requesting an increase of

⁶⁷¹ MDR00007291 page 11; MDR00215809 page 8

⁶⁷² MDR00070774; MDR00215809 pages 6-7

⁶⁷³ MDR00072440

⁶⁷⁴ MDR00007293 page 7; MDR00215809 page 6

⁶⁷⁵ MDR00007293 pages 9-13; MDR00215809 page 4

⁶⁷⁶ MDR00070774; MDR00220286 page 260;

MDR00088777 page 24; MDR00215809, pages 5-6

⁶⁷⁷ MDR00072440

⁶⁷⁸ MDR00007294 pages 5-7; MDR00215809 pages 2-3

⁶⁷⁹ MDR00071309

⁶⁸⁰ MDR00071309

⁶⁸¹ MDR00007295 page 3; MDR00215809 page 1

⁶⁸² MDR00215809 page 1; MDR00088777 page 26;

MDR00220286 page 262;

⁶⁸³ MDR00072440

L&TD's loan facility limit to £30 million.⁶⁸⁴ It was undated and contained blank space for the addition of the current values of "*the company's portfolio of assets*": "*Waterside*" (i.e., the Lakeview resort), "*El Cupey*" (i.e., The Hill) and "*Magante*" (i.e., The Beach).

E10.2 D1 also provided D8 with a draft default notification letter in respect of L&TD's late filing of its accounts. This was dated "*October 25th2916* [sic]" in typescript.

E10.3 D8 amended the facility increase letter by adding the following asset values: "*Waterside, £17,500,000; El Cupey, £30,000,000; Magante, £14,000,000*". He sent this to Nicola Thomson asking her to ensure that it was signed by D2 and dated 20.12.16.⁶⁸⁵

E10.4 D8 also asked Nicola Thomson to arrange for D2 to sign the default notification letter in respect of L&TD's late filing of its accounts and to backdate this to 25.10.16.⁶⁸⁶

E10.5 Shortly, Nicola Thomson emailed D1 (cc D2 and D8) attaching a scanned version of the facility increase letter signed by D2 and backdated to 20.12.16, along with a signed version of the default notification letter which had been backdated to 25.10.16.⁶⁸⁷

E10.6 The date 20.12.16 on the facility increase letter appears to have been chosen deliberately in order to make it look as though L&TD and LCF had agreed an increase to the facility limit *before* the borrowing of L&TD had exceeded the existing limit.

E11 Further payments under the Lakeview SPA

E11.1 On 20.01.17, LCF paid £624,950 to L&TD,⁶⁸⁸ which paid £247,500 to D4, £247,500 to D10, £27,500 to D3 and £27,500 to D1, each with the reference Share Payment,⁶⁸⁹ bringing the running total to £10,996,732.61.⁶⁹⁰

E11.2 By this point, LCF had paid a total of £19,617,285 to L&TD,⁶⁹¹ meaning that 56% of the total paid by LCF to L&TD had been transferred by L&TD to D1, D3, D4 and D10.

⁶⁸⁴ MDR00071397; MDR00071398; MDR00071400

⁶⁸⁵ D8-0008775; D8-0008776

⁶⁸⁶ D8-0008772; D8-0008773

⁶⁸⁷ MDR00071455; MDR00071456; D8-0008779

⁶⁸⁸ MDR00007295; MDR00073009; MDR00007296;

MDR00073010; MDR00215808 page 42

⁶⁸⁹ MDR00215808 pages 41-42; MDR00220286 page 264; MDR00088777 page 28

⁶⁹⁰ MDR00072440

⁶⁹¹ MDR00073010

- E11.3 On 25.01.17, LCF paid £475,545 to L&TD.⁶⁹² On 27.01.17, L&TD paid £20,000 to D4 and £20,000 to D10.⁶⁹³ On 30.01.17, LCF paid £20,375 to L&TD.⁶⁹⁴ On 01.02.17, LCF paid £529,650 to L&TD.⁶⁹⁵ By this point, L&TD owed £30,409,547 to LCF and had therefore borrowed in excess of the extended £30 million facility limit.⁶⁹⁶
- E11.4 On 02.02.17, L&TD paid £20,000 to D4 and £20,000 to D10.⁶⁹⁷ (D10 then paid a total of £40,000 to L&TD with the reference Refund, before L&TD paid a total of £40,000 to D2 with the reference Drawings.⁶⁹⁸)
- E11.5 On 06.02.17, LCF paid £101,500 to L&TD.⁶⁹⁹ On 08.02.17, LCF paid £152,250 to L&TD,⁷⁰⁰ which paid £6,000 to D3 and £6,000 to D1 with the reference Share Payment.⁷⁰¹ L&TD also paid £54,000 to D2 with the reference Drawings.⁷⁰²
- E11.6 On 09.02.17, LCF paid £601,750 to L&TD,⁷⁰³ which paid £279,000 to D4, £225,000 to D2, £25,000 to D3 and, £25,000 to D1, each with the reference Share Payment.⁷⁰⁴
- E11.7 On 17.02.17, LCF paid £770,900 to L&TD,⁷⁰⁵ which paid £303,750 to D4, £303,750 to D10, £33,750 to D3 and £45,000 to D1, each with the reference Share Payment.⁷⁰⁶ The running total of such payments now amounted to £10,849,500.⁷⁰⁷
- E11.8 On 23.02.17, LCF paid £121,100 to L&TD.⁷⁰⁸ On 24.02.17, LCF paid £453,125 to L&TD,⁷⁰⁹ which paid £180,000 to D4, £180,000 to D10, £20,000 to D3 and £45,000 to D1, each with the reference Share Payment.⁷¹⁰

⁶⁹² MDR00007296 page 9; MDR00215808 page 40
⁶⁹³ MDR00215808 page 39; D2D10-00000426 page 1
⁶⁹⁴ MDR00007297 page 9; MDR00215808 page 38
⁶⁹⁵ MDR00007298 page 1; MDR00215808 page 38
⁶⁹⁶ MDR00073689
⁶⁹⁷ MDR00215808 pages 36-37; MDR00076431 page 3
⁶⁹⁸ MDR00097577; MDR00215808 pages 36-37
⁶⁹⁹ MDR00007299 pages 11-13; MDR00215808 page 36
⁷⁰⁰ MDR00007300 pages 3-5; MDR00215808 page 35
⁷⁰¹ MDR00076431 pages 2-3; MDR00220286 page 268; MDR00215808 page 35
⁷⁰² MDR00097577 page 1; MDR00215808 page 35

⁷⁰³ MDR00007300 page 9
⁷⁰⁴ MDR00076431 page 2; MDR00088777; MDR00220286 page 268; MDR00097577 page 3
⁷⁰⁵ MDR00007302 pages 7-11; MDR00215808 page 32
⁷⁰⁶ MDR00076431 page 1; MDR00088777 page 34; MDR00215808 pages 31-32; MDR00220286 page 269
⁷⁰⁷ D2D10-00024827; D2D10-00024828
⁷⁰⁸ MDR00007303 pages 7-11; MDR00215808 page 30
⁷⁰⁹ MDR00007303 page 15; MDR00215808 page 29
⁷¹⁰ MDR00088777 page 35; MDR00215808 pages 28-29; MDR00220286 page 270

- E11.9 On 28.02.17, LCF paid £101,500 to L&TD.⁷¹¹ On 01.03.17, LCF paid £450,225 to L&TD,⁷¹² which paid £180,000 to D3, £180,000 to D10, £20,000 to D3 and £20,000 to D1, each with the reference Share Payment.⁷¹³
- E11.10 On 02.03.17, L&TD paid £20,000 to D4 and £20,000 to D10, each with the reference Share Payment.⁷¹⁴
- E11.11 On 03.03.17, LCF paid £215,150 to L&TD.⁷¹⁵ As a result, L&TD owed £34.7 million to LCF on a grossed-up (i.e., fee-inclusive) basis, having received £25.2 million net (i.e., in cash).⁷¹⁶ L&TD paid £25,000 to D1 (reference Share Payment).⁷¹⁷
- E11.12 On 06.03.17, D1 emailed D2 and D3 to say, “*LTD is way past its original limits and has exceeded its temporary increased limit so we will be asked some uncomfortable questions when we come to be audited which will only get more in depth the greater the overdrawn figure becomes*”.⁷¹⁸ But still the payments continued.
- E11.13 On 09.03.17, LCF paid £500,250 to L&TD,⁷¹⁹ which paid £225,000 to D4, £225,000 to D10, £25,000 to D3 and £50,000 to D1, each with the reference Share Payment.⁷²⁰
- E11.14 On 14.03.17, LCF paid £9,996 to L&TD.⁷²¹ On 16.03.17, LCF paid £101,500 to L&TD,⁷²² which paid £25,000 to D1 with the reference Share Payment.⁷²³ On 21.03.17, LCF paid a further £102,132.55 to L&TD.⁷²⁴ On 23.03.17, LCF paid £14,700 to L&TD.⁷²⁵ On 24.03.17, L&TD paid £25,000 to D1 with the reference Share Payment.⁷²⁶
- E11.15 On 27.03.17, LCF paid £917,850 to L&TD,⁷²⁷ which paid £360,000 to D4, £360,000 to D10, £40,000 to D3 and £40,000 to D1, each with the reference Share Payment.⁷²⁸

⁷¹¹ MDR00007304 pages 7-9; MDR00215808 page 28
⁷¹² MDR00007304 page 15; MDR00215808 page 27
⁷¹³ MDR00088777 page 36; MDR00215808 page 26; MDR00220286 page 271
⁷¹⁴ MDR00215808 page 25
⁷¹⁵ MDR00006913 page 5; MDR00215808 page 25
⁷¹⁶ MDR00077921
⁷¹⁷ MDR00088777 page 37; MDR00215808 page 25
⁷¹⁸ MDR00077754
⁷¹⁹ MDR00006914 page 5; MDR00215808 page 24
⁷²⁰ MDR00088777 page 38; MDR00215808 page 24; MDR00220286 page 274

⁷²¹ MDR00006914 page 19; MDR00215808 page 22
⁷²² MDR00006914 page 25; MDR00215808 page 22
⁷²³ MDR00088777 page 39; MDR00215808 page 22; MDR00220286 page 275
⁷²⁴ MDR00006915 pages 5-7; MDR00215808 pages 20-22
⁷²⁵ MDR00006916 page 3; MDR00215808 page 20
⁷²⁶ MDR00088777 page 39; MDR00215808 page 20; MDR00220286 page 276
⁷²⁷ MDR00006916 page 9; MDR00215808 page 20
⁷²⁸ MDR00088777 page 39; MDR00215808 page 20; MDR00220286 page 277

- E11.16 On 29.03.17, LCF paid £700,350 to L&TD.⁷²⁹ On 30.03.17, L&TD paid £20,000 to D4, £20,000 to D10 and £25,000 to D1, each with the reference Share Payment.⁷³⁰
- E11.17 On 31.03.17, LCF paid another £101,500 to L&TD,⁷³¹ which paid £90,000 to D4, £90,000 to D10, D10,000 to D3 and £10,000 to D1, with the reference Share Payment.⁷³²
- E11.18 On 05.04.17, LCF paid £400,200 to L&TD,⁷³³ which owed £39 million gross to LCF having received £28.3 million net.⁷³⁴ On the same day, L&TD paid £180,000 to D4, £180,000 to D10, £20,000 to D3 and £20,000 to D1 with the reference Share Payment.⁷³⁵
- E11.19 On 07.04.17, LCF paid £420,500 to L&TD,⁷³⁶ which paid £126,000 to D4, £126,000 to D10, £14,000 to D3 and £39,000 to D1, each with the reference Share Payment.⁷³⁷ On 11.04.17, LCF paid £355,075 to L&TD.⁷³⁸ On 12.04.17, LCF paid £5,400 to L&TD.⁷³⁹ On 13.04.17, LCF paid another £50,750 to L&TD,⁷⁴⁰ which now owed £40.2 million gross to LCF having received £29.2 million net.⁷⁴¹ On the same day, L&TD paid £25,000 to D1 with the reference Share Payment.⁷⁴²

E12 Discussions about a further price increase

- E12.1 As explained above, the price in the third version of the Lakeview SPA was £6 million, but the payments to D1, D3, D4 and D10 were significantly in excess of this sum.
- E12.2 At this point, there was a conversation between D2, D3, D4 and D8 about deploying the mechanism in clause 3.4 in order to justify the amount of monies that had been paid to D1, D3, D4 and D10. On 18.04.17, D8 emailed D2 and D3 (cc D4):⁷⁴³

“Further to our conversation today I confirm that I will draw up a memorandum between the parties to sale of LVCCL that in accordance with the terms of the

⁷²⁹ MDR00006917 page 1; MDR00215808 page 18
⁷³⁰ MDR00088777 page 40; MDR00215808 pages 16-17; MDR00220286 page 277
⁷³¹ MDR00006917 page 11; MDR00215808 page 15
⁷³² MDR00088777 page 40; MDR00215808 page 15; MDR00220286 page 278
⁷³³ MDR00007306 page 5; MDR00215808 page 15
⁷³⁴ MDR00082830
⁷³⁵ MDR00085829; MDR00088777 page 40; MDR00215808 pages 13-14; MDR00220286 page 279

⁷³⁶ MDR00007307 page 1; MDR00007307; MDR00215808 page 13
⁷³⁷ MDR00085829; MDR00215808 page 13; MDR00220286 page 280
⁷³⁸ MDR00007207 pages 9-11; MDR00215808 page 11
⁷³⁹ MDR00007207 page 15; MDR00215808 page 11
⁷⁴⁰ MDR00007308 page 3; MDR00215808 pages 9-10
⁷⁴¹ MDR00083717
⁷⁴² MDR00085829; MDR00215808 page 11; MDR00220286 page 281
⁷⁴³ EB0043657; D8-0013127

contract the sale price of the shares is being adjusted to increase it to £13.85M to allow for the following factors:

1.	<i>Value of Magante</i>	<i>£4M</i>
2.	<i>Telos Claim</i>	<i>£1M</i>
3.	<i>Time share Lodges</i>	<i>£2.85M</i>
4.	<i>Original price</i>	<i>£6M</i>
	<i>Total</i>	<i>£13.85M</i> ".

E12.3 D8 sent a further email to D1, D2, D3 and D4 ("*Revision of the price for sale of Lakeview*"): ⁷⁴⁴

"Further to recent discussions here is a variation agreement to establish the price being paid for the shares in Lakeview Country Club for your approval. I could add to it the division of the additional purchase price if that is helpful".

E12.4 The attached draft agreement provided as follows: ⁷⁴⁵

"BACKGROUND

(A) Seller and Buyer are party to an agreement for the sale and purchase of shares in Lakeview Country Club Limited dated 27th July 2015 (Agreement).

(B) The Agreement provided in clause 3.4 that Purchase Price be varied when the Parties are able to assess the value of the Megante Asset, the Telos Claim and the Time Share Claim. The Parties have now agreed a valuation of the Megante Asset, the Telos Claim and the Time Share Claim and have accordingly agreed to vary the Agreement as set out below ...

2. VARIATION

2.1 The Parties have agreed to value:

(a) The Megante Asset at £4,000,000

(b) The Telos Claim at £1,000,000; and

(c) The Time Share Claim at £2,850,000.

2.2 Accordingly the Parties have agreed that the Purchase Price shall be £13,850,000 in substitution for the original Purchase Price of £6,000,000.

2.3 The definition of Loan Notes shall be varied to increase the aggregate value of the Loan Notes issued by the Buyer to £13,850,000".

E13 Final payments under the Lakeview SPA

E13.1 The draft variation agreement was not executed immediately.

⁷⁴⁴ D1-0003697; EB0043658; D8-0013149

⁷⁴⁵ D1-0003699; EB0043659; D8-0013150

- E13.2 Instead, the payments continued. On 21.04.17, LCF paid £263,975 to L&TD,⁷⁴⁶ which paid £45,000 to D4, £45,000 to D10, £5,000 to D3 and £30,000 to D1, each with the reference Share Payment.⁷⁴⁷ On 28.04.18, LCF paid £207,000 to L&TD,⁷⁴⁸ which paid £25,000 to D1 with the reference Share Payment.⁷⁴⁹
- E13.3 By this point, L&TD owed £41.3 million gross to LCF having received £29.95 million net.⁷⁵⁰ This was significantly in excess of the £30 million facility limit.
- E13.4 On 03.05.17, D8 emailed D2 and D3 with the subject, “*Revision of the price for sale of Lakeview*”.⁷⁵¹ He said, “*Can I remind you that we need to deal with this?*”
- E13.5 On 04.05.17, L&TD made final payments of £20,000 to D4, £20,000 to D10 and £25,000 to D1 with the reference Share Payment.⁷⁵²

E14 Increase of the price to £14,260,260

- E14.1 On 22.05.17, Nicola Thomson sent an email to D3 entitled “*Share payments*”.⁷⁵³ Attached was a spreadsheet.⁷⁵⁴ Tab 1 showed the payments to 04.11.16 in the total sum of £6,036,611.11 [cell A46]. Tab 2 showed the additional payments since 04.11.16. The grand total that had been paid by L&TD to D1, D3, D4 and D10 stood at £14,260,361.10.
- E14.2 On the same day, D8 emailed D2 and D3 (with the subject, “*Variation of the consideration for LVCCL*”) stating:⁷⁵⁵

***“Following my conversation with Elten this morning I have amended the total consideration for the sale of the shares to £14,260,361.10. That is an increase of £8,260361.10 from the original price ...
I attach a short agreement recording the variation in price for your approval and if approved it needs to be signed by Andy and Helen and a director on behalf of London Trading & Development Limited”*** (emphasis added).

⁷⁴⁶ MDR00007309 pages 7-9; MDR00215808 pages 5-6
⁷⁴⁷ MDR00085829; MDR00215808 pages 6-8; MDR00224827 page 145; MDR00220286 page 282
⁷⁴⁸ MDR00007311; MDR00215808 page 2
⁷⁴⁹ MDR00085829; MDR00215808 page 3; MDR00220286 page 283

⁷⁵⁰ MDR00085672
⁷⁵¹ EB0046646; D8-0013976; D8-0013977
⁷⁵² MDR00215808 page 1; MDR00215818 page 1; MDR00220286 page 284
⁷⁵³ D2D10-00028391
⁷⁵⁴ D2D10-00028392
⁷⁵⁵ EB0048525; D2D10-00028396

E14.3 The attached draft agreement⁷⁵⁶ provided:

“BACKGROUND

(A) Seller and Buyer are party to an agreement for the sale and purchase of shares in Lakeview Country Club Limited dated 27th July 2015 (Agreement).

(B) The Agreement provided in clause 3.4 that Purchase Price be varied when the Parties are able to assess the value of the Megante Asset, the Telos Claim and the Time Share Claim. The Parties have now agreed a valuation of the Megante Asset, the Telos Claim and the Time Share Claim and have accordingly agreed to vary the Agreement as set out below ...

2. VARIATION

2.1 The Parties have agreed to value:

(a) The Megante Asset at £4,328,288.88

(b) The Telos Claim at £1,082,072.22; and

(c) The Time Share Claim at £2,850,000.

2.2 Accordingly the Parties have agreed that the Purchase Price shall be £14,260,361.10 in substitution for the original Purchase Price of £6,000,000.

2.3 The definition of Loan Notes shall be varied to increase the aggregate value of the Loan Notes issued by the Buyer to £14,260,361.10”.

E14.4 D8 also sent it to D1 and D10 (cc D2 and D3) under cover of an email stating:⁷⁵⁷

“As you know the agreement for the sale of Lakeview Country Club had a provision for variation of the price and I understand that agreement has been reached to increase the consideration to £14,260,361.10. I have drafted a short agreement to record the new numbers and I attach it herewith. Can you please sign this and return it to me as soon as possible”.

E14.5 On the following day, D8 discussed the numbers with D2, who requested some changes to the breakdown of the increased price in the draft agreement. D8 emailed D1 and D10 (cc D2 and D3) stating, *“Following discussions with Simon the breakdown of the increased price has been slightly varied and if you are able to agree it please sign and return the attached”.*⁷⁵⁸ The attached draft agreement⁷⁵⁹ had been amended to say:

“2.1 The Parties have agreed to value:

(a) The Megante Asset at £4,444,444.44

(b) The Telos Claim at £956,916.66; and

(c) The Time Share Claim at £2,850,000”.

⁷⁵⁶ EB0048527
⁷⁵⁷ MDR00088015; MDR00088016

⁷⁵⁸ EB0048652
⁷⁵⁹ D1-0003894; EB0048653

E14.6 On 31.05.17, D8 sent it to D1 and D3 “for signature tomorrow”.⁷⁶⁰ However, it was not signed on that date. D8 confirmed on 13.06.17 that the “proposed Variation Agreement ... [had] not yet been completed”.⁷⁶¹ D8 explained:⁷⁶²

“Simon asked me not to complete the variation agreement as the increase in value of the assets of the company conflicted with certain other things that he is seeking to achieve and I have been asked to look for other methods of achieving the same objective” (emphasis added).

E14.7 Eventually, on 14.08.17, D8 emailed D1 and D10 (cc D2 and D3) stating:

“Following some discussions with Simon I understand that there have been some adjustments to the agreed values for the extra sums paid for your shares. Accordingly I understand the valuations are:

- 1. Magante £4,250,000*
- 2. Telos £1,000,000*
- 3. Time share £3,010,000”*.⁷⁶³

E14.8 The attached draft agreement⁷⁶⁴ now provided:

“2. VARIATION
2.1 The Parties have agreed to value:
(a) The Megante Asset at £4,250,000
(b) The Telos Claim at £1,000,000; and
(c) The Time Share Claim at £3,010,000”.

E14.9 The total amount of the new price payable under the Lakeview SPA had thus been changed from £14,260,361.10 to £14,260,260.00. D8 emailed D1 and D10 to say that he “would be grateful if you could return to me the Variation Agreement”.⁷⁶⁵

E14.10 On 16.08.17, D8 emailed D1 and D10 again (cc D2 and D3) to say, “It would be helpful if you and Helen can both sign this today and get it back to me”.⁷⁶⁶ D1 and D10 complied with this request by signing the variation agreement on the same day.⁷⁶⁷

⁷⁶⁰ D1-0003930; D8-0015763; D8-0015764
⁷⁶¹ MDR00091073; D2D10-00029050; D2D10-00029051; D2D10-00029052
⁷⁶² MDR00090480
⁷⁶³ D1-0004424

⁷⁶⁴ D1-0004423
⁷⁶⁵ D1-0004427
⁷⁶⁶ EB0055027; EB0055033
⁷⁶⁷ MDR00005904; MDR00219446

E14.11 It is apparent from the chronology that clause 3.4 of the Lakeview SPA was activated at this time solely to justify the total amount of money that had already been taken.

E15 The purported justifications for the price increase

E15.1 The purported justifications for the increase in the price to £14,260,260.00, involving the valuations set out above, were nonsensical. Nothing had happened that could possibly have justified any such increase in the price of the LCCL shares.

E15.2 First, nothing had happened in respect of the so-called “*Megante Asset*” to justify any price increase. Tenedora 98520 had still not actually acquired The Beach. As noted above, Mark Ingham had confirmed to D1 on 15.04.16 that “*we don’t own land at Magante – Tenedora just has a contested purchase agreement*”.⁷⁶⁸ That continued to be the position: Alex Lee confirmed on 16.03.17 that “*the contract for the sale of the property there has not yet completed*”.⁷⁶⁹ Tenedora 98520 had not yet paid the purchase price to the various vendors of the land.⁷⁷⁰ Further, the property known as The Beach had not yet been developed. No profits had been made from the development. It had not been sold. No share of any proceeds of sale had been paid to LCCL.

E15.3 Secondly, nothing had happened in respect of the Telos Claim to justify any price increase. Some of the investors in Telos had assigned their claims against Telos to LCCL.⁷⁷¹ Telos had subsequently gone into liquidation.⁷⁷² On 12.10.17, LCCL assigned its claims against Telos to a company called LV Recovery Limited.⁷⁷³ Ultimately, on 06.05.18, the claim by the liquidator of Telos against the former directors of that company was settled on terms which required LCCL to pay £760,000 within 28 days.⁷⁷⁴ Thus, far from resulting in any payment *to* LCCL, LCCL was in fact a paying party under the terms of the settlement agreement. D2 was also a party to the settlement agreement and had been closely involved in the negotiations leading up to it.⁷⁷⁵

⁷⁶⁸ MDR00035933

⁷⁶⁹ MDR00080319

⁷⁷⁰ MDR00080904; MDR00080905; MDR00080921

⁷⁷¹ MDR00094591 to MDR00094599; MDR00094601; MDR00094603; MDR00011181; MDR00011187; MDR00011188; MDR00012382; MDR00012383; MDR00012384; MDR00012421; MDR00225496; D2D10-00005286; MDR00051804; MDR00106688

⁷⁷² MDR00032582; MDR00032592; MDR00042501

⁷⁷³ EB0061709; EB0061712; EB0062131; EB0062138; EB0062144; EB0062145

⁷⁷⁴ EB0113651; EB0113684

⁷⁷⁵ EB0078370; EB0078376; EB0078390; EB0078404; EB0078509; MDR00221703; D2D10-00042717; D2D10-00042718; D2D10-00044872; D2D10-00044873; D2D10-00044874; D2D10-00044875; D2D10-00045223; D2D10-00045224; D2D10-00045225; D2D10-00045226

E15.4 Thirdly, nothing had happened in respect of the Time Share Claim to justify this or indeed any increase to the price payable under the Lakeview SPA. The claim against the owners of the time share club at Lakeview regarding the leases of Lakeview Title Limited had been settled on 06.12.16 on terms which required Waterside Villages to pay a settlement sum of £762,500.⁷⁷⁶ The leases were surrendered for the benefit of Waterside Villages, which owned the freehold. LCCL, which had ceased to own the Lakeview resort (with the exception of the development land), saw no benefit from this transaction. Indeed, it was remarked that “*since LCCL no longer owns the freehold, it is not a proper party to the agreement to surrender*”.⁷⁷⁷ D2 had been closely involved in the Time Share Claim and was fully aware of the facts regarding the settlement.⁷⁷⁸

E16 Re-sale of LCCL for £1

E16.1 Further, the idea that the shares in LCCL were genuinely worth £14,260,260 is entirely undermined by the fact that they were sold just a few months later for £1.

E16.2 LCCL changed its name to International Resorts Management Limited (“IRM”) on 12.01.17.⁷⁷⁹ On 19.02.18, D8 emailed Terry Mitchell (cc Ian Sands, D2 and D3) to confirm that Terry Mitchell’s company, Prime Resort Development Limited (“Prime RDL”), would be buying the shares in IRM for a nominal consideration.⁷⁸⁰

E16.3 Further, to reflect the fact that IRM had a negative value (with its sole asset, the development land, being worth less than the debt owed to LUKI), it was agreed that there would be a reduction in the price payable by Prime RDL under the Prime SPA.

E16.4 D8 explained to Terry Mitchell (cc Ian Sands, D2 and D3), “*An adjustment will need to be agreed to the price being paid to the shareholders of Elysian Resorts Group to allow for the fact that you will be taking over the liability for the LUKI debt*”.⁷⁸¹

⁷⁷⁶ EB0033819; EB0033878; EB0033879; EB0033928; D8-0007337; EB0033932; EB0033938; D8-0007331; D8-0007332

⁷⁷⁷ EB0033973

⁷⁷⁸ MDR00033264; MDR00064060; EB0031625; EB0033486; EB0033500; EB0033507; EB0033612;

EB0033615; MDR00067430; EB0033777; EB0033811

⁷⁷⁹ MDR00070902; MDR00116161; EB0035980

⁷⁸⁰ MDR00130246

⁷⁸¹ MDR00130246; MDR00130267

- E16.5 D8 emailed D2 and D3 about this on 01.03.18, saying, “*The consideration for this is a reduction in the purchase price agreed for the sale of Elysian*”.⁷⁸²
- E16.6 On 02.03.18, Terry Mitchell told D8 that he was keen to receive the draft SPA for this transaction.⁷⁸³ He chased D8 again on 05.03.18⁷⁸⁴ and again on 06.03.18.⁷⁸⁵
- E16.7 D8 prepared a draft SPA between London Trading and Prime RDL for the sale of the shares in IRM for a price of £1.⁷⁸⁶ It also contained, in clause 5.1, provision for the reduction in the amount payable under the Prime SPA. D8 sent this to D2 and D3 on 07.03.18.⁷⁸⁷ He also sent it to Terry Mitchell, who was broadly happy with it.⁷⁸⁸
- E16.8 The draft SPA between London Trading and Prime RDL was subsequently amended to provide for a reduction in the amount payable under the Prime SPA in the sum of £5 million.⁷⁸⁹ Thus, not only was Prime RDL acquiring IRM (formerly known as LCCL) for a nominal consideration of £1; it was also obtaining the benefit of a reduction of £5 million in the sum payable by it under the Prime SPA to reflect the fact that IRM had a negative value, with the development land being worth less than the LUKI debt.
- E16.9 The SPA between London Trading and Prime RDL was executed on 11.04.18.⁷⁹⁰ D2 signed it on behalf of London Trading. Under it, Prime RDL acquired IRM for £1, and, as D8 explained, there was a reduction of £5 million to the sum payable by Prime RDL under the Prime SPA because “*Prime agreed to take over the residual liability ... for the debt due to Lakeview UK Investments PLC (approximately £5M)*”.⁷⁹¹

⁷⁸² EB0080146
⁷⁸³ MDR00132800
⁷⁸⁴ MDR00133208
⁷⁸⁵ MDR00133487
⁷⁸⁶ MDR00133511
⁷⁸⁷ EB0081464
⁷⁸⁸ MDR00133931

⁷⁸⁹ MDR00141457; MDR00141458
⁷⁹⁰ MDR00141470; MDR00141582; MDR00141591;
MDR00141629; MDR141630; EB0088414;
MDR00141663; MDR00216566; EB0114581;
MDR00217259
⁷⁹¹ MDR00174751

F. ELYSIAN SPA

F1 Introduction

- F1.1 As explained above, the final payment by L&TD to D3 took place on 21.04.17, whilst the final payments to D1, D4 and D10 occurred on 04.05.17.
- F1.2 By that point in time, L&TD had paid a total of £14,260,361.10 to D1, D2, D3, D4 and D10. Clause 3.4 was then used to justify a final increase in the price payable under the Lakeview SPA to match the amount that had been received by D1, D2, D3, D4 and D10.
- F1.3 The reason for drawing a line under the Lakeview SPA at that particular point in time was that, by then, a new mechanism had been set up to justify the continued extraction of monies from LCF: the Elysian SPA. Payments of LCF's money continued, but they would now be purportedly justified by the existence of the Elysian SPA.
- F1.4 Before the creation of this new mechanism, the position was that D1, D2, D3 and D4 were the beneficial owners of London Group plc, which owned a number of subsidiaries. One of the subsidiaries was London Trading, which had bought the shares in LCCL under the Lakeview SPA. Another was L&TD, which had borrowed from LCF in order to make payments to D1, D3, D4 and D10 under the Lakeview SPA, as set out above.
- F1.5 The new mechanism had three essential components. First, the liabilities of L&TD were redistributed to a number of new assetless companies, which were subsidiaries of London Group LLP. London Group LLP was owned beneficially by D1, D2, D3 and D4. The purpose of this first step was to strip the debt from London Group plc's subsidiary, L&TD, so that London Group plc could be sold on a debt-free basis.
- F1.6 Secondly, ordinary shares in London Group plc (the name of which was changed to GRP) were sold to a company called Elysian Resorts Group Limited ("Elysian RGL") on terms which contemplated or required the issuance of £82 million of redeemable

preference shares in GRP, which were to be registered in the name of London Group LLP. (As stated above, London Group LLP was owned by D1, D2, D3 and D4.)

- F1.7 As explained below, Elysian RGL was not an arm's length purchaser: its directors were Mark Ingham, who had worked with D1 and D3 on the Sanctuary scheme and who had helped D1 and D2 to set up SAFE in 2013, and Tom McCarthy, who was a consultant who worked for London Group LLP. Mark Ingham was given a beneficial interest in GRP so that he could receive some of the subsequent payments under the Elysian SPA. Tom McCarthy was promised a commission in return for his involvement.
- F1.8 Thirdly, the subsidiaries of GRP entered into new facility agreements with LCF so that they could borrow monies from LCF in order to provide GRP with funds to make payments to D1, D2, D3, D4 and Mark Ingham under the Elysian SPA.
- F1.9 The third step had always been a central part of the plan, having been discussed and agreed at an early stage, as explained below. Indeed, the liabilities of GRP's subsidiary, L&TD, were transferred away to other new companies in the first step of the plan precisely in order to ensure that GRP's group of companies could be debt-free in order to start borrowing afresh from LCF after the transfer of GRP to Elysian RGL.
- F1.10 With this new mechanism in place, the subsidiaries of GRP began to draw down monies from LCF to fund continued payments to D1, D2, D3 and D4, purportedly in redemption of the £82 million of redeemable preference shares. This is all explained below.

F2 Elysian SPA Step 1: The redistribution of L&TD's liabilities

- F2.1 The first step in this new mechanism involved the transfer of L&TD's liabilities to a number of new companies which were subsidiaries of London Group LLP. As D8 explained, "*the existing debt to LCF is to be taken over by the LG LLP subsidiaries*".⁷⁹²
- F2.2 The idea of reallocating L&TD's liabilities to various other companies was first discussed by D1 and D8 in or around mid-February 2017.⁷⁹³

⁷⁹² MDR00085096

⁷⁹³ MDR00074971; MDR00074988; MDR00075733

F2.3 In early March 2017, D8 said that D2 was going to agree with D1 how L&TD's liabilities were to be apportioned between the various companies.⁷⁹⁴ D1 emailed D2 and D3 on 06.03.17 to say that he wanted to see "*a breakdown of the proposed splits*".⁷⁹⁵

F2.4 After a delay,⁷⁹⁶ Alex Lee of Buss Murton prepared a draft facility agreement in a form which could be utilised for each subsidiary which would be assuming some of L&TD's indebtedness. On 12.04.17, Alex Lee sent this to D8, who forwarded it to D2 and D3.⁷⁹⁷

F2.5 On 20.04.17, Alex Lee emailed D8⁷⁹⁸ (who forwarded the email to D2 and D3⁷⁹⁹):

"... I gather that there is an agreement whereby London Group LLP (and its yet-to-be incorporated subsidiaries) will be taking over the debt ... With that being the case £24m (of the £40.4m LTD indebtedness) will be spread among those new subsidiaries ... The remaining £16.4m will be taken up by Atlantic Petroleum (I am certain I have not given you the correct name here so your assistance will be helpful!). I understand that this company is a subsidiary of London Power Corporation PLC ..."

F2.6 Alex Lee's understanding was broadly correct. The plan was that L&TD's liabilities to LCF would be re-allocated to five other companies. Four of them would be new subsidiaries of London Group LLP. Their names would reflect the names of the four subsidiaries of GRP which would be entering into new facility agreements with LCF in the third step of this new mechanism to enable fresh borrowings from LCF to continue.

F2.7 The four subsidiaries of GRP which would enter into new facility agreements with LCF in the third step would be Colina Property Holdings Limited ("Colina Property"), Costa Property Holdings Limited ("Costa Property"), CV Resorts and Waterside Villages.

F2.8 Reflecting these names, the four subsidiaries of London Group LLP which would assume L&TD's liabilities to LCF in the first step would be Colina Support Limited ("Colina Support"), Costa Support Limited ("Costa Support"), Cape Verde Support Limited ("CV Support") and Waterside Support Limited ("Waterside Support").

⁷⁹⁴ MDR00077656; D2D10-00025460; MDR00077690

⁷⁹⁵ MDR00077754; D8-0010848

⁷⁹⁶ D8-0011965; D2D10-00026518

⁷⁹⁷ D8-0013036; D8-0013038; MDR00083631; EB0043449

⁷⁹⁸ MDR00084180; MDR00084182

⁷⁹⁹ EB0044316; D2D10-00027562; EB0044381

F2.9 D8 explained, “*the proposal is that London Group LLP will form four subsidiary companies which will mirror the four subsidiaries of Global Resort Property PLC*”.⁸⁰⁰

F2.10 The fifth company assuming part of L&TD’s liabilities to LCF in the first step of this new mechanism was to be Atlantic Petroleum Support Limited (“Atlantic Support”), which was owned by London Power Corporation plc (“LPC”).

F2.11 On 25.04.17, D8 emailed D2 and D3, “*New subsidiaries of London Group LLP*”.⁸⁰¹

*“I would suggest that I form the following subsidiaries of the LLP:
Colina Support Limited
Costa Support Limited
Cape Verde Support Limited
Waterside Support Limited*

*And as a subsidiary of London Power Corporation:
Atlantic Petroleum Support”.*

F2.12 These companies were duly incorporated: D8 told D1 and D2 on 26.04.17 that this was being done.⁸⁰² These five companies ultimately came to be known as the ‘support companies’. The so-called support that they provided took the form of the assumption of the existing liabilities of L&TD in order to enable GRP and its subsidiaries to be debt-free so that they could borrow from LCF with a clean slate.

F2.13 Mark Ingham explained to D2, D3, D4 and Tom McCarthy, “*Seller will retain all Legacy Group and subsidiary company debts; none are to be passed to the Buyer*”.⁸⁰³

F2.14 Alex Lee explained to D8 (cc D1, D2), “*Our instructions are that the GRP PLC ‘group’ is to then be debt free to allow for further facilities from LCAF to be advanced*”.⁸⁰⁴

F2.15 The problem with the idea of these new companies assuming L&TD’s debt to LCF was that they had no assets. Alex Lee made clear to D1 on 26.04.17 that “*these are going to be empty of assets*”.⁸⁰⁵ Alex Lee also emailed D8 cc D1 to say, “*I spoke to Andy about*

⁸⁰⁰ MDR00084641; MDR00008567

⁸⁰¹ EB0044835

⁸⁰² MDR00084748

⁸⁰³ D8-0013468; D8-0013469 page 2

⁸⁰⁴ MDR00084663

⁸⁰⁵ MDR00084775

this element as there is on the face of it a lack of assets in the group that rather undermines the security position somewhat".⁸⁰⁶

F2.16 As explained below, Alex Lee was told that LOG would assign its contractual rights against a company called P/F Atlantic Petroleum to Atlantic Support in order to secure the £16.4 million of indebtedness to LCF that was being assumed by Atlantic Support.⁸⁰⁷

F2.17 In addition to the assumption of £16.4 million by Atlantic Support, the remaining £24 million of L&TD's debt to LCF would be assumed by the four subsidiaries of London Group LLP. As Mark Ingham put it, "*these debts will be held in subs of London LLP*".⁸⁰⁸ D8 emailed Alex Lee (cc D1, D2 and Mark Ingham) about this on 27.04.17.⁸⁰⁹

*"I understand that the allocation of the £24M between the subsidiaries is
Waterside Villages £5M
CV Resorts Ltd £7M
Colina £5.5M
Costa £6.5M
Total £24M".*

F2.18 D2 replied, "*Agreed*".⁸¹⁰

F2.19 On 29.04.17, LCF entered into new facility agreements with Waterside Support (in the sum of £5 million),⁸¹¹ CV Support (in the sum of £7 million),⁸¹² Colina Support (in the sum of £5.5 million)⁸¹³ and Costa Support (in the sum of £7 million).⁸¹⁴ LCF also entered into a new facility agreement with Atlantic Support (in the sum of £25 million) which contained an acknowledgement that £16.4 million of this sum had already been received.⁸¹⁵ These new facility agreements were all signed by D1, D2 and D8.

F2.20 As D8 explained, "[LCF] *had lent money to Leisure and Tourism Developments PLC*" but this "[was] *deemed to have been repaid by a fresh set of facilities*".⁸¹⁶

⁸⁰⁶ MDR00084823

⁸⁰⁷ MDR00084789; MDR00084804

⁸⁰⁸ MDR00085146

⁸⁰⁹ MDR00085033

⁸¹⁰ MDR00085038

⁸¹¹ MDR00005265

⁸¹² MDR00005203

⁸¹³ MDR00005226

⁸¹⁴ MDR00005244

⁸¹⁵ MDR00006056

⁸¹⁶ MDR000090456

F2.21 The four new subsidiaries of London Group LLP granted debentures in favour of LCF,⁸¹⁷ notwithstanding that they were newly-incorporated companies with no assets.

F2.22 Atlantic Support also granted a debenture in favour of LCF.⁸¹⁸ It was signed by D1, D2 and D8. Schedule 3 identified the charged assets in the following terms:

“1. Loan agreement (in the sum of £8,000,000.00 Loan agreement dated 25 May 2016 originally between London Oil & Gas Limited (as assigned to the Chargor on 28 April 2017), and P/F Atlantic Petroleum (Faroe Islands), Atlantic Petroleum UK Limited and Atlantic Petroleum North Sea Limited.

2. Debenture dated 13 March 2017 between originally between London Oil & Gas Limited (as assigned to the Chargor on 28 April 2017) and Atlantic Petroleum North Sea Limited.

3. Debenture dated 13 March 2017 between originally between London Oil & Gas Limited (as assigned to the Chargor on 28 April 2017) and Atlantic Petroleum UK Limited

4. Debenture dated 13 March 2017 between originally between [sic] London Oil & Gas Limited (as assigned to the Chargor on 28 April 2017) and P/F Atlantic Petroleum”.

F2.23 The obvious problem with this was that LOG’s rights against P/F Atlantic Petroleum and others had not been assigned to Atlantic Support. They continued to belong to LOG. Atlantic Support was therefore not able to charge them in favour of LCF.

F2.24 Alex Lee was apparently unaware of the true facts. On 02.05.17, Alex Lee asked D8 to provide *“a scan of the signed assignment in relation to the rights that LOG has in relation to P/F Atlantic Petroleum et al to Atlantic Petroleum Support Limited”*.⁸¹⁹

F2.25 On 01.08.17, Alex Lee chased D8 for the *“signed assignment of [Atlantic Petroleum] debt”*.⁸²⁰ D8 forwarded the email to D2 and D3, saying, *“He ... refers to the assignment of the Atlantic Petroleum loan to Atlantic Petroleum Support Ltd which needs to be executed. I will prepare a copy for execution when you are back in the office”*.⁸²¹

⁸¹⁷ MDR00005270; MDR00005205; MDR00005227;
MDR00005245

⁸¹⁸ MDR00006057

⁸¹⁹ MDR00085784
⁸²⁰ EB0054267
⁸²¹ EB0054267

F2.26 On 04.08.17, D8 emailed D2 and D3, with the subject “Atlantic Petroleum”:⁸²²

“You will recall that in April we agreed with LCF to assign the benefit of the loan by LOG to Atlantic Petroleum to a subsidiary of London Power Corporation PLC Atlantic Petroleum Support Limited and I prepared a form of assignment. Alex Lee has been chasing me to let him a copy of the executed assignment. I attach the document and would be grateful if you and Elten could execute this on behalf of LOG and Atlantic Petroleum Support respectively. I have left a copy on your desk for signature”.

F2.27 The attachment was a draft assignment by LOG of the Atlantic Petroleum loan to Atlantic Support.⁸²³ It was backdated to 28.04.17 in typescript on the front page.

F2.28 This draft assignment was signed by D2 and D3 at some point between 04.08.17 and 09.08.17.⁸²⁴ D8 witnessed their signatures.

F2.29 On 09.08.17, D8 emailed it to Alex Lee (“Please find attached a copy of the completed assignment between LOG and Atlantic Support for your records”).⁸²⁵

F2.30 The fact that it had been backdated to deceive Alex Lee was the least of its problems.

F2.31 First, even if the assignment had been valid, LOG had loaned less than £1 million to P/F Atlantic Petroleum. D8 explained to Alex Lee on 24.08.17, “When you refer to the £8m facility I assume that you are referring to the Atlantic facility with LOG. As I understand it less than £1M has been drawn but LOG has the right to require them to draw down the balance of the facility. The loan is convertible but no conversion has yet taken place”.⁸²⁶ Alex Lee forwarded this to D1. By 16.11.17, the debt of P/F Atlantic Petroleum to LOG was still only approximately £1.2 million.⁸²⁷

F2.32 Secondly, P/F Atlantic Petroleum had a market capitalisation of only £4.4 million.⁸²⁸ Even if Atlantic Support had owned 100% of P/F Atlantic Petroleum, this shareholding

⁸²² MDR00096349

⁸²³ MDR00096350

⁸²⁴ MDR00096696; MDR00005409

⁸²⁵ D8-0019456; D8-0019457

⁸²⁶ MDR00098684; D2D10-00032298

⁸²⁷ MDR00112435; MDR00112453; MDR00112456;
MDR00112457

⁸²⁸ MDR00084850

would have been “clearly ... insufficient as security for a facility of [£16.4 million]” (as Alex Lee pointed out to D1, D2 and D8).⁸²⁹

F2.33 Thirdly, the assignment was signed by D3 without the knowledge or approval of LOG’s board of directors. LOG’s independent directors learnt of its existence only after LCF’s collapse. David Elliott, LOG’s finance director, said on 12.02.19:⁸³⁰

“I know SHK is feeling bruised, but I also need to raise the issue of the Atlantic loan. In April 2017 there is a document that states that the loan was assigned to Atlantic Support, which is outside of the Oil & Gas group and I have been told that LCF have secured lending to Atlantic Support ... This concerns me, as we have mentioned in our May 2017 audited accounts that Atlantic is an asset of LOG and have continued to act as if it was an asset of LOG”.

F2.34 Fourthly, notwithstanding the purported assignment to Atlantic Support, D1, D2, and D8 themselves continued to treat the loan to P/F Atlantic Petroleum as one of LOG’s assets and proceeded as if the purported assignment did not exist.

F2.35 D2 continued to approve further payments by LOG to P/F Atlantic Petroleum under the loan facility between those two companies.⁸³¹

F2.36 Further, D1, D2 and D8 proceeded on the basis that the rights against P/F Atlantic Petroleum continued to belong to LOG and formed part of the security granted by LOG in support of LOG’s borrowings under the facility agreement between LCF and LOG.⁸³²

F2.37 The purported assignment between LOG and Atlantic Support was a sham which had been put in place (and falsely backdated) to create the impression that there was at least some security for the debt allocated to Atlantic Support when in reality there was none.

F2.38 On 07.07.22, it was set aside by ICC Judge Barber: [2022] EWHC 1672 (Ch).

⁸²⁹ MDR00084850

⁸³⁰ MDR00212113 page 10

⁸³¹ MDR00098713; MDR00126474

⁸³² MDR00097899; MDR00098405; MDR00098412; MDR00098413; MDR00098677; MDR00098678; MDR00098679; MDR00104499; MDR00104613; MDR00104614; MDR00104615; MDR00104616; MDR00104617; MDR00117215; MDR00117216;

MDR00117218; MDR00117323; MDR00117324; MDR00118501; MDR00119414; MDR00119417; MDR00119455; MDR00119459; MDR00119460; MDR00120069; MDR00128266; MDR00128267; MDR00128268; MDR00153591; MDR00141257; MDR00141258; MDR00141261; MDR00141262; MDR00141263; MDR00165751; MDR00141251; MDR00141252

F3 Elysian SPA Step 2: The sale of GRP to Elysian RGL

- F3.1 As explained above, the second step was to sell ordinary shares in GRP (which had formerly been known as London Group plc) on terms which provided for £82 million of redeemable preference shares in GRP to be allocated to London Group LLP.
- F3.2 The plan was that GRP would have four subsidiaries: Waterside Villages (to own the Lakeview resort, with the exception of the development land); CV Resorts (to own the rights under the contract with Paradise Beach ATASA); Costa Property (to own the shares in Tenedora 58520, which owned the rights to acquire The Beach); and Colina Property (to own legal title to the shares in Inversiones, which owned The Hill).⁸³³
- F3.3 Initially, the intention was to use a company called Global Resort Development Ltd as the purchaser,⁸³⁴ but some obstacle arose in this regard (“*the GRD which is engaged with Spain Etc cannot be the vehicle for this deal*”;⁸³⁵ “*Terry advised the team that unexpectedly he had deployed GRD for other purposes, so they have decided to use an alternative unconnected clean purchasing vehicle*”⁸³⁶).
- F3.4 The replacement purchaser was to be Elysian RGL, which was incorporated on 28.04.17. Mark Ingham explained to D3, “*I am setting a new company up for when the purchase of GRP goes through and closing Global Resorts Development*”.⁸³⁷
- F3.5 On 29.04.17, D8 emailed D2, D3, Mark Ingham and Tom McCarthy attaching a draft sale and purchase agreement between D1, D2 and D3 (as the sellers) and Elysian RGL (as the purchaser).⁸³⁸ This was executed by the parties on the same day.⁸³⁹
- F3.6 The Elysian SPA⁸⁴⁰ provided for D1, D2 and D3 to sell the Sale Shares to Elysian RGL. The term “*Sale Shares*” was defined to mean “*the 100 Ordinary shares of £1 each*” in GRP. The price payable for the Sale Shares was to be £100.

⁸³³ D8-0009718
⁸³⁴ MDR00077334
⁸³⁵ MDR00079699
⁸³⁶ MDR00085581
⁸³⁷ EB0044955

⁸³⁸ D2D10-00028001; D2D10-00028002; D2D10-00028003; D2D10-00028004; D2D10-00028005; D2D10-00028006; D2D10-00028007
⁸³⁹ D2D10-00028008; D2D10-00028009
⁸⁴⁰ MDR00005460; MDR00007483; MDR00090677; D1-0003735; D8-0013923

- F3.7 At the same time, however, London Group LLP was to own £82,125,000 of redeemable preference shares in GRP: see the definition of “*Redeemable Preference Shares*”.
- F3.8 Clause 5.3 of the Elysian SPA provided that D1, D2 and D3 would “*use all reasonable endeavours to assist [GRP] ... to raise funds for the purpose of enabling [GRP] to fund its regular activities and to develop the Properties acquire additional properties and to redeem the Redeemable Preference Shares (‘Corporate Finance’)*”. Clause 5.5 required the parties to ensure that 50% of any such monies remaining after payment of running costs and interest would be used to redeem the redeemable preference shares.
- F3.9 As mentioned above, Elysian RGL was not an arm’s length purchaser. Its directors were Mark Ingham and Tom McCarthy. As explained above, Mark Ingham had worked with D1 and D3 on the Sanctuary scheme and had helped D1 and D2 to set up SAFE in 2013.
- F3.10 D2 and D3 agreed that Mark Ingham should have a beneficial interest of 5% in GRP to enable him to participate in payments under the Elysian SPA. This is explained below.
- F3.11 On 27.02.17, D8 emailed D2 and D3 saying, “*You have asked that we transfer shares to MI to give him a 5% non-voting shareholding in GRP*”.⁸⁴¹
- F3.12 On 21.03.17, D8 emailed D2 and D3 saying, “*I understand that you wish to give shares in GRP to Mark Ingham so that he has 5% of the equity*”.⁸⁴²
- F3.13 D8 raised a concern that this might generate a tax liability, on the basis that “*to issue to Mark 1,893,680 shares would be treated by HMRC as a payment to him for his work and he may be charged income tax on the value of the issue of the shares*”.⁸⁴³
- F3.14 D8 thought an alternative course of action could be to execute “*a declaration of trust to the effect that you have held shares equivalent to 5% of the equity in the company for Mark since its inception. At its inception it had only a nominal value*”.⁸⁴⁴ Any such declaration of trust would self-evidently have to be backdated.

⁸⁴¹ D8-0010480

⁸⁴² D8-0011801

⁸⁴³ D8-0011801

⁸⁴⁴ D8-0011801

F3.15 Mark Ingham was content for his interest in GRP to be held on trust for him.⁸⁴⁵ D8 emailed D2 and D3 on 27.03.17 to say, “*I have spoken with Mark and he is happy that we proceed down the Trust route and I will produce a declaration of trust to be made by Simon and Elten to the effect that you each hold 2.5% of the shares in London Group (now GRP) on trust for him*”.⁸⁴⁶ The same email from D8 also makes clear that Mark Ingham was going to be given a beneficial interest in some shares in LOG.

F3.16 On 27.03.17, D8 emailed Mark Ingham (cc D2 and D3):⁸⁴⁷

*“I attach four trust deeds to cover your [i.e. Mark Ingham’s] interest in Global Resort Properties PLC and London Oil & Gas Limited
The Trust Deed for the GRP shares is dated 30th September [2015] when the shares were transferred to Simon and Elten from International Resorts Partnership LLP. The trust deed in the LOG shares is dated on the date that London Group PLC transferred its shareholding in LOG to Simon and Elten”.*

F3.17 The attachments to this email were drafts of: **(i)** a declaration of trust by D2 in favour of Mark Ingham in respect of 894,238 Ordinary Shares of £1.00 each in the London Group Limited (i.e., GRP) (dated, in typescript, 30.09.15);⁸⁴⁸ **(ii)** a declaration of trust by D3 in favour of Mark Ingham in respect 894,238 Ordinary Shares of £1.00 each in the London Group Limited (i.e., GRP) (dated, in typescript, 30.09.15);⁸⁴⁹ **(iii)** a declaration of trust by D2 in favour of Mark Ingham in respect 30,000 Ordinary Shares in LOG (dated, in typescript, 15.03.16);⁸⁵⁰ and **(iv)** a declaration of trust by D3 in favour of Mark Ingham in respect 30,000 Ordinary Shares in LOG (dated, in typescript, 15.03.16).⁸⁵¹

F3.18 Mark Ingham replied to D8 (cc D2 and D3) on 29.03.17 to say that it would be good to get these signed.⁸⁵² They were then signed by D2, D3 and D8.⁸⁵³

F3.19 Each of them was falsely backdated (in accordance with D8’s suggestion) to make it look as though Mark Ingham had held these beneficial interests for some time.

⁸⁴⁵ EB0040733
⁸⁴⁶ D8-0011923
⁸⁴⁷ MDR00081545
⁸⁴⁸ MDR00081548
⁸⁴⁹ MDR00081549

⁸⁵⁰ MDR00081547
⁸⁵¹ MDR00081546
⁸⁵² MDR00081788; D8-0011999
⁸⁵³ EB0041687; EB0041688; EB0078251; EB0078866;
EB0078867

- F3.20 On the basis of the declaration of trust in respect of shares in GRP, Mark Ingham subsequently received 5% of the monies from GRP under the Elysian SPA. In this way, Mark Ingham, who was a director of the purported purchaser, was also one of the sellers.
- F3.21 Tom McCarthy was also connected to D1, D2, D3 and D4. On 19.07.16, Tom McCarthy sent an email to D2, D3 and D4 proposing that he should be employed by London Group plc (which became GRP), working alongside Mark Ingham or under his control, for a fee of £10,000 per month.⁸⁵⁴ On 04.01.17, Tom McCarthy sent an email saying, “*My name is Tom McCarthy and I work for London Group plc*”.⁸⁵⁵
- F3.22 When D2, D3 and D8 were moving to a new office in Tunbridge Wells in June/July 2017, the office plan showed that Tom McCarthy would have his own desk in the new office, alongside Mark Ingham.⁸⁵⁶ Later, on 03.09.18, a draft settlement agreement between Tom McCarthy and London Group LLP recorded that Tom McCarthy had worked for London Group LLP and other associated companies until August 2018.⁸⁵⁷
- F3.23 As explained below in connection with the Prime SPA, Tom McCarthy was promised a substantial commission in return for his involvement in these transactions.
- F3.24 Accordingly, Tom McCarthy was not a third-party purchaser: he was a member of staff who was involved in these transactions in return for payment of his fees and commission.
- F3.25 But the intention was clearly to create the impression that Elysian RGL was a third-party purchaser. Tom McCarthy in particular was keen not to allow anything to undermine this impression. On 05.05.17, D8 emailed D2, D3, Mark Ingham and Tom McCarthy to say that he was going to add Paul Sayers as a director of GRP, in place of D2 and D3.⁸⁵⁸ Tom McCarthy expressed concern about this proposal, on the basis that Paul Sayers had previously been a director of LCF (from 05.09.13 to 10.08.15) and also had connections to Lakeview and Telos. Tom raised this concern with D2, D3, D8 and Mark Ingham saying, “*Nothing personal towards Paul, but his links to Lakeview/Telos/LC+F both previously and present as a Director and possible shareholder would make me*

⁸⁵⁴ EB0025614; EB0025615
⁸⁵⁵ MDR00090175 page 4
⁸⁵⁶ D8-0016320; D8-0016323

⁸⁵⁷ EB0098556; EB0098558
⁸⁵⁸ EB0047015; EB0047016

uncomfortable ... Cross contamination is key in my eyes in this transaction and all the above are public knowledge and easily found on the net" (emphasis added).⁸⁵⁹ D8 made clear that the identity of GRP's directors would have to be agreed with D2.⁸⁶⁰

F4 Elysian SPA Step 3: The fresh facilities from LCF

F4.1 With the existing debt to LCF having been parcelled away in the first step, and with the ordinary shares in GRP having been transferred to Elysian RGL on a debt-free basis in the second step, the third step was for LCF to provide new facilities to four subsidiaries of GRP (Waterside Villages, CV Resorts, Costa Property and Colina Property) so that payments could be made to D1, D2, D3, D4 and Mark Ingham under the Elysian SPA.

F4.2 This had always been a central part of the plan from the outset. On 15.03.17, D8 emailed Alex Lee to say, "*It is intended to sell the shares in the company subject to the current security in favour of London Capital & Finance PLC and indeed for them the companies to continue to draw down on the various new facilities*".⁸⁶¹

F4.3 Similarly, Alex Lee emailed D8 on 20.04.17 to say:⁸⁶²

"[In] relation to GRP itself I gather there will be new facilities to be granted (both to GRP but also to the GRP subsidiaries (Colina/Costa/WS/CV) in sums not yet nailed down precisely but otherwise it is anticipated that these will be on the basis of the attached facility in the general sense (subject to any further security requirements and to the amounts in each case)".

F4.4 D8 forwarded this email to D2 and D3.⁸⁶³

F4.5 One of the "*GRP subsidiaries*" that Alex Lee had mentioned in his email was "*CV*" (i.e., CV Resorts). On 21.04.17, Alex Lee provided a draft debenture between CV Resorts and LCF.⁸⁶⁴ D1 forwarded the email chain to D2.⁸⁶⁵

⁸⁵⁹ D8-0014230

⁸⁶⁰ D8-0014237

⁸⁶¹ MDR00080183

⁸⁶² MDR00084180; MDR00084182

⁸⁶³ EB0044316; D2D10-00027562; EB0044381

⁸⁶⁴ MDR00084233; MDR00084234; MDR00084238

⁸⁶⁵ MDR00084281; MDR00084386

- F4.6 On the same day, Alex Lee asked D8 for a copy of the contract for the purchase of the Cape Verde property so that it could be mentioned in the debenture.⁸⁶⁶ Alex Lee subsequently forwarded this email to D1 and D2.⁸⁶⁷
- F4.7 Each of the four subsidiaries of GRP was going to be granted a new loan facility with LCF in the sum of £20 million for each subsidiary. On 05.05.17, Alex Lee emailed Tom McCarthy (cc D1 and Mark Ingham) to say, “*I spoke to Andy yesterday and I am working on the facilities on the basis that there will be £20m per subsidiary*”.⁸⁶⁸
- F4.8 Mark Ingham emailed D1 on 09.05.17 to ask for an update on this, saying, “*I understand that you have had some discussions with Simon regarding our funding facility?*”⁸⁶⁹
- F4.9 Alex Lee emailed Mark Ingham, Tom McCarthy, D1 and D8 on 10.05.17 to confirm that there would be four facilities of £20 million each: “*Please note that the four facilities are for £20m each in accordance with Andy’s instructions to me*”.⁸⁷⁰
- F4.10 The new facilities were executed on 12.05.17. LCF entered into new facility agreements with CV Resorts (in the sum of £20 million),⁸⁷¹ Colina Property (in the sum of £20 million),⁸⁷² Costa Property (in the sum of £20 million)⁸⁷³ and Waterside Villages (in the sum of £20 million).⁸⁷⁴ These companies executed debentures in favour of LCF.⁸⁷⁵

F5 Payments under the Elysian SPA

- F5.1 As stated above, the Elysian SPA provided for payments to be made in redemption of redeemable preference shares in GRP.⁸⁷⁶
- F5.2 In fact, no such preference shares had been issued.⁸⁷⁷ Companies House has no records of any resolution authorising the issuance of such preference shares, and no preference shares were ever mentioned in any annual return filed by GRP at Companies House.⁸⁷⁸

⁸⁶⁶ MDR00084318

⁸⁶⁷ MDR00084499

⁸⁶⁸ MDR00086312

⁸⁶⁹ MDR00086648

⁸⁷⁰ MDR00086822

⁸⁷¹ MDR00005204; MDR00226341

⁸⁷² MDR00005229

⁸⁷³ MDR00005247

⁸⁷⁴ MDR00005264

⁸⁷⁵ MDR00005207; MDR00005230; MDR00005248; MDR00005415; MDR00005425

⁸⁷⁶ MDR00005460; MDR00007483; MDR000090677; D1-0003735; D8-0013923

⁸⁷⁷ RRAPOC, [18(B)(iii)]

⁸⁷⁸ RRAPOC, [18(B)(iii)]

- F5.3 At the time of the Elysian SPA, the issued share capital of GRP consisted of 32,192,552 ordinary shares and 3,576,950 non-voting “A” ordinary shares.⁸⁷⁹
- F5.4 Notwithstanding the nonexistence of the redeemable preference shares in GRP, payments under the Elysian SPA soon commenced. On 15.05.17, Alex Lee emailed D1 and Katie Maddock to say, “*I gather that Mark is looking for a drawdown today*”.⁸⁸⁰
- F5.5 Alex Lee attached a letter from Mark Ingham and Tom McCarthy to LCF dated 12.05.17 authorising the payment of drawdowns on any of the new facilities to GRP.⁸⁸¹
- F5.6 On 19.05.17, Mark Ingham asked D1 and Katie Maddock for a drawdown of £300,000 to be paid to GRP.⁸⁸² D1 told Katie that this was “*ok to pay*”.
- F5.7 Katie asked Mark which subsidiary it should be allocated to.⁸⁸³ Mark told her to allocate it to Costa Property; and Katie asked her colleague Eloise to make the payment.⁸⁸⁴
- F5.8 LCF paid £301,300 to GRP on 19.05.17.⁸⁸⁵ This increased GRP’s bank balance from £161,472.88 to £462,772.88. GRP then paid £400,000 to Sands Equity with the reference “*share purches [sic]*”.⁸⁸⁶ Sands Equity used this to pay £170,000 to D4, £20,000 to D1, £20,000 to D3 and £20,000 to Mark Ingham.⁸⁸⁷ The reference for each payment was Share Payment. These were the first payments under the Elysian SPA.⁸⁸⁸
- F5.9 Sands Equity was the company formerly known as CV Hotels Limited.⁸⁸⁹ D8 told D2 and D3 on 27.02.17 that he was changing its name to Sands Equity. The shares in Sands Equity were owned by London Group LLP.⁸⁹⁰ D2 was the sole director of Sands Equity.

⁸⁷⁹ Neutral statement of uncontested facts, Schedule 1, Global Resort Property plc
⁸⁸⁰ MDR00087277
⁸⁸¹ MDR00087278; MDR00087306; MDR00005512
⁸⁸² MDR00087910
⁸⁸³ MDR00087911
⁸⁸⁴ MDR00087916
⁸⁸⁵ MDR00007315 page 15

⁸⁸⁶ MDR00089470 tab 2 row 50; MDR00104156 tab 4 row 548; MDR00224332 page 9
⁸⁸⁷ MDR00142762 tab 4 row 6; MDR00215792 page 16; MDR00224332 page 8; MDR00220286 page 287
⁸⁸⁸ D2D10-00028374; D2D10-00028375
⁸⁸⁹ EB0038677; EB0038657; MDR00116145; MDR00116146
⁸⁹⁰ MDR00005871

- F5.10 On 24.07.17, D8 provided D2 and D3 with a backdated payment agency agreement (dated, in typescript, 19.05.17) to explain why Sands Equity was handling payments for other companies.⁸⁹¹ D8 told D2 and D3 that he was going to be backdating it, saying, “*I am dating it 19th May as that is the date of the first payment made by Sands*”.⁸⁹²
- F5.11 D3 explained on 09.10.17 that the “*sole purpose*” of Sands Equity was to act “*as a payment intermediary*” because it had “*a good relationship with Metro Bank and ... the facility for large sums (£2m+) to pass through the bank account*”.⁸⁹³
- F5.12 On 24.05.17, Mark Ingham asked Katie Maddock for a drawdown of £500,000.⁸⁹⁴ LCF paid £500,250 to GRP.⁸⁹⁵ On 26.05.17, he asked her for another £200,000.⁸⁹⁶ LCF paid £203,000 to GRP.⁸⁹⁷ On the same day, GRP paid a total of £475,000 to Sands Equity,⁸⁹⁸ which paid £24,625 to D2.⁸⁹⁹ On 30.05.17, Sands Equity paid £129,625 to D4, £15,250 to D3, £15,250 to D1 and £15,250 to Mark Ingham.⁹⁰⁰
- F5.13 On 06.06.17, LCF paid £400,200 to GRP.⁹⁰¹ On 13.06.17, GRP paid £300,000 to Sands Equity with the reference Share Purchase.⁹⁰² Sands Equity paid £127,500 to D4, £127,500 to D2/D10, £15,000 to D3, £15,000 to D1 and £15,000 to Mark Ingham.⁹⁰³
- F5.14 On 16.06.17, LCF paid £500,250 to GRP.⁹⁰⁴ On 20.06.17, D1 asked Katie Maddock to send a further £500,000 to GRP.⁹⁰⁵ On 21.06.17, LCF paid a further £500,250 to GRP (and Katie Maddock told Mark Ingham that this was being paid).⁹⁰⁶
- F5.15 Mark Ingham told D3 that GRP would pay £800,000 under the Elysian SPA.⁹⁰⁷ Sure enough, the next day, GRP paid £800,000 to Sands Equity.⁹⁰⁸ Sands Equity used this

⁸⁹¹ EB0053474; EB0053475

⁸⁹² EB0053474

⁸⁹³ D2D10-00035447

⁸⁹⁴ MDR00088376

⁸⁹⁵ MDR00007316 page 11; MDR00094508 page 35

⁸⁹⁶ MDR00088616

⁸⁹⁷ MDR00007317 page 1; MDR00094508 page 33

⁸⁹⁸ MDR00096450 rows 133 and 144; MDR00104156

tab 4 rows 509 and 520; MDR00224332 pages 7-8;

MDR00089470 tab 2 row 22

⁸⁹⁹ MDR00215792 page 15

⁹⁰⁰ MDR00224332 page 7; MDR00097580 page 4;

MDR00220286 page 288; D2D10-00029458;

MDR00142762 tab 4

⁹⁰¹ MDR00007318 page 7; MDR00094227 page 4;

MDR00094508 page 29

⁹⁰² MDR00094227 page 5; MDR00104156 tab 4 row 468; MDR00215792 page 13; MDR00224332 page 5

⁹⁰³ MDR00142762 tab 4; MDR00220286 page 291; MDR00215792 page 13; MDR00220325 page 3; MDR00224332 page 5; D2D10-0000947 page 1

⁹⁰⁴ MDR00007320 page 5; MDR00094227 page 6; MDR00094508 page 22

⁹⁰⁵ MDR00091132

⁹⁰⁶ MDR00007320 page 15; MDR00094227 page 7; MDR00094508 page 20; MDR00091190

⁹⁰⁷ EB0050191; EB0050192

⁹⁰⁸ MDR00091367 page 1; MDR00094227 page 8; MDR00104156 tab 4 row 427; MDR00215792 page 10

money to pay £297,500 to D4, £297,500 to D2 and D10, £35,000 to D3, £35,000 to D1 and £35,000 to Mark Ingham.⁹⁰⁹ Nicola Thomson provided D3 with a spreadsheet containing these and the earlier payments under the Elysian SPA.⁹¹⁰

- F5.16 On 28.06.17, Mark Ingham asked for a drawdown of £700,000; D1 told him that LCF had only around £395,000 available; so Mark sent a revised drawdown request.⁹¹¹ LCF then paid £398,750 to GRP.⁹¹² On the next day, GRP paid £350,000 to Sands Equity.⁹¹³ On 03.07.17, Mark Ingham asked for another drawdown, this time in the sum of £275,000.⁹¹⁴ LCF paid £275,500 to GRP on the same day.⁹¹⁵ GRP paid a total of £700,000 to Sands Equity on 03.07.17 and 04.07.17.⁹¹⁶ Sands Equity paid £238,000 to D4, £238,000 to D2, £28,000 to D3, £28,000 to D1 and £28,000 to Mark Ingham.⁹¹⁷
- F5.17 On 18.07.17, D1 asked Katie Maddock to send £1,000,000 to “*Elysian*”; Mark Ingham sent a drawdown request for £1,100,000 to LCF; and LCF paid £1,000,500 to GRP.⁹¹⁸ GRP then paid £900,000 of this money to Sands Equity.⁹¹⁹ On 19.07.17, Sands Equity used this receipt to fund payments of £382,500 to D4, £382,500 to D2 and D10, £45,000 to D3, £45,000 to D1 and £45,000 to Mark Ingham.⁹²⁰
- F5.18 On 01.08.17, LCF paid £306,334.59 to GRP,⁹²¹ which paid £370,000 to Sands Equity on 03.08.17.⁹²² On 04.08.17, LCF paid a further £500,250 to GRP,⁹²³ which then paid another £400,000 to Sands Equity.⁹²⁴ Sands Equity used this to pay £265,000 to D4, £265,000 to D2 and D10, £35,000 to D3 and £35,000 to D1.⁹²⁵ (There was nothing this time for Mark Ingham, who instead received a ‘top up’ payment on the next occasion.)

⁹⁰⁹ MDR00142762 tab 4; MDR00215792 page 10; MDR00220325 page 3; MDR00220286 page 292

⁹¹⁰ EB0050196; EB0050197

⁹¹¹ MDR00092037

⁹¹² MDR00007321 page 1; MDR00094227 page 9

⁹¹³ MDR00092282; MDR00094227 page 10; MDR00104156 tab 4 row 394

⁹¹⁴ MDR00092541

⁹¹⁵ MDR00007119 page 7; MDR00094508 page 12;

MDR00096695 tab 1 row 211, and tab 2 row 203

⁹¹⁶ MDR00215792 page 12; MDR00096695 tab 1 rows

205 and 212, and tab 2 rows 197 and 204;

MDR00104156 tab 4 rows 366 and 373;

MDR00224332 page 1

⁹¹⁷ MDR00142762 tab 4; MDR00215792 page 12;

MDR00220286 page 293; MDR00189017 page 2;

MDR00224332 page 1

⁹¹⁸ MDR00094175; MDR00094176; MDR00094185;

MDR00094193; MDR00007116 page 3;

MDR00094508 page 1

⁹¹⁹ MDR00096695 tab 1 row 123, and tab 2 row 115;

MDR00104156 tab 4 row 284; MDR00215792 page

8

⁹²⁰ MDR00142762 tab 4; MDR00220286 page 297;

MDR00215792 page 7; D2D10-00000165;

MDR00217301 page 6; MDR00220325 page 3;

MDR00218647 page 37

⁹²¹ MDR00007128 page 4; MDR00096695 tab 1 row 41

⁹²² MDR00096695 tab 1 row 29, and tab 2 row 21;

MDR00104156 tab 4 row 190

⁹²³ MDR00096361; MDR00007329 page 13

⁹²⁴ MDR00096695 tab 1 row 14, and tab 2 row 6;

MDR00104156 tab 4 row 175

⁹²⁵ MDR00142762 tab 4; MDR00215792 pages 4-5;

MDR00220286 page 301; MDR00217301 page 10;

MDR00220325 page 3; MDR00218647 page 32

F5.19 On 11.08.17, Mark Ingham asked Katie Maddock of LCF for a drawdown of £1,087,000.⁹²⁶ She emailed D1 to ask if this was OK, adding that the sum available in LCF’s account was “£1,087,109 which is almost the exact amount they have requested to draw so putting two and two together you must have already spoken about to Mark”.⁹²⁷ D1 replied, “Yes and yes 😊😄”.⁹²⁸ Katie then emailed Mark to say that the available balance in LCF’s account had fallen slightly to £1,047,000.⁹²⁹ LCF then paid a total of £1,018,770 to GRP,⁹³⁰ which immediately transferred this sum to Sands Equity.⁹³¹ Sands Equity then used it: (i) on 11.08.17, to make payments of £73,250 to Mark Ingham (who received a ‘top up’ on this occasion to reflect the fact that he had not received anything in the last payment round), £38,250 to D3 and £38,250 to D1;⁹³² and (ii) on 14.08.17, to make payments of £325,125 to D4 and £325,125 to D2 and D10.⁹³³

F5.20 On 18.08.17, Mark Ingham asked D1 and Katie Maddock for a drawdown of £300,000.⁹³⁴ LCF paid £300,875 to GRP, which increased the credit balance in GRP’s account to £486,239.99.⁹³⁵ GRP immediately paid £250,000 to Sands Equity.⁹³⁶ GRP paid a further £100,000 to Sands Equity on 24.08.17.⁹³⁷ On 29.08.17, LCF paid a further £425,575 to GRP,⁹³⁸ which immediately transferred £110,000 to Sands Equity.⁹³⁹ On 30.08.17, LCF paid £800,413 to GRP,⁹⁴⁰ which paid £900,000 to Sands Equity.⁹⁴¹ Sands Equity then used these monies to pay £367,625 to D4, £367,625 to D2 and D10, £43,250 to D3, £43,250 to D1 and £43,250 to Mark Ingham.⁹⁴²

⁹²⁶ MDR00096925

⁹²⁷ MDR00096925

⁹²⁸ MDR00096930

⁹²⁹ MDR00096964

⁹³⁰ MDR00007330 page 15

⁹³¹ MDR00104156 tab 4 rows 162-163

⁹³² MDR00142762 tab 4; MDR00215792 page 3;

MDR00220286 page 305

⁹³³ MDR00142762 tab 4; MDR00215792 pages 2-3;

MDR00215816 pages 2-3; MDR00217301 page 10;

MDR00218647 page 32; MDR00220325 page 3;

D2D10-00031847; D2D10-00031848

⁹³⁴ MDR00097827

⁹³⁵ MDR00007332 page 5

⁹³⁶ MDR00098792 row 32; MDR00104156 tab 4 rows 128-129

⁹³⁷ MDR00098792 row 9; MDR00104156 tab 4 row 105; MDR00215795 page 19

⁹³⁸ MDR00007333

⁹³⁹ MDR00104156 tab 4 rows 94-95; MDR00215795 page 19

⁹⁴⁰ MDR00007333 page 3; MDR00104156 rows 91-92

⁹⁴¹ MDR00104156 tab 4 row 90; MDR00215795 page 18

⁹⁴² MDR00142762 tab 4; MDR00215795 page 18; MDR00220286 page 309; MDR00220325 page 5; MDR00217301 page 11; MDR00218647 page 33

- F5.21 On 05.09.17, LCF paid £1,051,250 to GRP,⁹⁴³ which paid £1,000,050 to Sands Equity,⁹⁴⁴ which immediately paid £425,000 to D4, £425,000 to D2 and D10, £50,000 to D3, £50,000 to D1 and £50,000 to Mark Ingham.⁹⁴⁵
- F5.22 By this point, GRP had received a total of £11,631,162.79 from LCF.⁹⁴⁶ £6,155,000 of this (53% of the total) had been transferred on to D1, D2, D3, D4 and Mark Ingham.
- F5.23 The payments continued. On 13.09.17, Mark Ingham asked for a drawdown of £850,000.⁹⁴⁷ LCF paid £841,925 to GRP,⁹⁴⁸ which paid £850,000 to Sands Equity.⁹⁴⁹ D3 sent a text message to a phone which seems to have been used by Lucy Sparks at around this time⁹⁵⁰ (and which had previously been used by D2⁹⁵¹) stating, “£340k to SG & SHK; £40k to EB, AT & MP”.⁹⁵² Sands Equity paid £340,000 to D4, £340,000 to D2 and D10, £40,000 to D3, £40,000 to D1 and £40,000 to Mark Ingham.⁹⁵³
- F5.24 On 22.09.17, Mark Ingham asked for a drawdown of £1,300,000.⁹⁵⁴ LCF paid £1,300,531 to GRP,⁹⁵⁵ which paid £800,000 to Sands Equity on 22.09.17 and another £500,000 on 25.09.17.⁹⁵⁶ Sands Equity used this money to pay £425,000 to D4, £425,000 to D2 and D10, £50,000 to D3, £50,000 to D1 and £50,000 to Mark Ingham.⁹⁵⁷
- F5.25 On 06.10.17, Mark Ingham asked for a drawdown of £800,000.⁹⁵⁸ Then, around 25 minutes later, he modified it to request a drawdown of £1,550,000.⁹⁵⁹ LCF’s bank account had a credit balance of £1,553,344.01 at this time.⁹⁶⁰ Presumably, in response to the first drawdown request, someone with knowledge of this got in touch with Mark Ingham to say that he could and should request a larger sum, resulting in the second drawdown request for £1,550,000. LCF paid a total of £1,551,888 to GRP,⁹⁶¹ which paid

⁹⁴³ MDR00007335 page 9; MDR00104156 tab 4 row 70

⁹⁴⁴ MDR00104156 tab 4 row 69; MDR00215795 page 17

⁹⁴⁵ MDR00142762 tab 4; MDR00215795 page 17; MDR00220286 page 310; MDR00217301 page 15; MDR00220325 page 5

⁹⁴⁶ MDR00100823

⁹⁴⁷ MDR00102531

⁹⁴⁸ MDR00007337 page 5

⁹⁴⁹ MDR00104156 tab 4 rows 40-41; MDR00127187; MDR00215795 page 16; D2D10-00000278 page 2

⁹⁵⁰ D8-0044201; D1-0012997; EB0060771; EB0062376

⁹⁵¹ EB0035200

⁹⁵² EB0057842; EB0057843

⁹⁵³ MDR00142762 tab 4; MDR00215795 page 16; MDR00220286 page 312; MDR00217301 page 16; MDR00218647 page 30; MDR00220325 page 6

⁹⁵⁴ MDR00104127

⁹⁵⁵ MDR00007324 page 9

⁹⁵⁶ MDR00127187; MDR00215795 page 14

⁹⁵⁷ MDR00142762 tab 4; MDR00215795 page 14; MDR00220286 page 314; MDR00217301 page 16; MDR00218647 page 30; MDR00220325 page 7

⁹⁵⁸ MDR00105823

⁹⁵⁹ MDR00105830

⁹⁶⁰ MDR00007067 page 7

⁹⁶¹ MDR00007067 pages 7-9

£1,500,000 to Sands Equity.⁹⁶² Sands Equity used the money on the same day to pay £425,000 to D4, £425,000 to D2 and D10, £50,000 to D3 and £50,000 to D1.⁹⁶³

F5.26 On 17.10.17, LCF paid £850,093 to GRP,⁹⁶⁴ which paid £850,000 to Sands Equity,⁹⁶⁵ which paid (on 17.10.17) £212,500 to D4 and £212,500 to D2 and D10 and then (on 18.10.17) £25,000 to D3, £25,000 to D1 and £25,000 to Mark Ingham.⁹⁶⁶ By this point in time, LCF had paid a total of around £15.8 million to GRP.⁹⁶⁷ Approximately 60% of this money had been paid to D1, D2, D3, D4 and Mark Ingham via Sands Equity.⁹⁶⁸

F5.27 On 27.10.18, Tom McCarthy asked for a drawdown of £900,000, before lodging a revised drawdown request in the sum of £950,000.⁹⁶⁹ LCF's account had £974,399 in it at this point in time.⁹⁷⁰ It is inferred that someone with knowledge of LCF's bank balance told Tom McCarthy to re-lodge the drawdown request in a larger amount. LCF paid a total of £950,082.50 to GRP,⁹⁷¹ which paid £850,000 to Sands Equity,⁹⁷² which paid £276,250 to D4, £276,250 to D2 and D10, £32,500 to D3, £32,500 to D1 and £32,500 to Mark Ingham.⁹⁷³ By this point in time, the parties had put in place a new mechanism for taking money from LCF, the Prime SPA, which is addressed below.

F6 The absence of any underlying assets of any real value

F6.1 As explained above, D1 approved facilities for GRP's subsidiaries in the total sum of £80,000,000. Those subsidiaries were Waterside Villages (which owned the Lakeview resort, save for the development land); CV Resorts (which was party to the contract with Paradise Beach ATASA in respect of the Paradise Beach resort in Cape Verde); Costa Property (which owned the shares in Tenedora 58520, which in turn owned the contractual rights to acquire the property in the Dominican Republic known as The Beach); and Colina Property (which owned legal title to the shares in Inversiones, which owned the property in the Dominican Republic known as The Hill).

⁹⁶² MDR00127187; MDR00215795 page 11
⁹⁶³ MDR00142762 tab 4; MDR00220286 page 316;
MDR00215795 page 11; MDR00217301 page 18;
MDR00220325 page 8
⁹⁶⁴ MDR00007069
⁹⁶⁵ MDR00127187; MDR00215795 page 9
⁹⁶⁶ MDR00142762 tab 4; MDR00215795 page 8-9;
MDR00217301 page 19; MDR00220325 page 10;
MDR00220286 page 317; D2D10-00037660

⁹⁶⁷ MDR00111621; MDR00111623
⁹⁶⁸ D2D10-00037660 tab 1 and tab 2
⁹⁶⁹ MDR00108499; MDR00108498; MDR00108500
⁹⁷⁰ MDR00007064 page 13
⁹⁷¹ MDR00007064 page 13
⁹⁷² MDR00127187; MDR00215795 page 8
⁹⁷³ MDR00142762 tab 4; MDR00215795 page 7;
MDR00220286 page 319; D2D10-0000286 page 1;
MDR00217301 page 20; MDR00220325 page 12

- F6.2 As also explained above, the Elysian SPA provided for payments of £82,125,000 in redemption of the redeemable preference shares in GRP. The figure of £82,125,000 had been calculated on the basis of: **(i)** £18,745,000 for the Lakeview resort; **(ii)** £3,000,000 for CV Resorts; **(iii)** £32,100,000 for The Beach; and **(iv)** £28,280,000 for The Hill.⁹⁷⁴
- F6.3 These values were unsupportable. There was no basis for concluding that there were net assets worth anywhere near this sum. Further, D1’s decision to approve facilities in the total sum of £80,000,000 for GRP’s four subsidiaries was indefensible.
- F6.4 The value of the Lakeview resort has been addressed above. D1, D2, D4 and D8 knew the facts relating to its acquisition and the valuations, in which they had been involved.
- F6.5 As for CV Resorts, the rights under the contract with Paradise Beach ATASA were not worth anything, let alone £3 million. As explained above, CV Resorts had entered into an agreement with Paradise Beach ATASA on 13.04.15 to acquire the partly-built Paradise Beach resort for €57 million.⁹⁷⁵ However, Savills had advised that the market value of the Paradise Beach resort was only €40.55 million.⁹⁷⁶ D1 thought that CV Resorts would be “*overpaying by quite a margin*”.⁹⁷⁷ D2 agreed with this conclusion: he said that the price was “*far in excess of an open market sale*”.⁹⁷⁸
- F6.6 As explained above, CV Resorts had merely an opportunity to incur a loss by paying €57 million for something with a market value of only €40.55 million.
- F6.7 CV Resorts did not pay the monies to Paradise Beach ATASA,⁹⁷⁹ which complained about this state of affairs. As noted above, this dispute continued into early 2016.⁹⁸⁰
- F6.8 By the end of May 2016, CV Resorts and Paradise Beach ATASA had agreed a variation which postponed the payment dates of the various instalments without reducing the total

⁹⁷⁴ MDR00007516
⁹⁷⁵ MDR00005376; MDR00009585; D2D10-00012920; D2D10-00012921
⁹⁷⁶ MDR00017747; MDR00017750; MDR00017752; MDR00005198; D1-0000892; D1-0001122; MDR00005505; MDR00005504; MDR00007452; MDR00007482; MDR00005372; MDR00022760; MDR00022762; D1-0001760; MDR00024299; MDR00024302

⁹⁷⁷ EB0004668
⁹⁷⁸ EB0032302
⁹⁷⁹ EB0016756
⁹⁸⁰ EB0008909; EB0008910; EB0014784; EB0014785; EB0014904; EB0016762; EB0016763; D2D10-00015688; EB0017784; EB0017794; EB0017832; EB0017836; EB0018223

sum payable, which continued to be €57 million.⁹⁸¹ Mark Ingham confirmed on 26.08.16, “*There are several parts to the contract but they add up to 57m*”.⁹⁸²

- F6.9 However, CV Resorts had still not paid the purchase monies and still did not actually own any part of the Paradise Beach resort. D8 explained on 11.08.16, “*At the moment CV Resorts does not have actual title to any property at Paradise Beach. What it has is the contractual right to acquire the properties for the prices and on the terms set out in the Promissory Agreement as modified by the Variation Agreements*”.⁹⁸³
- F6.10 Furthermore, CV Resorts was in default of its obligation to pay for Phase 4 of the resort. D8 said on 10.10.16 (cc D2, D3 and Mark Ingham), “*To date we have not been able to complete the purchase of any of the units ... We should also have purchased Phase 4 at a price of €3,800,000 but they have not been pressing for that*”.⁹⁸⁴ D8 emailed D2, D3 and D4 on 18.10.16 to say that they had “*overlooked the requirement to complete the purchase of Phase 4 by the 1st September when we should have paid €3,800,000*”.⁹⁸⁵
- F6.11 D8 explained that they did not want CV Resorts to proceed with the purchase because the price was too high: “*As you know we are of the view that the price being paid for the site is too high and wish to persuade them to accept significantly less*”.⁹⁸⁶
- F6.12 For this reason, CV Resorts continued to drag its feet. D8 said, “*We are quite happy to have good reasons for delaying matters*”.⁹⁸⁷ He told CV Resort’s lawyer, Maria, that they “[wanted] *to find reasons to delay the closing of the purchases*” and asked, “*Could you please look at the contracts and see what we can do to hold things up?*”⁹⁸⁸
- F6.13 This prevarication annoyed the vendor, Paradise Beach ATASA, and its owner, John Cotter, who was said to have “*expressed ... considerable dismay and even anger*” as a result of CV Resort’s “*continued delay*”.⁹⁸⁹ On 12.01.17, D8 forwarded to D2 and D3 a

⁹⁸¹ EB0021887; EB0021888; EB0021894; EB0022093; EB0022094; MDR00042481; MDR00042487; MDR00042489; MDR00042490; EB0022224; EB0022226; MDR00053540; D2D10-00017502; D2D10-00017503; D2D10-00017504; D2D10-00017505; D8-0004521; D8-0004522; D8-0004523; D8-0004524; EB0023434; MDR00053371; MDR00053375; MDR00053376; MDR00053377; MDR00053378

⁹⁸² MDR00056253
⁹⁸³ MDR00053540
⁹⁸⁴ D2D10-00020961
⁹⁸⁵ EB0030880; D8-0006343
⁹⁸⁶ D2D10-00024621
⁹⁸⁷ D8-0006754
⁹⁸⁸ MDR00069441
⁹⁸⁹ EB0032302; D2D10-00021996

letter from Paradise Beach ATASA “giving us until the 1st February to remedy our alleged breaches of the agreements”.⁹⁹⁰ However, CV Resorts remained in default.

F6.14 On 24.02.17, Paradise Beach ATASA sent a letter to CV Resorts stating that it had “definitely lost all its interest in the present deal and in the signed Promissory Contracts, and therefore your present breach of the Promissory Contracts is deemed definitive”.⁹⁹¹

F6.15 D8 emailed Paradise Beach ATASA on 04.04.17 (cc D2 and John Cotter) to set out his understanding that Paradise Beach ATASA “no longer considers itself bound by its agreements with CV Resorts Limited”.⁹⁹² A letter from Paradise Beach ATASA, which John Cotter provided to D8 on 10.04.17, confirmed this understanding.⁹⁹³

“Thus, in face of the lack of a contractual and/ or legal justification for your present and past breaches, in addition to your continuous refusal to comply with your contractual obligations under the terms of the contracts effectively SIGNED & AGREED between the Parties, we conclude as in our previous notice letter that CV RESORTS is in definitive breach of the Framework Addendum and of the Promissory Contracts”.

F6.16 Thus, by the time of execution of the Elysian SPA on 29.04.17 and the granting of a new facility of £20 million to CV Resorts on 12.05.17, CV Resorts did not own any part of the Paradise Beach resort⁹⁹⁴ and it was doubtful whether it had any right to purchase it. Even if it did, it was considered worthless and was never going to be exercised.

F6.17 On 07.06.17, John Cotter sent a further letter from Paradise Beach ATASA to D2 and D8 confirming the termination of the agreement.⁹⁹⁵

F6.18 The idea that Costa Property owned an asset worth £32,100,000 was similarly indefensible. As Mark Ingham reminded D1 on 15.04.16, “we don’t own land at Magante – Tenedora just has a contested purchase agreement”.⁹⁹⁶ Tenedora 58520 had not yet paid for the land at Magante, known as The Beach, which continued to take the

⁹⁹⁰ EB0035999; EB0036001; EB0036009

⁹⁹¹ D8-0010649

⁹⁹² D8-0012165

⁹⁹³ D8-0012803; D8-0012804

⁹⁹⁴ MDR00084251; MDR00084318

⁹⁹⁵ EB0049497; EB0049496; D2D10-00029118; D2D10-00029119

⁹⁹⁶ MDR00035933

form of 37 separate titles registered in the names of their various owners; and “[the] *original purchase contract* [was] *subject to a court claim by both parties*”.⁹⁹⁷

- F6.19 The difficulties had been clear from the outset. On 03.03.14, when D2 had asked Richard Marsh about the prospect of developing The Beach, he had warned, “*No; too many legal issues regarding title despite planning permission being available, could be a long time before satisfactory legal title can be obtained so the business risks are too great*”.⁹⁹⁸
- F6.20 The value of £28,280,000 attributed to The Hill was also untenable. As explained above, Sanctuary PCC had been the registered holder of the shares in Inversiones, which in turn owned The Hill. Sanctuary PCC had executed a declaration of trust in respect of those shares in favour of El Cupey for the benefit of the 284 investors who had paid substantial sums to Sanctuary.⁹⁹⁹ In or around April 2015, there was discussion of transferring legal title to the shares in Inversiones to another company, IRG, which would then hold them on trust for El Cupey for the benefit of the 284 investors.
- F6.21 Michael Peacock emailed D8 on 07.04.16 to say, “*As discussed and agreed there should be another declaration of trust, this time between IRG PLC and El Cupey Ltd, so the current agreement (declaration of trust dated 30 July 2013) can be cancelled and the share register in Inversiones 51588 SRL amended...*”¹⁰⁰⁰
- F6.22 D8 prepared a declaration of trust by IRG in favour of El Cupey.¹⁰⁰¹ D8 said to Michael Peacock, “*I would propose that IRG executes the Declaration of Trust. In essence it says that it holds the shares on the same basis as Sanctuary International PCC*”.¹⁰⁰²
- F6.23 Subsequently, IRG executed the declaration of trust, which was dated 12.04.16.¹⁰⁰³ D2 signed it on behalf of IRG. His signature was witnessed by D8. In summary, it provided for IRG to hold the shares in Inversiones on trust for El Cupey. Another version of that document dated 17.06.16 was also signed by D2 and witnessed by D8.¹⁰⁰⁴

⁹⁹⁷ EB0021707; EB0021710

⁹⁹⁸ D2D10-00006537

⁹⁹⁹ MDR00014024; MDR00014025; MDR00014026

¹⁰⁰⁰ EB0017315

¹⁰⁰¹ MDR00015986; MDR00035330; MDR00035331

¹⁰⁰² MDR00035330; EB0017647; EB0017648; D2D10-00015666; D2D10-00015667

¹⁰⁰³ MDR00005340; MDR00009467; D1-0012377

¹⁰⁰⁴ MDR00116028; MDR00217775; D8-0006128; D8-0006129; D8-0006130; D8-0006131

- F6.24 Paul Sayers confirmed on 20.06.17, “*Inversiones 51588SRL is owned by International Resorts Group PLC, a member of the London Group, the shares being held in trust for El Cupey Limited as confirmed in the Declaration of Trust dated 17 June 2016*”.¹⁰⁰⁵
- F6.25 Legal title to the shares in Inversiones was transferred to Colina Property, which held those shares on trust for El Cupey, for the benefit of the 284 investors. A declaration of trust in favour of El Cupey was executed by Colina Property on 18.07.17.¹⁰⁰⁶
- F6.26 The situation with The Hill was also contentious: “*A gentleman by the name of Palan was a shareholder of the company Sunraise, from whom bought the project. He has entered proceedings against Inversiones alleging that notice was not given correctly calling the Board Meeting approving the sale ... The case is ongoing and needs to be addressed*”.¹⁰⁰⁷ On 24.08.16, D2 expressed the view (cc D3, D4 and Mark Ingham) that this situation was “*worsening exponentially for pretty obvious reasons*”.¹⁰⁰⁸ The problems regarding The Hill were not new and were well known to D1, D2, D4 and Mark Ingham.¹⁰⁰⁹ On 27.07.14, D2 had complained that “*it seems very messy yet again – doesn’t anyone just buy or sell clean land with good title in this country?*”¹⁰¹⁰
- F6.27 Further, Inversiones was not worth £32,100,000. Its own audited accounts for the year ended 31.12.17 record that it had total assets of DR\$ 89.2 million (£1.338 million) and total liabilities of DR\$ 98.5 million (£1.477 million) giving rise to a deficiency of DR\$ 9.3 million (£140,000) (applying an exchange rate of DR\$ 1 = £0.015).¹⁰¹¹ In other words, according to its own audited accounts, Inversiones was balance sheet insolvent.

¹⁰⁰⁵ MDR00116025; MDR00116024; MDR00116023

¹⁰⁰⁶ MDR00124476; MDR00124477

¹⁰⁰⁷ MDR00110351; MDR00110352

¹⁰⁰⁸ EB0027823

¹⁰⁰⁹ D2D10-00007387; D2D10-00007390

¹⁰¹⁰ D2D10-00007389

¹⁰¹¹ MDR00175174

G. PRIME SPA

G1 Introduction

- G1.1 By this point in time, D1, D3, D4 and D10 had received almost £15 million from LCF under the Lakeview SPA; and D1, D2, D3, D4 and Mark Ingham had subsequently received around £10 million from LCF under the Elysian SPA. (D1, D2, D3 and D4 had also received numerous other sums from LCF, as set out below.)
- G1.2 Debts to LCF of around £40 million had been parked in the support companies, as explained above; and Waterside Villages, CV Resorts, Costa Property and Colina Property had since incurred fresh indebtedness of almost £23 million to LCF.
- G1.3 As explained below, the Prime SPA was then put in place with a company called Prime RDL to serve as a new mechanism for extracting monies from LCF.

G2 Prime RDL

- G2.1 Prime RDL was owned beneficially by Terry Mitchell, although the share capital was registered in the name of Ian Sands. On or around 20.10.17, Ian Sands agreed to hold the share capital in Prime RDL on trust for Terry Mitchell.¹⁰¹²
- G2.2 Terry Mitchell is a fraudster. On 20.12.18, he was sentenced at Southwark Crown Court (together with his accomplice, Andrew Meikle) for running a fraudulent investment scheme, which the Judge described as an “*elegantly packaged scam*”.¹⁰¹³ The bulk of the funds were dissipated on supporting their lifestyles.
- G2.3 Paul Seakens worked for Terry Mitchell. On 17.09.18, Prime RDL’s bank accounts were frozen on account of Paul Seakens being disqualified as a director.¹⁰¹⁴

¹⁰¹² MDR00107521; MDR00107524

¹⁰¹³ MDR00226935

¹⁰¹⁴ MDR00172428; MDR00172498

G3 The idea of an agreement with Prime RDL

- G3.1 The idea of a transaction involving Prime RDL seems to have been formed at some point in or around the middle of 2017. On 29.08.17, D8 emailed D2 and D3 to say, “*I am busy preparing the commercial terms for Terry [sic] proposed purchase*”.¹⁰¹⁵
- G3.2 The initial concept involved the sale of IRG (owning Costa Property and Colina Property) to Prime RDL¹⁰¹⁶ in return for loan notes in the sum of £11,255,000.¹⁰¹⁷
- G3.3 Although the vendor was to be GRP (which owned the shares in IRG), “*the purchase price [would] be paid to London Group LLP*”.¹⁰¹⁸ As D8 put it in an email to D2, the plan involved “*diverting all the consideration to LG LLP*”.¹⁰¹⁹
- G3.4 An important feature of the plan was that there would be “*a facility from LC&F in place on completion*”.¹⁰²⁰ D8 emailed Alex Lee (cc D1 and D2) on 11.09.17 mentioning his understanding that “*LCAF is prepared to continue funding these companies*”.¹⁰²¹ Indeed, Terry suggested to D2 that the transaction documents should “*include reference to the LC&F facility that will be in place on completion*”.¹⁰²²
- G3.5 The transaction documents would also contain a provision obliging Prime RDL to borrow monies from LCF in order to repay the loan notes.
- G3.6 As D8 explained to D2, D3 and D4, the idea was that Prime RDL would be “*under an obligation to raise corporate finance to repay the loan notes and the money raised will flow through [a] paying agency in accordance with the cash waterfall set out*”.¹⁰²³
- G3.7 D8 explained to Alex Lee in the email sent on 11.09.17:

“The buyer is under an obligation to raise corporate finance and the agreement provides that all the corporate finance raised is paid to a company to be appointed

¹⁰¹⁵ EB0055866

¹⁰¹⁶ EB0055866; MDR00099176; EB0056294

¹⁰¹⁷ MDR00099176

¹⁰¹⁸ MDR00099176; MDR00099177

¹⁰¹⁹ EB0056292

¹⁰²⁰ MDR00099193

¹⁰²¹ MDR00101213

¹⁰²² MDR00099289

¹⁰²³ MDR00099176; MDR00099177

by the Sellers who then distributes the money raised through an agreed cash waterfall".¹⁰²⁴

G3.8 Thus, although Prime RDL would be able (and, indeed, obliged) to make fresh drawdowns from LCF, the monies would be paid to a trustee or paying agent who would be required to use the monies in order to discharge the liabilities under the loan notes.¹⁰²⁵

G3.9 D2 emailed D8 (cc D3, D4, Mark Ingham and Tom McCarthy) on 09.09.17 to check his understanding of this point.¹⁰²⁶ D8 replied to confirm that, in the draft agreement with Prime RDL, "*all corporate finance arranged is paid to an agent appointed by the Seller who then distributes it in accordance with the cash waterfall*".¹⁰²⁷

G4 The first Prime SPA

G4.1 The idea of selling IRG to Prime RDL proved to be problematic, because, as D8 explained to D2, "*there are complications with its accounts etc*".¹⁰²⁸

G4.2 It was therefore decided that the transaction with Prime RDL should instead involve the sale of LV Resorts (which would own Costa Property and Colina Property) to Prime RDL.¹⁰²⁹ An agreement to this effect was signed on 13.09.17 (the "first Prime SPA").¹⁰³⁰

G4.3 The consideration consisted of loan notes in the sum of £11,255,000, which were to be issued by Prime RDL to London Group LLP.

G4.4 Clause 6.3 of the first Prime SPA obliged Prime RDL to "*fully utilise the financial facilities available to them from London Capital & Finance plc*" (i.e., it required Prime RDL to borrow as much as possible from LCF) with such borrowings to be paid "*directly to the Security Trustee*" who would then use 50% of the monies remaining after payment of running costs and interest in order to repay the loan notes. (The term "*Security Trustee*" was defined to mean "*a company to be appointed by [London Group LLP]*".)

¹⁰²⁴ MDR00101213
¹⁰²⁵ MDR00101214
¹⁰²⁶ EB0056557
¹⁰²⁷ EB0056571
¹⁰²⁸ D2D10-00032914

¹⁰²⁹ EB0056240; EB0056242; MDR00101368;
MDR00102548; MDR00102549
¹⁰³⁰ D2D10-00033605; D2D10-00033606; D2D10-
00033635; D2D10-00033636; D2D10-00033637;
MDR00102724

G5 The second Prime SPA

- G5.1 It was then decided that Elysian RGL should be sold to Prime RDL.
- G5.2 On 25.10.17, D8 sent emails stating that “*it has now been agreed to sell Elysian Resorts Group to Prime Resorts*”¹⁰³¹ and that “*Tom and Mark will sell Elysian to Prime*”.¹⁰³²
- G5.3 It was proposed that this would be “*a simple sale of Elysian which holds 2 things the Option for CV and Waterside and its Subs*”.¹⁰³³
- G5.4 As Terry Mitchell explained in an email to Paul Seakens, “*Mark and Tom will fall away and PRD will acquire Elysium [sic]*”.¹⁰³⁴
- G5.5 Paul Seakens responded, “*That’s great but personally no idea what Elysium is or what sits underneath it*”. Terry Mitchell replied, “*Michael [Peacock] will know*”.
- G5.6 An agreement in these terms was drawn up by D8, who circulated it to D2, D3, Mark Ingham and Tom McCarthy on 01.11.17.¹⁰³⁵
- G5.7 It was signed on 07.11.17 (the “second Prime SPA”).¹⁰³⁶
- G5.8 The second Prime SPA provided for Mark Ingham and Tom McCarthy to sell Elysian RGL to Prime RDL for £12 million of redeemable preference shares in Prime RDL.
- G5.9 £10 million of these redeemable preference shares were to be issued to London Group LLP. The remaining £2 million were to be issued to Mark Ingham and Tom McCarthy.
- G5.10 Clause 6.2 of the second Prime SPA obliged Prime RDL to redeem at least £1 million of the preference shares per month. Clause 6.3 of the second Prime SPA obliged Prime RDL to “*fully utilise the financial facilities available to them from London Capital & Finance plc*” (in other words, it required Prime RDL to borrow as much as possible from

¹⁰³¹ D2D10-00036422

¹⁰³² D2D10-00036427

¹⁰³³ D2D10-00036429

¹⁰³⁴ MDR00107786

¹⁰³⁵ D2D10-00036596; D2D10-00036597

¹⁰³⁶ MDR00007440; MDR00009226; D1-0005184; D1-0012088; EB0064185; D2D10-00037030

LCF) with all such borrowings to be paid “*directly to the Security Trustee*” who would use 50% of the monies remaining after payment of running costs and interest in order to redeem the preference shares. (The term “*Security Trustee*” was defined by the second Prime SPA to mean “*a company to be appointed by the Sellers*”.)

G6 The combined Prime SPA

- G6.1 There were now two agreements with Prime RDL: one for the sale of LV Resorts (owning Costa Property and Colina Property) for loan notes in the sum of £11,250,000; and another for the sale of Elysian RGL (owning Waterside Villages and its subsidiaries) in return for redeemable preference shares in the sum of £12 million.
- G6.2 Prime RDL was expressly obliged by both agreements to borrow from LCF in order to repay the loan notes and to redeem the preference shares.
- G6.3 At this point, D8 had the idea of combining these two agreements into a single agreement which would have the effect of replacing them both. D8 explained this idea to D2 and D3 on 19.11.17, saying, “*I propose that there be a final agreement which ... will dis-apply those two agreements and combine them in a single agreement*”.¹⁰³⁷
- G6.4 D8 emailed D2, D3, Terry Mitchell, Ian Sands and Paul Seakens (cc Mark Ingham and Tom McCarthy) on 20.11.17 to explain his idea of “*consolidating the two agreements*” and to say that he had “*merged the two agreements*” to produce a new version.¹⁰³⁸
- G6.5 The combined Prime SPA was signed on 21.11.17.¹⁰³⁹ It provided expressly for the cancellation of the two prior agreements with Prime RDL. Mark Ingham and Tom McCarthy thereby re-acquired Elysian RGL, which re-acquired LV Resorts.
- G6.6 The combined Prime SPA then provided for Mark Ingham, Tom McCarthy and London Group LLP to sell Elysian RGL to Prime RDL for a total consideration of loan notes in the sum of £10.3 million, which were to be issued by Prime RDL to London Group LLP,

¹⁰³⁷ EB0065824

¹⁰³⁸ MDR00112712; MDR00112744; MDR00112778;
MDR00112809; MDR00112810; D2D10-00037769

¹⁰³⁹ EB0066391; EB0066393; MDR00005659;
MDR00225049; MDR00112920; MDR00112922;
D2D10-00038164

and redeemable preference shares in Prime RDL in the sum of £12 million, which were to be issued to London Group LLP (in the total sum of £9.5 million) and Mark Ingham and Tom McCarthy (in the total sum of £2.5 million).

G6.7 Clause 6.4 of the combined Prime SPA obliged Prime RDL to repay £1 million of the loan notes per month and to redeem £1 million of the preference shares per month.

G6.8 Clause 6.5 of the combined Prime SPA obliged Prime RDL to “*fully utilise the financial facilities available to them from London Capital & Finance plc*” (i.e., it required Prime RDL to borrow as much as possible from LCF) with such borrowings to be paid “*directly to the Security Trustee*” who would then use 50% of the monies remaining after payment of running costs and interest in order to repay the loan notes and redeem the preference shares. The term “*Security Trustee*” was defined by the combined Prime SPA to mean GAD, a company under the control of D8, as noted above.

G6.9 Completion occurred on 06.12.17.¹⁰⁴⁰

G6.10 The loan notes under the Prime SPA were issued on completion of the combined Prime SPA. However, the preference shares in Prime RDL were never issued.¹⁰⁴¹

G7 The Prime SPA was not a genuine commercial transaction

G7.1 The Prime SPA was not a genuine commercial transaction between two arm’s length parties. Rather, it was another device to extract monies from LCF.

G7.2 On 12.09.17, Tom McCarthy emailed D8 to make clear that Tom McCarthy and Mark Ingham had been promised a “*fee*” of £2 million for their participation.¹⁰⁴²

G7.3 D8 replied to say that London Group LLP could “[execute] *a declaration of trust in respect of the appropriate percentage of the shares and agrees to instruct the Security Trustee to remit to you that percentage out of each payment received from the Buyer*”.

¹⁰⁴⁰ MDR00224976 to MDR00225048; MDR00225068; MDR00225069 to MDR00225074; EB0072612 to EB0072928; EB0072937 to EB0072980; EB0113774; D2D10-00000254

¹⁰⁴¹ MDR00180039; MDR00180912; MDR00180946; MDR00180947; MDR00173892; MDR00173585

¹⁰⁴² D2D10-00033287

G7.4 Terry Mitchell suggested a different structure for the fee – a “*very simple introducer agreement*” which would oblige London Group LLP to pay a fee of £2 million.¹⁰⁴³

G7.5 In response to Terry’s suggestion, D8 asked D2 (cc D4), “*What is this about? Is it the money that is being paid to Mark and Tom?*”¹⁰⁴⁴

G7.6 At this time, the idea was that Mark Ingham and Tom McCarthy would sell LV Resorts to Prime RDL for loan notes of £11,255,000. On 13.09.17, Tom McCarthy emailed D8 (cc D2, D3 and Mark Ingham) to say, “*Further to recent agreement Mark Ingham and myself would like the allocation of 8.886% of shares in LV Resorts*” (i.e., £1 million each).¹⁰⁴⁵ D2 responded, “*Have no idea what this is about and do not agree it*”.¹⁰⁴⁶

G7.7 D8 explained:¹⁰⁴⁷

“You will recall that Tom and Mark are entitled to ‘a commission’ out of the sale proceeds. In order to make this tax effective they have suggested that they have an entitlement to a percentage of the shares in LV Resorts and we agree to hold on trust their share of the sale proceeds of those shares, i.e. 8.66% and then LG pay them that percentage of the amounts received on the loan notes...”

G7.8 Tom McCarthy added, “*This was agreed with SG and Robert was aware of the arrangement*”.¹⁰⁴⁸ Subsequently, on 13.09.17, D8 emailed D2, D4 and D3 (cc Mark Ingham and Tom McCarthy) to confirm that it would be necessary to set up a trust mechanism for the interest of Mark and Tom in the shares in LV Resorts and their share of the proceeds of sale.¹⁰⁴⁹ D8 circulated drafts of these documents to D2, Tom and Mark on 06.10.17.¹⁰⁵⁰ He circulated further drafts to the same individuals on 09.10.17.¹⁰⁵¹

G7.9 Mark replied to say that he did not understand these drafts: “*I thought it was just going to be a simple agreement where all parties confirm that MI and TM get paid £2m from the sale of LV Resorts to Prime Resorts. This is 44 pages long and I don’t get it*”.¹⁰⁵²

¹⁰⁴³ D2D10-00033291; D8-0021470; D8-0021471

¹⁰⁴⁴ D8-0021472

¹⁰⁴⁵ D2D10-00033420

¹⁰⁴⁶ D2D10-00033421

¹⁰⁴⁷ D2D10-00033425

¹⁰⁴⁸ D2D10-00033426

¹⁰⁴⁹ EB0057846

¹⁰⁵⁰ D2D10-00035362; D2D10-00035365; D2D10-00035366

¹⁰⁵¹ EB0060588; D2D10-00035394; EB0060590; EB0060637; EB0060639

¹⁰⁵² EB0060719

- G7.10 When the two agreements with Prime RDL were merged into a single agreement, the fee payable to Mark Ingham and Tom McCarthy was increased to £2.5 million.¹⁰⁵³
- G7.11 The other main party to the Prime SPA was Prime RDL, which was owned beneficially by Terry Mitchell. He was given a fee of £1 million in return for his participation.
- G7.12 On 10.10.17, D3 was liaising with Monex (a currency exchange company which facilitated international payments) about a payment to a company called Zectrade Limited (“Zectrade”), a company incorporated in Dubai. Monex asked D3 to explain the reason for the payment to Zectrade.¹⁰⁵⁴ D3 forwarded Monex’s email to Terry Mitchell, asking him, “*Please advise on how you would like me to answer this*”.¹⁰⁵⁵ Terry replied to D3, “*To settle the invoice for the acquisition of shares*”.
- G7.13 D3 replied to Monex, “*The invoice from Zectrade that we need to pay is for commission/brokerage fees for the sale of a company and its assets in the Dominican Republic. The fees total circa £1m and are to be paid over a 18 month period*”.¹⁰⁵⁶
- G7.14 Later on the same day, D3 emailed Terry Mitchell to tell him that Sands Equity had paid €111,500 to Zectrade.¹⁰⁵⁷ Terry replied, “*Excellent thanks Elten*”.¹⁰⁵⁸
- G7.15 Subsequent payments to Zectrade were made by London Power Consultants Limited (“LP Consultants”) (formerly Wealden Consultants Limited), a company controlled by D3, including:¹⁰⁵⁹ (i) £50,000 on 09.07.18;¹⁰⁶⁰ (ii) £50,000 on 11.07.18;¹⁰⁶¹ (iii) £50,000 on 11.10.18;¹⁰⁶² (iv) £50,000 on 31.10.18;¹⁰⁶³ (v) £50,000 on 16.11.18;¹⁰⁶⁴ (vi) £100,000 on 30.11.18;¹⁰⁶⁵ (vii) £100,000 on 10.01.19;¹⁰⁶⁶ (viii) £100,000 on 17.01.19.¹⁰⁶⁷
- G7.16 The invoices from Zectrade to LP Consultants in respect of these payments said, “*As per agreement dated 13th September 2017*”.¹⁰⁶⁸ That was the date on which the first Prime

¹⁰⁵³ D2D10-00039440; EB0108317

¹⁰⁵⁴ EB0061279

¹⁰⁵⁵ EB0061314

¹⁰⁵⁶ EB0061350

¹⁰⁵⁷ MDR00106236

¹⁰⁵⁸ MDR00106237

¹⁰⁵⁹ EB0089938; EB0089939

¹⁰⁶⁰ MDR00168767 page 8; MDR00224026 page 9

¹⁰⁶¹ MDR00168767 page 8; MDR00224026 page 9

¹⁰⁶² MDR00182385; MDR00224256

¹⁰⁶³ MDR00224256

¹⁰⁶⁴ MDR00224261 page 2

¹⁰⁶⁵ MDR00224261 page 2

¹⁰⁶⁶ MDR00224261

¹⁰⁶⁷ MDR00224261

¹⁰⁶⁸ EB0132184; MDR00200983; MDR00200984

SPA, for the sale of LV Resorts, had been executed.¹⁰⁶⁹ There was no express provision in that agreement for the payment of a commission of £1 million to Zectrade (and no one has disclosed any other written agreement bearing that date) so there was presumably a collateral oral agreement with Terry Mitchell in respect of his commission.

G7.17 On 13.11.18, D8 and Michael Peacock were trying to calculate the capital gains arising from the Prime SPA. The list of expenses, drawn up by D8, included, “*Commission payable to Zectrade for the introduction of Prime: £1,000,000*”.¹⁰⁷⁰ Michael Peacock produced a spreadsheet to calculate the capital gains. The list of “*Allowable Costs*” included £1 million marked “*Commission – ZecTrade*”.¹⁰⁷¹

G7.18 There was also a “*management fee*” of £200,000 per month for Prime RDL in return for its participation in the transaction, which was payable from the LCF monies.¹⁰⁷²

G8 Payments under the Prime SPA

G8.1 On 02.11.17, Terry Mitchell emailed D8 (cc Ian Sands and Paul Seakens) to say:¹⁰⁷³

“I have just run through with Simon and PRD formally requests a drawdown of £450,000 from LC&F for November. Please send me a template if you require a form to be completed or are happy with this email”.

G8.2 D8 replied to explain that Terry would have to “*send an email to London Capital & Finance requesting a drawdown*”¹⁰⁷⁴. He provided Terry with the wording to use for a drawdown request, payable to IRG.

G8.3 Terry replied, “*Why would it go to IRG?*” He then asked if D8’s wording “*with the funds going via IRG*” was correct.¹⁰⁷⁵ D8 replied to explain, “*I have taken over the account and am managing it as if it were the account for Global Security Trustees*”.¹⁰⁷⁶

¹⁰⁶⁹ D2D10-00033605; D2D10-00033606; D2D10-00033635; D2D10-00033636; MDR00102724

¹⁰⁷⁰ EB0108317

¹⁰⁷¹ MDR00195174

¹⁰⁷² MDR00114707; MDR00114750; MDR00114776; MDR00123830; MDR00123835; MDR00123837; MDR00123839; MDR00123840; EB0066647

¹⁰⁷³ MDR00109299

¹⁰⁷⁴ MDR00109324

¹⁰⁷⁵ MDR00109325

¹⁰⁷⁶ MDR00109338

- G8.4 The name of IRG was subsequently changed (on 09.11.17) to GAD; and it re-registered as a private company.¹⁰⁷⁷ As D8 explained to D2 and D3 (on 08.01.18), “*GAD is the company to which the consideration for the sale of Elysian is paid and everyone assumes that it is under my control*”.¹⁰⁷⁸ During January 2018, the shares in GAD were transferred to Global Realisations Limited, a company owned by D8.¹⁰⁷⁹
- G8.5 D8 explained to Michael Peacock, “*GAD is being used as a means of receiving and distributing the proceeds of sale of Elysian*”.¹⁰⁸⁰
- G8.6 On 02.11.17, Terry sent a drawdown request to LCF, asking for the sum of £450,000 to be paid to GAD.¹⁰⁸¹ On 03.11.17, LCF paid a total of £450,950 to GAD.¹⁰⁸² GAD paid some of this money straight back to LCF as part of the Ponzi scheme described above.¹⁰⁸³ On 06.11.17, GAD used the rest of the money from LCF to pay a total of £200,000 to Sands Equity with the reference Share Purchase.¹⁰⁸⁴
- G8.7 On 17.11.17, Mark Ingham provided Katie Maddock with a drawdown request in the sum of £100,000, payable to GAD.¹⁰⁸⁵
- G8.8 Later, Mark Ingham emailed Tom McCarthy, Ian Sands, Paul Seakens and D8:¹⁰⁸⁶

“I have just spoken to Andy @ LC&F and in view of the documentation signed to date he feels that the request should be from Prime – I presume you Ian, as you have been set up as a director of Waterside. Can you please sign the request attached scan and send to LC&F requests usually go to Katie and Katy cc Andy. I have used the new template requested by LC&F”.

- G8.9 The attached drawdown request still provided for a drawdown of £100,000.¹⁰⁸⁷ Ian Sands signed it and returned it to LCF.¹⁰⁸⁸

¹⁰⁷⁷ MDR00110517; MDR00129954; MDR00129955; MDR00129956

¹⁰⁷⁸ D2D10-00040186

¹⁰⁷⁹ D2D10-00040254

¹⁰⁸⁰ D2D10-00040407; D2D10-00040554

¹⁰⁸¹ MDR00109340; MDR00109404

¹⁰⁸² MDR00007070 page 7; MDR00113545

¹⁰⁸³ MDR00113545

¹⁰⁸⁴ MDR00113545; MDR00118895; MDR00215795
page 6

¹⁰⁸⁵ MDR00112346; MDR00112347

¹⁰⁸⁶ MDR00112357

¹⁰⁸⁷ MDR00112358

¹⁰⁸⁸ MDR00112369; MDR00112370

- G8.10 However, D4 had had other ideas. He had sent a text message to D3 saying, “*Should be £990k in LCAF this morning ... Should be able to split £500k as a share payment. I’ve told SHK you are planning on coming in later*”.¹⁰⁸⁹
- G8.11 A revised drawdown request was duly prepared in the sum of £700,000 (payable to GAD). Paul Seakens sent it to Ian Sands, who signed it and returned it to LCF.¹⁰⁹⁰
- G8.12 On 17.11.17, LCF paid £700,350 and £100,678.56 to GAD.¹⁰⁹¹ On 20.11.17, GAD paid £700,000 to Sands Equity with the reference Share Purchase.¹⁰⁹²
- G8.13 Sands Equity then used these monies to pay £212,500 to D4, £212,500 to D2 and D10, £25,000 to D3, £25,000 to D1 and £25,000 to Mark Ingham.¹⁰⁹³
- G8.14 On 23.11.17, Lucy Sparks sent a text message to D3 about a drawdown request by Prime RDL. D3 responded, “*Get them to draw £870k and we will sort out how it is split tomorrow*”.¹⁰⁹⁴ Lucy replied, “*That’s exactly what SHK said*”.
- G8.15 D3 then sent a text to D1 saying, “*Prime are going to draw today ... please can I have the available balance?*”¹⁰⁹⁵ D1 replied, “*we have £726k available to draw today*”.¹⁰⁹⁶
- G8.16 Paul Seakens emailed Terry to say that he was “*preparing a draw for £700k*”.¹⁰⁹⁷ Prime RDL then submitted two drawdown requests in the total sum of £700,000, payable to GAD.¹⁰⁹⁸ LCF paid £707,846.80 to GAD on the same day.¹⁰⁹⁹
- G8.17 On the next day, 24.11.17, GAD paid £500,000 to Sands Equity,¹¹⁰⁰ which paid £212,500 to D4, £212,500 to D2 and D10, £25,000 to D3, £25,000 to D1 and £25,000 to Mark Ingham.¹¹⁰¹

¹⁰⁸⁹ EB0065391
¹⁰⁹⁰ MDR00112383; MDR00112445; MDR00112446
¹⁰⁹¹ MDR00007073 page 11
¹⁰⁹² MDR00113545; MDR00118895; MDR00215795 page 3
¹⁰⁹³ MDR00142762 tab 4; MDR00220286 page 322; MDR00215795 page 3; MDR00217301 page 24; MDR00218647 page 25; MDR00220325 page 17; D2D10-00037660 tab 2
¹⁰⁹⁴ EB0066647
¹⁰⁹⁵ EB0066657

¹⁰⁹⁶ EB0066657
¹⁰⁹⁷ MDR00113443
¹⁰⁹⁸ MDR00113402; MDR00113441; MDR00113468 to MDR00113470; MDR00113504; MDR00113505; MDR00113507; MDR00113508
¹⁰⁹⁹ MDR00007075 pages 5 and 9; MDR00114364 tabs 3 and 5
¹¹⁰⁰ MDR00118895; MDR00215795 page 2
¹¹⁰¹ MDR00142762 tab 4; MDR00215795 page 2; MDR00220286 page 324; MDR00217301 page 24; MDR00218647 page 25; MDR00220325 page 18

G8.18 On 30.11.17, Prime RDL submitted a drawdown request in the sum of £800,000, payable to GAD.¹¹⁰² However, LCF did not have the full amount available.¹¹⁰³ D8 emailed Paul Seakens on the following day to say:¹¹⁰⁴

“I understand that the drawdown today will be only £650,000. There are sufficient funds in the account that upon receipt of that sum we can and will be paying £500,000 by way of share payments ... There are a number of redemptions next week which can also be funded from cash in that account. I would suggest that the drawdown request be amended to £650,000 ...”

G8.19 Prime RDL submitted a revised request in the sum of £650,000, payable to GAD.¹¹⁰⁵ LCF paid £650,035 to GAD,¹¹⁰⁶ which paid £500,000 to Sands Equity,¹¹⁰⁷ which paid £182,750 to D4, £182,750 to D2 and D10, £21,500 to D3 and £21,500 to D1.¹¹⁰⁸

G8.20 On 07.12.17, Prime RDL requested drawdowns of £425,000 for Costa Property (payable to GAD) and £470,000 for Waterside Villages (payable to GAD).¹¹⁰⁹

G8.21 On the next day, LCF paid £470,525 and £425,575 to GAD,¹¹¹⁰ which paid £500,000 to London Group LLP (“Share Purchase”),¹¹¹¹ which paid £170,000 to D4, £170,000 to D2 and D10, £20,000 to D3, £20,000 to D1 and £20,000 to Mark Ingham.¹¹¹²

G8.22 On 14.12.17, Paul Seakens emailed Ian Sands to say, “Apparently there is £950,000 available so Terry has instructed via Elten to draw this amount”.¹¹¹³ Ian signed drawdown requests in the total sum of £950,000, comprising of £540,000 for Waterside Villages (payable to GAD) and £410,000 for Colina Property (payable to GAD).¹¹¹⁴

¹¹⁰² MDR00114603; MDR00114604; MDR00114618; MDR00114619; MDR00114713; MDR00114714

¹¹⁰³ MDR00114740

¹¹⁰⁴ MDR00115161

¹¹⁰⁵ MDR00115167; MDR00115168; MDR00115177; MDR00115178; MDR00115181

¹¹⁰⁶ MDR00007076 page 13

¹¹⁰⁷ MDR00118895; MDR00126834; MDR00215795 pages 1-2

¹¹⁰⁸ MDR00142762 tab 4; MDR00215795 page 1; MDR00220286 page 324; MDR00217301 page 26; MDR00218647 page 19; MDR00220325 page 18

¹¹⁰⁹ MDR00117268; MDR00117269; MDR00117270 to MDR00117272

¹¹¹⁰ MDR00007083 page 7

¹¹¹¹ MDR00118895; MDR00126835; MDR00220330 pages 3-4

¹¹¹² MDR00008467; MDR00196021 tab 2; MDR00220330 page 4; MDR00220286 page 326; MDR00224827 page 176; MDR00217301 page 26; MDR00218647 page 19; MDR00220325 page 19

¹¹¹³ MDR00118310

¹¹¹⁴ MDR00118311; MDR00118312; MDR00118342; MDR00118343; MDR00118344; EB0069965; EB0069967; MDR00118349; MDR00118350; MDR00118403; MDR00118654; MDR00118655; MDR00118829

- G8.23 LCF paid £950,000 to GAD on the same day.¹¹¹⁵ On 20.12.17 and 21.12.17, GAD paid £540,000 to London Group LLP,¹¹¹⁶ which paid £170,000 to D4, £170,000 to D2 and D10, £20,000 to D3, £20,000 to D1 and £20,000 to Mark Ingham.¹¹¹⁷
- G8.24 On 04.01.18, Prime RDL requested drawdowns of £590,000 for Waterside Villages (payable to GAD), £350,000 for Costa Property (payable to GAD) and £310,000 for Colina Property (payable to GAD).¹¹¹⁸ On the same day, LCF made payments of £590,150, £350,175 and £310,300 to GAD.¹¹¹⁹
- G8.25 On the next day, GAD paid a total of £1,000,000 to London Group LLP.¹¹²⁰ Five days later, on 10.01.18, London Group LLP paid £289,000 to D4, £289,000 to D2 and D10, £34,000 to D3, £34,000 to D1 and £34,000 to Mark Ingham.¹¹²¹
- G8.26 On 11.01.18, Prime RDL requested drawdowns of £300,000 for Waterside Villages (payable to GAD), £170,000 for Colina Property (payable to GAD) and £130,000 for Costa Property (payable to GAD).¹¹²² LCF had well over £2 million in its bank account:¹¹²³ there was plenty of scope for these drawdown requests to be increased; and presumably someone thought that they should be increased, because Prime RDL then lodged revised drawdown requests in the total sum of £1.2 million, comprising £600,000 for Waterside Villages (payable to GAD), £320,000 for Colina Property (payable to GAD) and £280,000 for Costa Property (payable to GAD).¹¹²⁴
- G8.27 On the following day, LCF paid a total of £1,200,237.50 to GAD.¹¹²⁵ On 15.01.18, GAD paid £1 million to London Group LLP,¹¹²⁶ which paid £321,075 to D4, £321,075 to D2 and D10, £45,000 to D3, £45,000 to D1 and £45,000 to Mark Ingham.¹¹²⁷

¹¹¹⁵ MDR00007049 page 11

¹¹¹⁶ MDR00220330 page 5

¹¹¹⁷ MDR00008467; MDR00196021 tab 2; MDR00224827 page 179; MDR00217301 page 27; MDR00218647 page 20; MDR00220325 page 21; MDR00220286 page 329; MDR00220330 pp 5-6

¹¹¹⁸ MDR00120500; MDR00120501; MDR00120502; MDR00120503; MDR00120504; MDR00120505; MDR00120506; MDR00120513; MDR00120514

¹¹¹⁹ MDR00007078 page 15; MDR00007079 page 1; D2D10-00000503 page 5

¹¹²⁰ MDR00126835; MDR00123214; D2D10-00000503 page 5; MDR00129744 page 5; MDR00220330 pages 6-7

¹¹²¹ MDR00008467; MDR00196021 tab 2; MDR00121876; MDR00224827 page 183;

MDR00217301 page 31; MDR00220325 page 24; MDR00218647 page 15; MDR00220286 page 332; MDR00220330 page 7

¹¹²² MDR00122171; MDR00122172; MDR00122170; MDR00122210

¹¹²³ MDR00007081 page 3

¹¹²⁴ MDR00122278; MDR00122279; MDR00122280; MDR00122329; MDR00122331

¹¹²⁵ MDR00007081 pages 11-15

¹¹²⁶ MDR00220330 page 8; MDR00126835; MDR00123214; MDR00129744 page 4; MDR00157469

¹¹²⁷ MDR00220330 pages 8-9; MDR00008467; MDR00196021 tab 2; MDR00122922; MDR00224827 page 184; MDR00217301 page 31;

- G8.28 London Group LLP also paid £41,251.50 to Tom McCarthy and £41,251.50 to Mark Ingham on 16.01.18.¹¹²⁸
- G8.29 On 19.01.18, Katie Maddock of LCF emailed Paul Seakens to say, “*We have £1.8 million available to lend today*”.¹¹²⁹ He replied attaching drawdown requests in the total sum of £1.8 million,¹¹³⁰ comprising £600,000 for Waterside Villages (payable to GAD), £600,000 for Costa Property (payable to GAD) and £600,000 for Colina Property (payable to GAD).¹¹³¹ On 22.01.18, LCF paid £1,800,029.50 to GAD.¹¹³²
- G8.30 GAD then paid £1.3 million of these monies to London Group LLP,¹¹³³ which paid £392,425 to D4, £392,424 to D2 and D10, £55,000 to D3, £105,418.50 to Mark Ingham and £50,418.50 to Tom McCarthy.¹¹³⁴
- G8.31 On 26.01.18, Prime RDL made drawdown requests in the total sum of £1.8 million, comprising £600,000 for Waterside Villages (payable to GAD), £600,000 for Costa Property (payable to GAD) and £600,000 for Colina Property (payable to GAD).¹¹³⁵ On the same day, LCF paid a total of £1,800,030 to GAD.¹¹³⁶
- G8.32 On 29.01.18, GAD paid £1.3 million to London Group LLP.¹¹³⁷ London Group LLP paid £392,425 to D4, £392,424 to D2 and D10, £55,000 to D3, £110,000 to D1, £105,418.50 to Mark Ingham and £50,418.50 to Tom McCarthy.¹¹³⁸
- G8.33 By this point in time, the aggregate sum owing by Waterside Villages, Costa Property and Colina Property had grown to more than £35 million.¹¹³⁹

¹¹²⁸ MDR00218647 page 15; MDR00220325 page 24; MDR00220286 page 333

¹¹²⁹ MDR00220330; MDR00008467; MDR0019602122

¹¹³⁰ MDR00124036

¹¹³¹ MDR00124174

¹¹³² MDR00124175; MDR00124176; MDR00124177; MDR00124186; MDR00124187; D2D10-00040814

¹¹³³ MDR00007045

¹¹³⁴ MDR00220330 page 9; MDR00125096; MDR00126835; MDR00129744 page 4

¹¹³⁵ MDR00220330 page 10; MDR00008467; MDR00196021; MDR00224827; MDR00217301 page 32; MDR00218647 page 16; MDR00220325 page 27; MDR00220286 page 334

¹¹³⁵ MDR00125454; MDR00125455; MDR00125461; MDR00125468; MDR00125469; MDR00125469; MDR00125470; MDR00125472

¹¹³⁶ MDR00007044 page 11

¹¹³⁷ MDR00126835; MDR00129744 page 3; MDR00220330 page 11

¹¹³⁸ MDR00220330 pages 11-12; MDR00008467; MDR00196021 tab 2; MDR00125828; MDR00224827 page 186; MDR00217301 page 33; MDR00218647 page 17; MDR00220325 page 28; MDR00220286 pages 334-335

¹¹³⁹ MDR00126814; MDR00126815; MDR00126820

- G8.34 D1 became concerned that there was nothing on file to justify the ever-increasing level of borrowing. There was therefore what Alex Lee described as a “*payment holiday on the deferred consideration*” on the basis that there was “*very little headroom with the current facilities*”.¹¹⁴⁰ As Mark Ingham recorded in an email to D8 and D2, “*they are not paying off loan notes and pref. shares until ... they have the new headroom*”.¹¹⁴¹
- G8.35 During this payment holiday, D1, D2, D3 and D4 formulated a new device to extract monies from LCF, which evolved to become the LPE SPA, as explained below.
- G8.36 Ultimately, on 01.05.18, D1 told Terry Mitchell that Prime RDL should send a letter to LCF “*giving an opinion of the current value and short paragraph as to where we are with each project*”¹¹⁴² on which D1 could rely to permit drawdowns to continue.
- G8.37 Terry’s colleague, Angel Rodriguez, drafted a letter from Prime RDL to LCF stating that The Hill and The Beach were worth US\$50 million each and that the Lakeview resort was worth £30 million.¹¹⁴³ Terry sent it to D2 (“*would really appreciate your views*”).¹¹⁴⁴
- G8.38 D1 was also consulted about the wording of the draft letter from Prime RDL; he proposed some amendments to it.¹¹⁴⁵ The letter was amended in accordance with D1’s suggestions.¹¹⁴⁶ It was then signed by Terry and Angel.¹¹⁴⁷
- G8.39 Having seen the final version, D2 telephoned Ian Sands to say that drawdowns by Prime RDL from LCF could now resume. Ian reported this to Terry and Paul on 11.05.18: “*Just had a call from Simon H-K on a number of things but included was that the letters to LC&F were fine and that we can resume drawing down funds*”.¹¹⁴⁸
- G8.40 Prime RDL then made further drawdown requests in the total sum of £1.5 million, comprising £750,000 for Colina Property (payable to LP Consultants) and £750,000 for

¹¹⁴⁰ MDR00138755

¹¹⁴¹ D2D10-00043102

¹¹⁴² MDR00145328

¹¹⁴³ MDR00146131

¹¹⁴⁴ MDR00146132

¹¹⁴⁵ MDR00147399; MDR00147405

¹¹⁴⁶ MDR00147410

¹¹⁴⁷ MDR00147420; MDR00147428; MDR00147429; MDR00147483; MDR00147513; MDR00147514; MDR00147570

¹¹⁴⁸ MDR00147564

Costa Property (payable to LP Consultants).¹¹⁴⁹ On 15.05.18, LCF made two payments of £750,012.50 each to LP Consultants.¹¹⁵⁰

- G8.41 On 22.05.18, LP Consultants paid £497,500 to D4, £497,500 to D2, £112,500 to D3 and £112,500 to D1.¹¹⁵¹ On 24.05.18, LP Consultants paid £143,752.50 to Mark Ingham and £68,752.50 to Tom McCarthy.¹¹⁵²
- G8.42 These were the final payments under the Prime SPA.¹¹⁵³ By this time, D1, D2, D3 and D4 had devised another mechanism for extracting monies from LCF.

¹¹⁴⁹ MDR00148053; MDR00148056; MDR00148058; MDR00148061; MDR00148093; MDR00148096

¹¹⁵⁰ MDR00007015 pages 5-7; EB0097828 page 4

¹¹⁵¹ EB0097828 page 4; MDR00173805 page 12; MDR00203955 page 38; MDR00220286 page 353; MDR00217305 page 11

¹¹⁵² EB0097828 page 4

¹¹⁵³ MDR00213460; EB0123428

H. LPE SPA

H1 Introduction

- H1.1 The new mechanism involved drawdowns by LOG under LOG's facility agreement with LCF in order to fund payments to D1, D2, D3 and D4.
- H1.2 Initially there seems to have been some uncertainty about the ostensible justification for these payments. At the outset, it was said that they related to preference shares in LPC. Later, these payments were retrospectively recharacterised when it was said that they had been made under the LPE SPA, which was signed on 03.07.18.
- H1.3 Before setting out the facts in relation to the payments and the LPE SPA, it is necessary to address LOG's facility with LCF from which these payments were drawn.

H2 LOG's facility with LCF

- H2.1 LOG's first drawdown took place on 21.03.16, when LCF paid a total of £50,117.45 to London Trading on behalf of LOG.¹¹⁵⁴ London Trading paid this to IOG, which was in the process of borrowing monies from LOG.¹¹⁵⁵
- H2.2 At this point, there was no written facility agreement between LCF and LOG.
- H2.3 Alex Lee emailed D8 on 14.04.16 (with the subject "*London Oil and Gas facility*") to say that he had "*instructions to prepare the facility and supporting security documentation*".¹¹⁵⁶ On 15.04.16, Alex Lee emailed D8 again (cc D2 on this occasion) to say that the draft facility agreement was "*almost completed*".¹¹⁵⁷

¹¹⁵⁴ MDR00007235 page 2; MDR00034152 page 2;
MDR00043998 row 4; D2D10-00041161; D2D10-
00041167; MDR00033543

¹¹⁵⁵ MDR00033543

¹¹⁵⁶ MDR00035715

¹¹⁵⁷ MDR00035747

- H2.4 On 27.04.16, Alex Lee emailed D1 attaching a further draft of the facility agreement between LCF and LOG containing a limit of £20 million.¹¹⁵⁸
- H2.5 On 28.04.16, D1 emailed Alex Lee saying, “*This looks OK, can you send to Robert for signature*”.¹¹⁵⁹ Alex sent it to D8 (cc D1).¹¹⁶⁰ D8 forwarded it to D2 and D3.¹¹⁶¹
- H2.6 By 12.05.16, it had still not been signed.¹¹⁶² D1 hoped that D2 would sign it “*tomorrow morning*”¹¹⁶³ but this did not happen. Alex Lee told D1 that they would “[need] to get the documentation in place if for nothing else your audit” [sic].¹¹⁶⁴ The “*clean version for signing*” was circulated on 20.05.16,¹¹⁶⁵ but still it was not signed.
- H2.7 However, the absence of a signed facility agreement with LOG was apparently not considered to be any impediment to continued drawdowns from LCF.
- H2.8 On 20.05.16, Katie Maddock emailed Nicola Thomson (cc D3) to say, “*Andy is going to be sending £681,208.05 to London Group on behalf of the loan agreement that we have with London Oil & Gas*”.¹¹⁶⁶ She asked them to provide “*on London Oil & Gas headed paper a letter of authorisation for the drawing to be paid to London Group’s account*”. A letter in those terms was signed by D2 and sent to LCF.¹¹⁶⁷ LCF paid £681,208.50 to London Group plc.¹¹⁶⁸ This was the second drawing by LOG.¹¹⁶⁹
- H2.9 There was another drawing by LOG on 26.05.16 in the sum of £243,288.59¹¹⁷⁰ and another on 07.06.16 in the sum of £437,919.46.¹¹⁷¹ By this point, on a gross basis (i.e., grossed up to include D6’s commission of 25% and LCF’s fee of 2%), LOG owed over £1.9 million to LCF.¹¹⁷² But still no facility agreement had been signed.¹¹⁷³

¹¹⁵⁸ MDR00037784; MDR00037785

¹¹⁵⁹ MDR00037937

¹¹⁶⁰ MDR00037955; MDR00037956; D8-0004174;

¹¹⁶¹ D8-0004174; D8-0004175; D2D10-00016049

¹¹⁶² D8-0004258; EB0020236; EB0020237

¹¹⁶³ MDR00040609; MDR00040610; MDR00040611

¹¹⁶⁴ MDR00041147

¹¹⁶⁵ MDR00041570; MDR00041571; MDR00041572;

MDR00041573

¹¹⁶⁶ MDR00041526

¹¹⁶⁷ MDR00041561; MDR00041560; MDR00007546

¹¹⁶⁸ MDR00007247 page 7

¹¹⁶⁹ MDR00043998 row 5

¹¹⁷⁰ MDR00042320; MDR00042321; MDR00042324;
MDR00042325; MDR00007248 pages 9-13;
MDR00042363 page 1; MDR00043998 row 7

¹¹⁷¹ MDR00043605; MDR00043607; MDR00043608;
MDR00043609; MDR00007250 page 13;
MDR00043998 row 8

¹¹⁷² MDR00043998; MDR00044047; MDR00044049

¹¹⁷³ MDR00041931; MDR00041933; MDR00041935;
MDR00041942; MDR00041944; MDR00041945;
MDR00043715; MDR00043717; MDR00043718;
MDR00043720

- H2.10 On 09.06.16, D8 emailed D2 and D3 to say, “*Andy was pressing me yesterday to get the Facility Agreement and Debenture for LOG duly executed. I attach copies of both documents and have left printed copies on Simon’s desk*”.¹¹⁷⁴ But still it was not signed.
- H2.11 Again, the absence of a signed agreement was apparently not considered to be any impediment to continued drawdowns from LCF. In response to drawdown requests by LOG, LCF paid to London Group plc (on behalf of LOG) sums of £291,946.31 on 10.06.16,¹¹⁷⁵ £33,150 on 13.06.16¹¹⁷⁶ and £350,043.62 on 17.06.16.¹¹⁷⁷
- H2.12 By this point in time, LOG owed £2.9 million to LCF.¹¹⁷⁸
- H2.13 On 20.06.16, the facility agreement between LCF and LOG was approved by LOG’s board at a meeting chaired by D2.¹¹⁷⁹ The “*latest drafts*” were produced to the meeting. The facility agreement contained a limit of £20 million. It was then signed by D2 on behalf of LOG and backdated to 15.03.16 in manuscript.¹¹⁸⁰
- H2.14 It is assumed that the reason for backdating the facility agreement in this way was to make it seem as though it had been executed before LOG’s first drawdown on 21.03.16. However, the accompanying debenture dated 20.06.16 gave the game away: it referred to “*the facility agreement entered into on the date of this Deed*”.¹¹⁸¹
- H2.15 Drawings by LOG continued. LOG’s debt to LCF rose above the £20 million facility limit. Eloise Wade of LCF emailed Katie Maddock of LCF on 12.10.17 to say, “*LOG is £2,869,837.58 over their credit limit*”.¹¹⁸²
- H2.16 It was decided that there would be a new facility agreement for LOG with an increased limit. Initially it was proposed that the new facility limit for LOG would be £40 million.¹¹⁸³ However, the drafting of the new facility agreement itself proved to be less

¹¹⁷⁴ MDR00044016; MDR00044017; MDR00044018; MDR00044019

¹¹⁷⁵ EB0023799; EB0023800; D2D10-00017849; MDR00044257; D2D10-00017850; D2D10-00017851 page 2; MDR00007251 page 13

¹¹⁷⁶ D2D10-00017850; D2D10-00017851 page 1; MDR00007251 page 15

¹¹⁷⁷ MDR00045109; MDR00045111; MDR00045112; MDR00045113; MDR00007253 page 15

¹¹⁷⁸ MDR00045648; MDR00045654

¹¹⁷⁹ MDR00006103; MDR00046296

¹¹⁸⁰ MDR00100801

¹¹⁸¹ MDR00002278 page 2

¹¹⁸² MDR00106611

¹¹⁸³ EB0062340; EB0062341; MDR00108026; MDR00108027

than straightforward due to the desire to include what was described as a ‘G&T clause’ (or ‘gin and tonic clause’ or ‘GT clause’)¹¹⁸⁴ which would suspend LOG’s obligations to pay interest and to repay principal in the event of LCF’s collapse.¹¹⁸⁵

H2.17 By early March 2018, the wording of the G&T clause had still not been agreed.¹¹⁸⁶ D1 had expressed a concern that it would not be acceptable to LCF’s auditors.

H2.18 The delay in signing a revised facility agreement was problematic because LOG was being audited by BDO LLP, who had been told that there was a facility agreement with LCF with a limit of £50 million.¹¹⁸⁷ In reality, no such agreement yet existed.¹¹⁸⁸

H2.19 On 09.03.18, Alex Lee provided D1 with a draft letter agreement between LCF and LOG increasing the facility limit to £50 million, backdated to 01.12.17 (in typescript at the top of the page).¹¹⁸⁹ D1 and D2 signed it in that form on the same day¹¹⁹⁰ and it was provided to BDO LLP (cc D2).¹¹⁹¹ It is clear from these facts that it was falsely backdated in order to deceive BDO LLP into thinking that LOG’s indebtedness to LCF had always stayed within the facility limit when in fact it had not.

H3 Initial payments to D1, D2, D3 and D4 from LOG’s facility

H3.1 As explained above, there was what Alex Lee described as a “*payment holiday*”¹¹⁹² under the Prime SPA after 29.01.18.¹¹⁹³

H3.2 D1, D2, D3 and D4 were keen that the flow of monies from LCF to their personal bank accounts should not be interrupted. Therefore they sought to find a new way to justify the extraction of monies from LCF. The solution on which they alighted was to draw monies under LOG’s facility for payment to D1, D2, D3 and D4.

¹¹⁸⁴ D2D10-00002667; D2D10-00029860; D2D10-00031179; D2D10-00035799; D2D10-00055802
¹¹⁸⁵ D2D10-00040783; MDR00133474; MDR00133475
¹¹⁸⁶ MDR00145848; D2D10-00055802
¹¹⁸⁷ MDR00133709
¹¹⁸⁸ MDR00133822; MDR00133821; MDR00133911
¹¹⁸⁹ MDR00134357; MDR00134358

¹¹⁹⁰ MDR00134414; MDR00134415; MDR00134416; MDR00134419
¹¹⁹¹ MDR00134435; MDR00134436; MDR00169410; MDR00169411
¹¹⁹² MDR00138755
¹¹⁹³ MDR00213460 rows 35-38; EB0123428 rows 35-38

- H3.3 On 02.02.18, D1 emailed Katie Maddock and Katy Eaves to say, “*Please can you send Elten the available funds figure tomorrow when you have it*”.¹¹⁹⁴ Katy Eaves emailed D3 saying, “*Good Morning Elten, We have £1,950,000.00 to lend today*”.¹¹⁹⁵
- H3.4 D3 prepared a spreadsheet of “*LPC Pref Share Payments*”¹¹⁹⁶ showing proposed payments of £450,000 to D4, £450,000 to D2, £50,000 to D3 and £50,000 to D1.¹¹⁹⁷
- H3.5 LPC had previously issued preference shares to D2 and D3. Thus, the initial intention seems to have been that the proposed payments would relate to the preference shares.
- H3.6 On 02.02.18, LCF paid £1,500,025 to LOG.¹¹⁹⁸ LOG paid a total of £1 million of this to London Group LLP with the reference Pref Share Adv.¹¹⁹⁹
- H3.7 London Group LLP then paid £450,000 to D4, £450,000 to D2 and D10, £50,000 to D3 and £50,000 to D1.¹²⁰⁰ Each of these had the reference PEF SHARE ADV. They were included in a spreadsheet as “*LPC Preference Share – Advance Payments*”.¹²⁰¹
- H3.8 On 09.02.18, LCF paid £1,000,065 to LOG,¹²⁰² which paid £1,000,000 to London Group LLP,¹²⁰³ which paid £450,000 to D4, £50,000 to D3 and £50,000 to D1. Again the references for the payments were PEF SHARE ADV.¹²⁰⁴ The sum of £450,000 for D2 (equal to D4’s payment) was not transferred into D2’s personal bank account but was instead transferred to another London Group LLP account.¹²⁰⁵
- H3.9 On 16.02.18, D1 emailed LCF’s administrative staff to say, “*I’ve spoken to LOG and they should be drawing £1.9m today*”.¹²⁰⁶ Sure enough, LOG submitted a drawdown request in the sum of £1,853,000.¹²⁰⁷ LCF paid £1,853,099.99 to LOG,¹²⁰⁸ which paid £900,000 to London Group LLP with the reference PEF SHARE ADV.¹²⁰⁹

¹¹⁹⁴ MDR00126617

¹¹⁹⁵ MDR00126666

¹¹⁹⁶ EB0077050

¹¹⁹⁷ EB0077049; EB0077050

¹¹⁹⁸ MDR00007031 page 5

¹¹⁹⁹ MDR00220330 page 12-13

¹²⁰⁰ MDR00220330 page 13; MDR00008467; MDR00196021; MDR00127273; MDR00217301 page 36; MDR00218647 page 11; MDR00218653 page 11; MDR00220325 page 30; MDR00220286 page 336

¹²⁰¹ MDR00147028

¹²⁰² MDR00007029 page 9; MDR00128372; MDR00128378; MDR00128380; MDR00129529 row 119

¹²⁰³ MDR00220330 page 14

¹²⁰⁴ MDR00008467; MDR00196021; MDR00128607; MDR00220286 page 337; MDR00220330 page 14

¹²⁰⁵ MDR00220330 page 14

¹²⁰⁶ MDR00129939

¹²⁰⁷ MDR00129930; MDR00129931

¹²⁰⁸ MDR00007028 page 7

¹²⁰⁹ MDR00220330 page 15

- H3.10 London Group LLP then used these monies to pay £634,375 to D4, £158,750 to D3 and £72,500 to D1 (all with the reference PREF SHARE ADV).¹²¹⁰ D2's payment of £634,375 (equal to D4's payment) was again transferred into another London Group LLP account, rather than into his personal account.¹²¹¹
- H3.11 On 19.02.18, LOG paid £600,000 to London Group LLP with the reference PREF SHARE ADV.¹²¹² On 22.02.18, LCF paid £422,505 to LOG.¹²¹³ On 23.02.18, LOG paid a further £600,000 to London Group LLP with the reference PREF SHARE ADV.¹²¹⁴
- H3.12 London Group LLP used the money to pay £437,500 to D4, £75,000 to D3 and £50,000 to D1, each with the reference PREF SHARE ADV.¹²¹⁵
- H3.13 On 26.02.18, LOG paid £400,000 to London Group LLP with the reference PREF SHARE ADV; and London Group LLP paid £437,500 to another London Group LLP account, presumably on behalf of D2, given that this sum was equal to the payment that had been made to D4 on 23.02.18.¹²¹⁶
- H3.14 On 12.03.18, LCF paid a total of £551,484.56 to LOG.¹²¹⁷ The next day, D1 asked one of LCF's administrative staff, "*What's the maximum amount we can loan out today?*"¹²¹⁸ She replied to tell him that £380,000 was available.¹²¹⁹ LOG then submitted a drawdown request for £360,000.¹²²⁰ LCF paid £360,035 to LOG.¹²²¹
- H3.15 On 14.03.18, LOG paid £500,000 to London Group LLP with the reference PREF SHARE ADV.¹²²² London Group LLP then paid £218,750 to D4, £37,500 to D3 and £25,000 to D1.¹²²³ Each payment had the reference PREF SHARE ADV.

¹²¹⁰ MDR00220330 pages 15-16; MDR00008467; MDR00196021; MDR00130152; MDR00130151; MDR00220286 page 338

¹²¹¹ MDR00220330 pages 15-16

¹²¹² MDR00220330 page 16

¹²¹³ MDR00007026 pages 13-15

¹²¹⁴ MDR00220330 pages 17-18

¹²¹⁵ MDR00220330 page 18; MDR00008467; MDR00196021; MDR00131625; MDR00220286 page 339

¹²¹⁶ MDR00220330 page 18

¹²¹⁷ MDR00007106 pages 1-3

¹²¹⁸ MDR00135097

¹²¹⁹ MDR00135097

¹²²⁰ MDR00135248; MDR00134249; D2D10-00043138; D2D10-00043139

¹²²¹ MDR00007106 page 9

¹²²² MDR00220330 page 20

¹²²³ MDR00220330 pages 20-21; MDR00008467; MDR00196021; MDR00220286 page 343

- H3.16 D2’s payment of £218,750 (equal to D4’s payment) was again transferred into another London Group LLP account, this time with the reference PREF SHARE ADV SHK.¹²²⁴
- H3.17 On 16.03.18, D4 sent a text message to D3 stating, “*Morning, should be about £1m available today. From Andy*”.¹²²⁵ This was followed by a drawdown request from LOG to LCF in the sum of £1.1 million, signed by D3.¹²²⁶ D4 then sent a further text message to D3 stating, “*Just had the actual available figs £1.87m*”.¹²²⁷ LOG then sent a revised drawdown request “*as requested*” in the sum of £1.8 million, signed by D3.¹²²⁸
- H3.18 LCF paid £1,800,018.83 to LOG.¹²²⁹ LOG used the money to pay £1.3 million to London Group LLP with the reference PREF SHARE ADV.¹²³⁰ London Group LLP then paid £568,750 to D4 and £65,000 to D1, each with the reference PREF SHARE ADV.¹²³¹
- H3.19 £568,750 for D2 and £97,500 for D3 were transferred into another London Group LLP account with the references SHK PREF SHARE ADV and EB PREF SHARE ADV.¹²³² A spreadsheet recorded, “*Payment transferred to LG LLP Savings account*”.¹²³³
- H3.20 On 06.04.18, LOG submitted a drawdown request in the sum of £2.3 million.¹²³⁴ LCF paid £2,300,062.50 to LOG,¹²³⁵ which paid £2,037,000 to London Group LLP.¹²³⁶
- H3.21 London Group LLP used the money to pay £787,500 to D4, £135,000 to D3 and £90,000 to D1.¹²³⁷ Each payment had the reference PREF SHARE ADV.
- H3.22 D2’s payment of £787,500 was not transferred into his personal account but was again transferred instead to another London Group LLP account with the reference PREF SHARE ADV SHK.¹²³⁸ A spreadsheet recorded a “*PREF SHARE PAYMENT*” of £787,500 for D2 with the note, “*Payment transferred to LG LLP Savings account*”.¹²³⁹

¹²²⁴ MDR00220330 page 21; MDR00220332 page 2; MDR00140110 page 1

¹²²⁵ EB0083707

¹²²⁶ MDR00135953; MDR00135954

¹²²⁷ EB0083707

¹²²⁸ MDR00135966; MDR00135968

¹²²⁹ MDR00007110 page 15

¹²³⁰ MDR00220330 page 21

¹²³¹ MDR00220330 pages 21-22; MDR00008467;

MDR00196021; MDR00220286 page 344

¹²³² MDR00220330 pages 21-22; MDR00220332 page 2; MDR00140110; MDR00147028

¹²³³ MDR00147028

¹²³⁴ MDR00140534; MDR00140535; MDR00140576

¹²³⁵ MDR00007099 page 15; MDR00220967 page 9

¹²³⁶ MDR00220330 page 25; MDR00224575 page 9;

MDR00220967 page 9

¹²³⁷ MDR00220330 pages 25-26; MDR00008467;

MDR00196021; MDR00173805 page 1

¹²³⁸ MDR00220330 page 26; MDR00220332 page 3;

MDR00143076 page 2

¹²³⁹ MDR00147028

- H3.23 The payments for D2 which had not been paid to him directly but had been transferred into another London Group LLP account were then used on 10.04.18 to fund payments of £200,000 to D2 and £97,500 to D3 with the reference PREF SHARE ADV.¹²⁴⁰
- H3.24 London Group LLP made a further payment on 13.04.18 in the sum of £60,000 to D2's company, LV Management, again with the reference PREF SHARE ADV.¹²⁴¹
- H3.25 On 13.04.18, LCF paid £2,024,200 to LOG.¹²⁴² On 16.04.18, LOG paid £2,000,000 to London Group LLP with the reference PREF SHARE ADV.¹²⁴³
- H3.26 London Group LLP then paid (on 16.04.18) £828,750 to D4 and £146,250 to D3 (each with the reference PREF SHARE ADV)¹²⁴⁴ and (on 17.04.18) £200,000 to D2 and £146,250 to D1 (each with the reference PREF SHARE ADV).¹²⁴⁵ The payment to D2 was made from the other London Group LLP account.
- H3.27 On 20.04.18, LOG submitted a drawdown request in the sum of £1.62 million.¹²⁴⁶ LCF paid £1,620,146.56 to LOG,¹²⁴⁷ which paid £1,390,000 to London Group LLP with the reference PREF SHARE ADV.¹²⁴⁸ London Group then paid £608,125 to D4, £104,250 to D3 and £104,250 to D1¹²⁴⁹ and (on 25.04.18) £200,000 to D2, from the other London Group LLP account.¹²⁵⁰ Each payment had the reference PREF SHARE ADV.
- H3.28 On 27.04.18, London Group LLP transferred a total of £650,000 from two separate accounts to a firm of solicitors called Keogh Caisley LLP with the reference ELTEN

¹²⁴⁰ MDR00141487 page 1; MDR00220332 page 3;
MDR00143075 page 1; MDR00217305 page 2;
MDR00217310 page 2; MDR00142132 page 1;
MDR00203955 page 51; MDR00008467;
MDR00196021
¹²⁴¹ MDR00220332 page 4
¹²⁴² MDR00007101 page 11
¹²⁴³ MDR00143076 page 1; MDR00220330 page 27;
MDR00220967 page 12
¹²⁴⁴ MDR00220330 page 27; MDR00008467;
MDR00196021; MDR00142601; MDR00142602;
MDR00143076
¹²⁴⁵ MDR00143076 page 1; MDR00143075;
MDR00144296; DR00220332 page 4;

MDR00196021; MDR00220286 page 347;
MDR00173805 page 3; MDR00203955 page 51;
MDR00217305 page 2
¹²⁴⁶ MDR00143443; MDR00143444; MDR00143445
¹²⁴⁷ MDR00007033 page 3; MDR00220967 page 13
¹²⁴⁸ MDR00220330 page 28; MDR00220967 page 14
¹²⁴⁹ MDR00220330 pages 28-29; MDR00008467;
MDR00196021; MDR00220286 page 348;
MDR00143588; MDR00143589; MDR00173805
page 4
¹²⁵⁰ MDR00144296 page 1; MDR00147052;
MDR00220332 page 5; MDR00203955 page 52;
MDR00217305 page 3

BARKER.¹²⁵¹ These were treated as being preference share advances in favour of D2,¹²⁵² who presumably loaned the monies to D3.

H3.29 On 01.05.18, London Group LLP paid £500,000 to D3 with the reference SHK LOAN.¹²⁵³ These were treated as preference share advances in favour of D2. The reference SHK LOAN indicates that D2 was loaning his payments to D3.

H3.30 On 05.06.18, LOG submitted a drawdown request in the sum of £1.1 million, payable to LP Consultants.¹²⁵⁴ LCF paid £1,102,000 million to LP Consultants.¹²⁵⁵

H3.31 LP Consultants then paid (on 05.06.18) £32,500 to D3 and £32,500 to D1 and (on 06.06.18 and 07.06.18) £487,500 to D4, £50,000 to D3 and £50,000 to D1.¹²⁵⁶

H4 GCEN payments

H4.1 Payments from LCF to D1, D2, D3 and D4 then started to be made through LCF's payment processor, GCEN. It continued to be envisaged that these would ostensibly be justified in some way by the preference shares in LPC which were held by D2 and D3.

H4.2 On 14.05.18, D1 called Luke Tofts of GCEN to ask him to set up a new payment facility for LCF on GCEN's system.¹²⁵⁷

H4.3 Luke Tofts emailed D1 on 15.05.18 to say that this was being set up.¹²⁵⁸

H4.4 D1 sent his bank details to D3.¹²⁵⁹

H4.5 The next day, D3 provided bank details for D2, D3 and D4 to D1 ("*Bank details for GCEN if you need them while I'm away*").¹²⁶⁰

¹²⁵¹ MDR00220332 page 5; MDR00220330 page 29

¹²⁵² MDR00008467 page 2; MDR00196021 rows 95-97

¹²⁵³ MDR00147051 page 3; MDR00150310 page 4;

MDR00220330 page 30

¹²⁵⁴ MDR00152091

¹²⁵⁵ MDR00152258; MDR00224026 page 3

¹²⁵⁶ MDR00177312 rows 237, 243-246; MDR00220286 page 355-356; MDR00224254 page 4;

MDR00224255 pages 12-13; MDR00224026 page 3; MDR00173805 pages 14-15; MDR00183282 page 2

¹²⁵⁷ MDR00147837

¹²⁵⁸ MDR00147847; MDR00147909

¹²⁵⁹ D1-0007292

¹²⁶⁰ D1-0007316

H4.6 The following day, D3 emailed D1:¹²⁶¹

*“Meant to send you %’s for the sale of LPC pref shares:
SG 42.5%
SHK 42.5%
EB 7.5%
RT 7.5%
Back to the pool!”*

H4.7 On 15.06.18, Luke Tofts emailed D1 to say that the new GCEN payment facility was ready to use.¹²⁶² He emailed again to confirm, *“Everything is in place”*.¹²⁶³

H4.8 On the same day, D1 emailed Katie Maddock of LCF to say, *“Please can you send £5.5m to the below account. I’ll give you a call later to talk it through but just need to get the funds to GCEN in preparation”*.¹²⁶⁴

H4.9 LCF then paid £5,500,067.50 to GCEN.¹²⁶⁵

H4.10 On 22.06.18, D3 emailed D1 (at 9.38am) to say:¹²⁶⁶

*“EB 7.5%
20-47-47
60336068*

*SG 42.5%
20-88-13
33352374*

*SHK 42.5%
20-88-13
50921564”*.

H4.11 LOG then submitted a drawdown request (signed by D3) for £4.5 million to be distributed via GCEN.¹²⁶⁷

¹²⁶¹ D1-0007361
¹²⁶² MDR00154580
¹²⁶³ MDR00154620
¹²⁶⁴ MDR00154613

¹²⁶⁵ MDR00007010 page 7
¹²⁶⁶ MDR00220173
¹²⁶⁷ MDR00156012; MDR00156011; MDR00156043;
MDR00156042

H4.12 D1 then sent an email to Luke Tofts of GCEN:¹²⁶⁸

“Please can you distribute the £5,500,000 held in the LCAF distribution account to the below payers in the amounts highlighted less the agreed payment fee.

*Elten Barker
£412,500*



*Spencer Golding
£2,337,500*



*Simon Hume-Kendall
2,337,500*



*Michael Thomson
£412,500*



H4.13 GCEN complied with this request by paying the specified sums to D1, D2, D3 and D4 from LCF’s account (net of GCEN’s payment fee in each case).¹²⁶⁹

H4.14 On 03.07.18, LOG submitted a drawdown request to LCF signed by D3 for £1,960,000 (“TO BE DISTRIBUTED VIA GCEN”).¹²⁷⁰

H4.15 LCF paid £1,960,690.50 to GCEN.¹²⁷¹ D1 then emailed Luke Tofts:¹²⁷²

“Please can you distribute the £1.9m held in the LCAF distribution account to the below beneficiaries, the bank details are the same as the previous £5.5m distribution.

*Spencer Golding £711,250
Simon Hume-Kendall £711,250
Elten Barker £150,750
Michael Thomson £352,000”.*

¹²⁶⁸ MDR00156052
¹²⁶⁹ MDR00220172 page 1; MDR00173805 page 18;
MDR00220286 page 358; MDR00203955 page 22;
MDR00217305 page 23

¹²⁷⁰ MDR00157578; MDR00157579
¹²⁷¹ MDR00157808
¹²⁷² MDR00157732

H4.16 GCEN complied with this request by paying £711,250 to D4, £711,250 to D2, £150,750 to D3 and £352,000 to D1 (net of GCEN's payment fee in each case).¹²⁷³

H5 GCEN's request for supporting documentation

H5.1 By this point in time, D1, D2, D3 and D4 had received a total of £20 million from LOG's drawings on its facility with LCF as set out above in Sections H3 and H4.¹²⁷⁴

H5.2 There was no ostensible legal justification for these payments. There was simply the vague notion (which is reflected in the documents) that they might end up being justified as having something to do with preference shares in LPC.

H5.3 However, the fact that payments were taking place through GCEN meant that it would soon be necessary to come up with a more concrete explanation.

H5.4 GCEN had a compliance department. Luke Tofts knew that GCEN's compliance department might well ask to see supporting documentation to justify the payments that were being made to D1, D2, D3 and D4 and that he would need to be able to provide it.

H5.5 Therefore, on 22.06.18, Luke Tofts emailed D1: (i) to record his understanding that these payments were being made "*on behalf of ... London Power Corporation*" (which he understood to be "*purchasing a company that is owned by the individuals below, hence the payments to personal accounts*"); and (ii) to ask D1 for "*an outline of the purchase [and] supporting documentation*" and the "*valuation and how it was agreed*".¹²⁷⁵

H5.6 Luke added, "***Sorry to be asking for war and peace, but as we're making payments from investor money to personal accounts, including yours, we need to ensure it is documented thoroughly. If compliance ask and I don't have thorough documentation they'll castrate me!! For other payments we won't need anything like this amount of information though***" (emphasis added).

¹²⁷³ MDR00157788; MDR00157789; MDR00157790;
MDR00157791; MDR00157793; MDR00157950;
MDR00157982; MDR00220172 page 2;

MDR00173805 page 19; MDR00220286 page 359;
MDR00203955 page 15; MDR00217305 page 29
¹²⁷⁴ EB0123432
¹²⁷⁵ MDR00156052

- H5.7 D1 replied, “*I will arrange for the details to be sent when I’m back in the office*”.¹²⁷⁶
- H5.8 D1’s immediate difficulty was that no such supporting documentation yet existed. However, it was in the course of being prepared. On 20.06.18, D8 had provided D2 and D3 with a draft agreement between D2 and D3 (as sellers) and London Power & Technology Limited (company number 11424900) (as purchaser) for the sale of 90 shares in Intelligent Technology Investments Limited (“ITI”) and 800 shares in London Artificial Intelligence Limited (“LAI”) for a price of £20 million.¹²⁷⁷
- H5.9 At some point before 03.07.18, D8 amended the draft agreement to provide for the purchaser to be LPE Enterprises Limited (“LPE Enterprises”) in place of London Power & Technology Limited. The price continued to be £20 million.
- H5.10 On 03.07.18, D8 emailed D2 and D3 attaching this revised version in Word format.¹²⁷⁸ D8 said in his covering email that it had been “*signed by Elten last week*”.
- H5.11 There is nothing in D3’s disclosure to suggest that he had signed it “*last week*” and the version attached to D8’s email was still an unsigned Word version. In any event, “*last week*” would have been the week commencing 25.06.18.
- H5.12 Nicola Wiseman then sent a signed copy of the LPE SPA to D1 (cc D2 and D3) by email (“*Please find attached the Share Purchase Agreement between Simon Hume-Kendall, Elten Barker and LPE Enterprises Limited*”).¹²⁷⁹
- H5.13 In the attached version, D2 and D3 had signed the LPE SPA in their capacity as sellers; D2 had also signed on behalf of the purchaser, LPE Enterprises.
- H5.14 It had been dated 21.06.18. On any view, it had been backdated. (The significance of the date 21.06.18 was presumably that this was the day before the first payments to D1, D2, D3 and D4 via GCEN, which had taken place on 22.06.18, as explained above.)

¹²⁷⁶ MDR00156072
¹²⁷⁷ D2D10-00046940; D2D10-00046941; EB0092616;
EB0092620

¹²⁷⁸ EB0093298; EB0093299
¹²⁷⁹ MDR00157768; MDR00157770

- H5.15 The LPE SPA provided for D2 and D3 to sell 90 shares in ITI and 800 shares in LAI to LPE Enterprises for £20 million. In fact, by this time, the total payments to D1, D2, D3 and D4 from LOG’s drawdowns had *already* amounted to £20 million.¹²⁸⁰
- H5.16 D1 forwarded the signed LPE SPA to Luke Tofts on 17.07.18.¹²⁸¹
- H5.17 As explained above, when the payments to D1, D2, D3 and D4 from LOG’s drawdowns were made, they had been characterised as having something to do with LPC preference shares. Indeed, that is what D1 had told Luke Tofts as late as 22.06.18.¹²⁸²
- H5.18 Now, however, they were said to have been made under the LPE SPA.¹²⁸³ The complete incoherence produced by this retrospective recharacterisation is explained below. But that was only one of the numerous ways in which the LPE SPA was unjustifiable.

H6 LPE SPA incoherence 1: selling to themselves

- H6.1 The first difficulty with the LPE SPA relates to the identity of the purchaser, LPE Enterprises. LPE Enterprises was owned by London Private Equity LLP.¹²⁸⁴ On 21.06.18, London Private Equity LLP changed its name to TW Private LLP. The designated members of TW Private LLP were D2, D3 and London Group LLP. The designated members of London Group LLP were D2 and D3.
- H6.2 Accordingly, by selling shares in ITI and LAI to LPE Enterprises, D2 and D3 were effectively selling to themselves. Structure charts post-dating the LPE SPA recorded that D2, D3 and London Group LLP owned TW Private LLP, which owned LPE Enterprises, which owned 90% of ITI and 80% of LAI.¹²⁸⁵ On 08.08.18, D8 explained, “*Intelligent Technology Investments Limited ... is now owned as to 90% by LPE Enterprises which in turn is owned by Simon and Elten as members TW Private LLP*”.¹²⁸⁶ On 14.11.18, D8 confirmed, “*TW Private LLP ... it is now the shareholder of LPE Enterprises Limited*

¹²⁸⁰ EB0123432
¹²⁸¹ MDR00160089; MDR00160092
¹²⁸² MDR00156052
¹²⁸³ MDR00213443; EB0123432

¹²⁸⁴ MDR00127304
¹²⁸⁵ EB0105453; EB0109758; EB0112890; EB0106831;
D2D10-00003545; MDR00210617
¹²⁸⁶ MDR00164464

[which] *acquired the shares of Intelligent Technology Investments Limited ... in June 2018 ... The members of TW Private LLP are Simon Elten and London Group LLP*".¹²⁸⁷

H6.3 In other words, pursuant to the LPE SPA, an entity owned by D2 and D3 was purportedly buying shares in LPE Enterprises from D2 and D3 for a price of £20 million.

H7 LPE SPA incoherence 2: the value of Asset Mapping

H7.1 Pursuant to the LPE SPA, as explained above, D2 and D3 sold 90% of the shares in ITI and 80% of the shares in LAI to LPE Enterprises for £20 million. ITI owned 50% of a company called Asset Mapping Limited ("Asset Mapping") and 14% of a company called Reserec Limited ("Reserec").¹²⁸⁸ But it was fanciful to suggest that these shares had any real value, let alone anything approaching £20 million.

H7.2 Asset Mapping was a company which had been founded by Bill Clee. It was described by its own solicitor as a "*small, non-profitable company*".¹²⁸⁹

H7.3 That description was accurate. Asset Mapping's accounts for the year ended 30.06.15 disclosed a loss of £45,215 for the financial year and net assets of £12,605 at the year end.¹²⁹⁰ Asset Mapping's accounts for the year ended 30.06.16 disclosed a loss of £98,880 for the financial year and a deficiency of £86,187 at the year end.¹²⁹¹ As explained below, Asset Mapping's deficiency only worsened with time.

H7.4 By early November 2016, D4 and Mark Ingham were considering the idea of buying a substantial shareholding in Asset Mapping.¹²⁹² They proposed initially to buy 38% of the shares in Asset Mapping for a price of £1 million.¹²⁹³

H7.5 They then decided to structure this investment as a convertible loan to Asset Mapping in the sum of £1 million, which could be converted into a shareholding of 38%. D8 helped them to prepare heads of terms in respect of such a convertible loan.¹²⁹⁴

¹²⁸⁷ MDR00186553
¹²⁸⁸ EB0105453; EB0109758; EB0112890; EB0106831;
D2D10-00003545
¹²⁸⁹ MDR00128604
¹²⁹⁰ MDR00006373; MDR00006461
¹²⁹¹ MDR00006374

¹²⁹² MDR00006589
¹²⁹³ MDR00006716
¹²⁹⁴ D2D10-00022092; D2D10-00022093; D2D10-
00022112; D2D10-00022113; D2D10-00022421;
D2D10-00022423

- H7.6 ITI was incorporated on 16.11.16 to be the special purpose vehicle for this investment.¹²⁹⁵ The shares in ITI were registered in the name of Mark Ingham.¹²⁹⁶
- H7.7 It was intended from the outset that Mark Ingham would hold the shares in ITI on trust for D2, D3 and D4 or their vehicle London Group LLP. On 28.11.16, D8’s colleague, Jo Marshall, emailed D8 to say that “*the asset mapping transaction appears ... to have nothing to do with London group ... Strangely HK and SG are copied in on the emails but I can’t see where they are involved ... This appears to be a transaction between asset mapping and a company owned 100% by mark*”.¹²⁹⁷ D8 replied, “*I believe that the newco established by Mark is acting as trustee for the London Group but we will confirm*”.¹²⁹⁸ Jo Marshall replied to say that she would “*work on the assumption that trust arrangements will shortly be set up*”.¹²⁹⁹ In the event, there was a period of delay before any declaration of trust was executed by Mark Ingham.
- H7.8 In the meantime, the idea of the convertible loan to Asset Mapping was progressing.
- H7.9 On 04.12.16, Mark Ingham told D3 that Asset Mapping had “*agreed to our draft loan agreement and HoTs*”.¹³⁰⁰ On 07.12.16, Jo Marshall amended the draft loan agreement and heads of terms “*as per SG’s instructions*”.¹³⁰¹
- H7.10 They provided for a “*proposed loan ... of £1,000,000 ... which may at the option of the Lender be converted into 38% of the share capital ... of [Asset Mapping]*”.¹³⁰²
- H7.11 Jo Marshall emailed them to Asset Mapping’s director and majority owner, Bill Clee, explaining that she acted for the group which controlled ITI.¹³⁰³
- H7.12 It was envisaged that the loan of £1 million would be advanced under a series of separate facility agreements. The first such facility agreement was signed on 09.12.16.¹³⁰⁴

¹²⁹⁵ MDR00006377
¹²⁹⁶ MDR00006377
¹²⁹⁷ D2D10-00022449
¹²⁹⁸ D2D10-00022449
¹²⁹⁹ D2D10-00022467
¹³⁰⁰ D2D10-00022549

¹³⁰¹ D2D10-00022907; D2D10-00022908; D2D10-00022909
¹³⁰² MDR00006555; MDR00006663
¹³⁰³ D2D10-00022910; D2D10-00022911; D2D10-00022912
¹³⁰⁴ MDR00006490

- H7.13 The loans by ITI to Asset Mapping were ultimately funded by LCF, which was lending monies to L&TD.
- H7.14 For example, on 08.12.16, LCF paid £101,500 to L&TD.¹³⁰⁵ On 09.12.16, L&TD paid £70,000 to London Group plc.¹³⁰⁶ Then, on 16.12.16, London Group plc paid £30,000 to ITI, which paid £30,000 to Asset Mapping.¹³⁰⁷
- H7.15 The same pattern was repeated over the next few weeks, resulting in further advances of £60,000¹³⁰⁸ and £78,000¹³⁰⁹ to Asset Mapping. In total, £198,000 was advanced by ITI to Asset Mapping in this way by 02.03.17.¹³¹⁰
- H7.16 A problem arose when the proposed price of £1 million for 38% of the shares in Asset Mapping was undermined by a professional valuation of Asset Mapping dated 03.02.17 by an accountant, John Stuckey BSc FCA, who advised:¹³¹¹

*“The company has been trading for four years and has achieved a certain acceptance in the market place for the work done on the location of assets within an organisation ... The last funding round saw the company raise £60,000 for 10% of the share capital. This was in November 2014. I am informed the next funding round would seek to raise £1,000,000 for 38% of the share capital. This would value the company at £2.7m. This is too far in the future to affect the valuation except to confirm that the company has a future ... **I would value the company as a whole at £450,000** based on the hope of future sales and the hard work put into the source code to make a viable product. There are currently no returns to investors as losses have been incurred creating the product” (emphasis added).*

- H7.17 It was clear that 38% of Asset Mapping for £1 million would involve a substantial overpayment. Therefore Mark Ingham provided D2, D3, D4 and D8 with new heads of terms for the acquisition of 100% of Asset Mapping for a revised price of **£450,000**, less the loans of £198,000 that had previously been advanced by ITI.¹³¹²

¹³⁰⁵ MDR00007289 pages 3-5

¹³⁰⁶ MDR00215809 page 11

¹³⁰⁷ MDR00005564; MDR00005563; MDR00006446; MDR00006469; MDR00006470

¹³⁰⁸ MDR00215809 page 1; MDR00005564; MDR00006469; MDR00005563; MDR00006446; MDR00006470; MDR00161016 tabs 2 and 5

¹³⁰⁹ MDR00215809 page 1; MDR00005564; MDR00006469; MDR00005563; MDR00006446; MDR00006470; MDR00006489

¹³¹⁰ EB0038784; D2D10-00025337

¹³¹¹ MDR00006557

¹³¹² D2D10-00025335; D2D10-00025337; EB0038782; EB0038784

H7.18 D8 edited Mark's draft term sheet.¹³¹³ Mark then sent the final version of the new term sheet to Bill Clee on 03.03.17, under cover of a letter stating:¹³¹⁴

"I would like to formally confirm my offer to purchase 100% of the shares in Asset Mapping Limited ... [for] £450,000 less loans previously made to Asset Mapping by Intelligent Technology Investments Limited, these to become settled by deduction from the purchase price.

I understand you were disappointed with the offer price. However, the valuation by Stuckey's business advisors commissioned by your directors valued the company shares at £450,000 ... which considering the indebtedness of the company seems generous. Also ... while the technology holds potential, it is just that, a promise! None of the anticipated clients we discussed months ago has yet materialised ..." (emphasis added).

H7.19 Mark Ingham and Bill Clee signed the heads of terms on 16.03.17 for the acquisition by ITI of 100% of Asset Mapping for £450,000 less Asset Mapping's loan debt to ITI.¹³¹⁵

H7.20 As noted above, Asset Mapping's loan debt to ITI stood at £198,000.¹³¹⁶ A further loan of £75,000 to Asset Mapping in late March 2017¹³¹⁷ increased the total loan debt to £273,000¹³¹⁸ and therefore reduced the net purchase price to £177,000.

H7.21 Mark Ingham explained to D2 and D3 (cc D4) on 17.03.17, "*The HoTs allows for the deduction of all previous loans from the purchase price so we pay them a net price for the shares. e.g. £450K purchase price less Facility 1&2 (£198K) less the new facility (£75K) = Net Purchase price £177 K*".¹³¹⁹

H7.22 The draft SPA for the acquisition of Asset Mapping by ITI was drafted by D8.¹³²⁰ Mark Ingham anticipated that it would complete before the end of April. He emailed D2 and D3 (cc D4 and D8) on 24.04.17 to say, "*the Asset Mapping sale will complete this week ... £450,000 less ... loans ... = £177,000 (Sale Price)*".¹³²¹

¹³¹³ EB0038788

¹³¹⁴ MDR00006547

¹³¹⁵ D2D10-00026294; D2D10-00026295; D8-0011483; D8-0011488; D8-0011492; D8-0011493; D8-0011498; D8-0011499

¹³¹⁶ EB0038784; D2D10-00025337

¹³¹⁷ MDR00006488; EB0040732; D8-0011906; MDR00005564; MDR00006469; MDR00006470; MDR00005563; MDR00006446

¹³¹⁸ MDR00006543

¹³¹⁹ EB0040732

¹³²⁰ D2D10-00026362; D2D10-00026368; EB0040270; EB0040271

¹³²¹ D8-0013402

- H7.23 However, it became apparent that it would be necessary to implement the ‘drag and tag’ procedures in Asset Mapping’s articles in order to compel the sale of shares held by minority shareholders who would not otherwise be willing to sell their shares.¹³²²
- H7.24 The SPA was signed at a meeting between D4 and Bill Clee on or around 19.05.17.¹³²³
- H7.25 On the next day, LOG paid £177,000 to ITI, which paid £177,000 to Bill Clee’s solicitors, to be held to ITI’s order pending completion.¹³²⁴
- H7.26 The drag and tag procedure was then activated.¹³²⁵ However, it was done in a defective way and so had to be re-started.¹³²⁶ Some further amendments were made to the SPA in this period¹³²⁷ before a final version of the SPA was circulated on 01.06.17.¹³²⁸
- H7.27 Eventually the sale completed on 23.06.17.¹³²⁹
- H7.28 Although ITI had ostensibly bought 100% of Asset Mapping for £450,000 (including the aggregate amount of the prior loans), ITI agreed to hold 62% of Asset Mapping on trust for Bill Clee. ITI executed a declaration of trust to this effect in favour of Bill Clee, by which ITI declared that it held 62% of the shares for him.¹³³⁰
- H7.29 The effect of the transaction was therefore that ITI had paid a total sum of £450,000 to acquire a beneficial interest of only 38% of Asset Mapping.
- H7.30 ITI made further loans to Asset Mapping (above and beyond the loans totalling £273,000 which were mentioned in the SPA), funded ultimately by LCF, in the further sums of £75,000,¹³³¹ £75,000¹³³² and £45,000.¹³³³

¹³²² D8-0010991; D8-0013039; D8-0013040; EB0048283; EB0048335

¹³²³ D8-0014918; MDR00006585; D8-0016402; D8-0016421

¹³²⁴ EB0048433; EB0048489; D2D10-00028352; MDR00006469

¹³²⁵ D2D10-00028456; D2D10-00028457; D2D10-00028458; D2D10-00028459; D2D10-00028460

¹³²⁶ EB0050256; D2D10-00029550; D2D10-00031062

¹³²⁷ D8-0015093; D8-0015180; D8-0015707; D8-0015788; D8-0015802

¹³²⁸ D8-0015804; D8-0015805

¹³²⁹ MDR00006542; MDR00006533; MDR00006534; MDR00006535; MDR00006536; MDR00006538;

MDR00006539; MDR00006540; MDR00006541; MDR00006570; MDR00006575; MDR00006744

¹³³⁰ MDR00006656; MDR00006393; MDR00006394; MDR00006469

¹³³¹ EB0046571; EB0046577; EB0046611; EB0046642; MDR00086012; MDR00007312 pages 7-9; MDR00005564; MDR00005563; MDR00006446; MDR00006469; MDR00006470; MDR00150675

¹³³² MDR00006487; MDR00005564; MDR00005563; MDR00006446; MDR00006469; MDR00006470; MDR00150675

¹³³³ MDR00006486; MDR00007318 page 7; MDR00094508 page 29; MDR00104843 page 12;

- H7.31 The effect was to worsen Asset Mapping’s balance sheet, resulting in a deficiency of well over £500,000 by 30.06.17.¹³³⁴ Asset Mapping was still loss-making.¹³³⁵
- H7.32 As explained above, the shares in ITI (which held the shares in Asset Mapping) were registered in Mark Ingham’s name. However, Mark Ingham was never intended to be the sole beneficial owner of ITI. Initially the idea seems to have been that Mark Ingham would ultimately transfer the shares in ITI to LPC.¹³³⁶
- H7.33 In the event, however, on or around 27.07.17, Mark Ingham executed a declaration of trust in respect of the shares in ITI by which he declared that he held them on trust for D4 (40%), D2 (40%), D3 (10%) and Mark Ingham himself (10%).¹³³⁷
- H7.34 This was backdated to 01.06.17, presumably to make it seem that it had pre-dated ITI’s acquisition of Asset Mapping.
- H7.35 ITI continued to make loans to Asset Mapping (funded by LCF) of £179,000,¹³³⁸ £108,000,¹³³⁹ £179,000,¹³⁴⁰ £162,000,¹³⁴¹ £130,000,¹³⁴² £120,000,¹³⁴³ £126,000¹³⁴⁴ and £144,000.¹³⁴⁵ By 26.02.18, ITI had loaned £1,615,900 to Asset Mapping.¹³⁴⁶
- H7.36 ITI then made further loans to Asset Mapping (funded by LCF) of £132,000,¹³⁴⁷ £185,000¹³⁴⁸ and £106,000.¹³⁴⁹ Asset Mapping continued to make losses.¹³⁵⁰ Its balance sheet worsened: the deficiency grew.¹³⁵¹ It had problems with its credit rating.¹³⁵²

¹³³⁴ MDR00005564; MDR00005563; MDR00006446;
MDR00006469; MDR00006470; MDR00150675
¹³³⁵ MDR00006408; MDR00006445
¹³³⁶ MDR00006408; MDR00006444
¹³³⁷ EB0050256
MDR00006653; EB0053713; EB0053714;
MDR00006537; MDR00095145; EB0065153;
EB0085422
¹³³⁸ MDR00006469; MDR00005563; MDR00005564;
MDR00215792 page 5; MDR00006446;
MDR00006470
¹³³⁹ MDR00006469; MDR00005563; MDR00006446;
MDR00006470; MDR00006484
¹³⁴⁰ MDR00006469; MDR00005563; MDR00005564;
MDR00006470; MDR00150675; MDR00161017;
D2D10-00034288; MDR00006482
¹³⁴¹ MDR00006469; MDR00005563; MDR00005564;
MDR00006481

¹³⁴² MDR00006469; MDR00005563; MDR00005564;
MDR00006470; MDR00150675; MDR00006480;
¹³⁴³ MDR00006469; MDR00005563; MDR00005564;
MDR00006470; MDR00150675; MDR00006479
¹³⁴⁴ MDR00006469; MDR00005563; MDR00005564;
MDR00006470; MDR00150675; MDR00006478
¹³⁴⁵ MDR00006469; MDR00005563; MDR00005564;
MDR00006470; MDR00150675
¹³⁴⁶ MDR00215099
¹³⁴⁷ MDR00006469; MDR00005563; MDR00005564;
D2D10-00043533; MDR00150675; MDR00006476
¹³⁴⁸ MDR00006469; MDR00005563; MDR00005564;
MDR00150675
¹³⁴⁹ MDR00006469; MDR00005563; MDR00005564;
MDR00149712; MDR00007037 page 7;
MDR00006473
¹³⁵⁰ MDR00006508
¹³⁵¹ MDR00006507
¹³⁵² EB0056804

- H7.37 During April 2018, Mark Ingham instructed a firm called Kilby Fox to value Asset Mapping.¹³⁵³ He provided a business plan which postulated that Asset Mapping’s gross revenues would grow to £4.5 million in the year ending 31.03.19, £14.5 million in the year ending 31.03.20, £34 million in the year ending 31.03.21, £66 million in the year ending 31.03.22 and £107.5 million in the year ending 31.03.23.¹³⁵⁴ He asked Kilby Fox to multiply these gross revenues by a multiplier of somewhere between 16.0 and 70.0.¹³⁵⁵
- H7.38 Clive Adkins of Kilby Fox prepared the valuation. He resolved to ignore the highest multiplier of 70,¹³⁵⁶ which left a range of 16.0 to 30.8, before settling on 20.0.¹³⁵⁷
- H7.39 Clive Adkins then performed the following (rather basic) calculations:¹³⁵⁸

“It follows that if a multiple of 20 is to be applied to the projected values in the Business Plan then the value of AML would be as follows:

Y/e 31st March 2019: £4,564,000 x 20 = £91,280,000 (£91.3M)
Y/e 30th September 2019: £9,730,000 x 20 = £194,600,000 (£194.6M)
Y/e 31st March 2020: £14,533,000 x 20 = £290,660,000 (£290.6M)
Y/e 30th September 2020: £24,616,000 x 20 = £492,320,000 (£492.3M)
Y/e 31st March 2021: £34,026,000 x 20 = £680,520,000 (£680.5M)
Y/e 30th September 2021: £50,643,000 x 20 = £1,012,860,000 (£1.01BN)
Y/e 31st March 2022: £66,193,000 x 20 = £1,323,860,000 (£1.32BN)
Y/e 30th September 2022: £87,620,000 x 20 = £1,752,400,000 (£1.75BN)
Y/e 31st March 2023: £107,615,000 x 20 = £2,152,300,000 (£2.15BN)”.

- H7.40 Mr Adkins emphasised that he had not been able to calculate a present value because he had not been provided with any details of revenues for the year ended 31.03.18.¹³⁵⁹ He also emphasised that he had not been free to select his own multiplier.
- H7.41 Kilby Fox charged £5,000 for this valuation.¹³⁶⁰ The purpose of this exercise remains unclear. It is not known if the Kilby Fox valuation was ever used.
- H7.42 To be clear, the Kilby Fox valuation was absurd. Asset Mapping was a small, loss-making company with a substantial and worsening deficiency on its balance sheet.¹³⁶¹ It

¹³⁵³ MDR00006382
¹³⁵⁴ MDR00006659 page 12; D2D10-00066357
¹³⁵⁵ MDR00006659 pages 11-13; D2D10-00066358 page 23
¹³⁵⁶ MDR00006659 page 13

¹³⁵⁷ MDR00006659 page 15
¹³⁵⁸ MDR00006659 page 15
¹³⁵⁹ MDR00006659 page 16
¹³⁶⁰ MDR00006622
¹³⁶¹ EB0093593; EB0093589

was being propped up by ITI, which continued to advance loans to Asset Mapping, funded by ultimately LCF, including a further £165,000 on 27.06.18.¹³⁶²

H7.43 There had been talk for some time of increasing the percentage of ITI's beneficial ownership of Asset Mapping to 50% in recompense for ITI's continuing financial support.¹³⁶³ This was ultimately agreed: ITI executed a variation of the deed of trust, reducing Bill Clee's beneficial share to 50%.¹³⁶⁴

H7.44 D8 explained, "*ITI has executed a deed of trust and a deed of variation of that trust so that it now holds 50% of the shares in [Asset Mapping] on trust for Bill*".¹³⁶⁵

H7.45 ITI continued to make further loans to Asset Mapping. By 29.06.18, these amounted to almost £2.4 million.¹³⁶⁶ By 31.10.18, they had grown to £2.7 million.¹³⁶⁷ By 15.03.19, they had risen further to £3.0 million.¹³⁶⁸ By 04.04.19, they stood at £3.3 million.¹³⁶⁹

H7.46 Asset Mapping's deficiency on its balance sheet worsened to £1.8 million by 30.09.18¹³⁷⁰ and to £2.1 million by 31.01.19.¹³⁷¹

H7.47 But even these figures painted an over-optimistic picture, because, as Mazars pointed out, the fixed assets "*mainly [consisted] of capitalised development expenditure*".¹³⁷² Mazars concluded that Asset Mapping was balance sheet insolvent.

H7.48 In their report dated 28.02.19, Mazars concluded that the shares in Asset Mapping had a value of nil because the company (i) was loss-making, (ii) required significant further shareholder investment, (iii) would be likely to experience difficulties in growing sales because its services had a limited track records and (iv) had negative net assets.¹³⁷³

H7.49 The nil value of the shares was confirmed by Lambert Smith Hampton, who valued the assets and the business for Asset Mapping's prospective administrator, Simon Paterson

¹³⁶² MDR00156751; MDR00156756; MDR00156757; MDR00007013 page 13; MDR00006472
¹³⁶³ EB0085422; EB0089479; EB0089480; EB0091806
¹³⁶⁴ EB0093140; EB0093146; EB0093150; MDR00006393; MDR00006394; MDR00006655
¹³⁶⁵ EB0095035
¹³⁶⁶ MDR00161011; MDR00161017

¹³⁶⁷ MDR00184996; MDR00185012
¹³⁶⁸ MDR00215099
¹³⁶⁹ MDR00216410
¹³⁷⁰ MDR00001067; MDR00185008; MDR00185009
¹³⁷¹ MDR00005706; MDR00215922
¹³⁷² MDR00213396; MDR00215921
¹³⁷³ MDR00213396; MDR00215921

of Kirker & Co. Lambert Smith Hampton advised on 17.04.19 that: (i) Asset Mapping's office furniture and equipment was worth between £2,225 and £5,920; (ii) Asset Mapping's stock was worth between £1,000 and £4,350; and (iii) Asset Mapping's intellectual property rights had a market value of £350,000 but should be marketed with an initial asking price of £500,000 in order to achieve a sale at that level.¹³⁷⁴

H7.50 Asset Mapping went into administration on 18.04.19.¹³⁷⁵ After two rounds of bids,¹³⁷⁶ Asset Mapping's administrator sold its business and assets for £150,000 on completion plus earn-out payments which ultimately totalled £25,649.¹³⁷⁷ Given the level of Asset Mapping's liabilities, it is clear that the equity in that company had no value.

H7.51 The fact that ITI owned 50% of Asset Mapping is unable to provide any explanation for the payments of £20 million which were sought to be justified by the LPE SPA.

H8 LPE SPA incoherence 3: LAI and Reserec

H8.1 As mentioned above, at the time of the LPE SPA, LPE Enterprises owned 80% of LAI, whilst ITI owned just over 10% of Reserec. These shareholdings were also incapable of justifying the payment of £20 million under the LPE SPA.

H8.2 LAI was incorporated on 30.06.17.¹³⁷⁸ The shares in LAI were held by GST on trust for D2 and D3.¹³⁷⁹ At this point, LAI did not trade. D8 explained to D1 on 31.07.17, "*The company at the moment is dormant and has no assets or liabilities*".¹³⁸⁰

H8.3 Jagadeesh 'Jaggu' Gorla is a computer programmer from the state of Telangana in India who seems to have settled in the UK after some initial visa difficulties.¹³⁸¹

H8.4 Jaggu had a company called Reserec which carried out IT development work.

H8.5 On 22.09.17, D8 had a meeting with Jaggu to discuss a proposal with two parts. The first part of the proposal was that Jaggu would seek to develop an automated system for

¹³⁷⁴ MDR00005799
¹³⁷⁵ MDR00005800; MDR00005801; MDR00005807
¹³⁷⁶ MDR00226305
¹³⁷⁷ MDR00226936

¹³⁷⁸ MDR00002038
¹³⁷⁹ EB0054241; EB0054247; EB0054249
¹³⁸⁰ MDR00095512
¹³⁸¹ MDR00034535

commodities trading (using artificial intelligence (“AI”)) in return for a fee of £11,000 per month. The second part involved the acquisition of 20% of the shares in Reserec for £1.5 million, which would be payable to Jaggu at a rate of £30,000 per month.¹³⁸²

H8.6 On 10.10.17, D2 emailed D8 to say, “*Jaggu.com contract is now urgent*”.¹³⁸³ D8 replied to explain that there would in fact be two agreements with Jaggu/Reserec – a consultancy agreement and an investment agreement.¹³⁸⁴ D8 sent the draft consultancy agreement to Jaggu on 11.10.17¹³⁸⁵ saying, “*The company which will be entering into the contracts with you will be London Artificial Intelligence Limited*”.¹³⁸⁶

H8.7 Jaggu signed the consultancy agreement¹³⁸⁷ and got down to work.¹³⁸⁸ By 12.06.18, he had created an automated system for commodities trading, which was ready to be tested.¹³⁸⁹ It was said in a presentation delivered by Jaggu on 14.06.18¹³⁹⁰ that the commencement of testing “*turns it from an interesting study on the possible applications of AI into a commodifiable product that can be used to trade*”.¹³⁹¹

H8.8 However, testing was delayed. On 13.09.18, D2’s son, Henry Hume-Kendall, emailed D2, D3 and Jaggu to inform them “*that tomorrow will see the initiation of trading using real funds. The investment will total £300,000*”.¹³⁹²

H8.9 The first day of trading was unsuccessful, resulting in a loss of £6,480.00.¹³⁹³

H8.10 Jaggu’s trading programme seems to have fallen short of expectations. On 21.12.18, Robin Hudson emailed D2 and D3 to say that they had been up over 5% but that their gains “*evaporated*”.¹³⁹⁴ He said that he wanted to “*apply a bit of human intervention*”.

H8.11 Clearly, this trading programme could not justify the payments of £20 million to D1, D2, D3 and D4 between 02.02.18 and 03.07.18. At the beginning of that period, LAI

¹³⁸² EB0061434

¹³⁸³ D2D10-00035616

¹³⁸⁴ D2D10-00035617

¹³⁸⁵ EB0061434; EB0061444

¹³⁸⁶ EB0061434; EB0061444

¹³⁸⁷ MDR00006520

¹³⁸⁸ MDR00128829; MDR00128830; MDR00126339;
MDR00126340

¹³⁸⁹ MDR00000371

¹³⁹⁰ MDR00000405

¹³⁹¹ MDR00000371

¹³⁹² MDR00000868

¹³⁹³ MDR00000868

¹³⁹⁴ EB0113641

had merely paid a few of Jaggu's monthly invoices; at the end of that period, it was still merely "an interesting study on the possible applications of AI".

- H8.12 As explained above, the second part of the proposal involved an investment in Reserec. D8 sent the draft investment agreement to Jaggu on 12.10.17.¹³⁹⁵ Jaggu did not sign it immediately; instead, he said that he wanted to seek some advice on the matter.¹³⁹⁶
- H8.13 Jaggu sent a term sheet to D2 and Mark Ingham on 25.01.18 providing for LAI to buy 20% of Reserec over a 12 month period.¹³⁹⁷ Mark Ingham said to D3, "This deal has been cooking for some time would be good to put it to bed".¹³⁹⁸ D2 agreed.¹³⁹⁹ The draft agreement was progressed during February 2018.¹⁴⁰⁰ Towards the end of February 2018, the identity of the proposed investor was changed from LAI to ITI.¹⁴⁰¹ The documentation was finalised during the first half of March 2018.¹⁴⁰²
- H8.14 The agreement for the investment in Reserec was signed on 21.03.18.¹⁴⁰³ The deal was essentially that ITI would acquire 20% of Reserec in a total of 10 tranches: 3,080 shares on completion for a total of £231,000; another 3,080 shares on 21.04.18 for £231,000; and then 8 monthly tranches of 1,730 shares for £129,750 per month. Mark Ingham explained this payment schedule to D2 and D3 on 20.03.18.¹⁴⁰⁴
- H8.15 ITI used monies from LOG (and, ultimately, LCF) to make payments of £231,000 on 23.03.18 to acquire the first 3,080 shares in Reserec.¹⁴⁰⁵ ITI now owned 3.6% of Reserec.
- H8.16 On 20.04.18, ITI used monies from LOG (and, ultimately, LCF) to make payments of £231,000 to acquire another 3,080 shares.¹⁴⁰⁶ ITI now owned 7.15% of Reserec.

¹³⁹⁵ D2D10-00036556; D2D10-00036557; EB0061642

¹³⁹⁶ MDR00006520

¹³⁹⁷ MDR00008740; EB0075395

¹³⁹⁸ EB0075400

¹³⁹⁹ EB0075508; MDR00008740

¹⁴⁰⁰ EB0078588; EB0078591; D2D10-00041936; D2D10-00041937; MDR00008745; MDR00008746; MDR00008748; EB0079519; EB0079520; EB0079541

¹⁴⁰¹ EB0079961; EB0079965; EB0079997

¹⁴⁰² D2D10-00042629; EB0081086; D2D10-00043055; MDR00008756 to MDR00008760; EB0083389; EB0083393; EB0083590; EB0083593; EB0083596; EB0083621; EB0083660; EB0083837; EB0083978;

EB0083992; EB0084013; EB0084058;

MDR00002061; EB0084190; EB0084549;

EB0084770; EB0084772; EB0084796; EB0084817; EB0084838; EB0084862; EB0084869

¹⁴⁰³ EB0085959; D2D10-00043495; D2D10-00043496; D2D10-00043497; D2D10-00043498; D2D10-00043497; D2D10-00043498; D2D10-00043499; D2D10-00043500

¹⁴⁰⁴ MDR00006505

¹⁴⁰⁵ MDR00150675; EB0085601; EB0085820;

MDR00005563; MDR00005564; MDR00150675

¹⁴⁰⁶ MDR00150675; MDR00005563; MDR00005564; MDR00150675

- H8.17 ITI proceeded to use further monies drawn down by LOG on its facility with LCF to make the further payments of £129,500 each on 10.05.18¹⁴⁰⁷ (giving ITI a total of 8.9% of Reserec), 14.06.18¹⁴⁰⁸ (giving ITI a total of 10.7% of Reserec), 12.07.18¹⁴⁰⁹ (giving ITI a total of 12.4% of Reserec) and 10.08.18¹⁴¹⁰ (giving ITI a total of 14.0% of Reserec).
- H8.18 Thus, on 02.02.18, at the start of the payments to D1, D2, D3 and D4 which were later sought to be justified by the LPE SPA, ITI did not yet own any shares in Reserec; whilst, on 03.07.18, by which point £20 million had been paid to D1, D2, D3 and D4, ITI owned only 10.7% of Reserec, for which it had paid a total of only £721,000. (ITI had borrowed these monies from LOG, which had in turn borrowed them from LCF.)
- H8.19 Clearly, this could not justify the payments of £20 million to D1, D2, D3 and D4.

H9 LPE SPA incoherence 4: unauthorised use of LOG's monies

- H9.1 As explained above, the payments to D1, D2, D3 and D4 totalling £20 million were funded by drawdowns on LOG's facility with LCF. But LOG's board of directors had not authorised the use of LOG's monies for that purpose.
- H9.2 The idea of LOG investing in LAI and Asset Mapping seems to have first been raised at a meeting of LPC's board of directors on 14.06.18, when "*SHK/Elten proposed that both LAI and Asset Mapping be brought formally into the LPC group*".
- H9.3 The board of LPC "[approved] *the formation of a new technology company and to bring in LAI and Asset Mapping in to the LPC group*".¹⁴¹¹
- H9.4 At that point, the idea was that London Power & Technology Limited would acquire the shares in LAI and Asset Mapping: the board minutes record that "*London Power and Technology Ltd was formed as a TOPCO for LAI and Assets [sic] Mapping*".¹⁴¹²

¹⁴⁰⁷ MDR00005563; MDR00005564; MDR00150308 page 3; MDR00150675; MDR00220967 page 20
¹⁴⁰⁸ MDR00154428; MDR00154430; MDR00154431; MDR00154438; MDR00007009 page 13
¹⁴⁰⁹ MDR00159338; MDR00159340; MDR00159341; MDR00006991 page 9

¹⁴¹⁰ MDR00164767; MDR00164768; MDR00164775; MDR00164778; MDR00007091 page 3
¹⁴¹¹ MDR00000405; MDR00154909; MDR00157040
¹⁴¹² MDR00000405; MDR00154909; MDR00157040

- H9.5 As explained above, the first version of the SPA for the sale of the shares in LAI and ITI, which D8 sent to D2 and D3 on 20.06.18, featured London Power & Technology Limited as the purchaser.¹⁴¹³
- H9.6 D8 told his colleague, Jo Marshall, about this, but she appears to have objected (“*This appears to be wholly inconsistent with what we agreed this morning with SHK*”).¹⁴¹⁴
- H9.7 As also explained above, D8 amended the SPA at around this time to provide for the purchaser to be LPE Enterprises in place of London Power & Technology Limited.¹⁴¹⁵
- H9.8 But there is no evidence that there was any discussion about using LOG’s monies to make any payments to D1, D2, D3 and D4 in connection with such a transaction.
- H9.9 Further, there is nothing to suggest that anyone was aware that this had occurred. On 12.07.18, Erica MacDonald, a lawyer who worked for LPC, emailed Mark Ingham about the “*future transfer of the AI business*” (emphasis added) saying that she wanted to “*get on with a bit of due diligence of the AI business*”.¹⁴¹⁶
- H9.10 Similarly, the draft board minute for the LPC board meeting scheduled for 07.08.18 (which was drafted on 27.07.18) envisaged that the board of LPC would “*discuss and approve the proposal for the Company to invest in the artificial intelligence industry by acquiring interests in London Artificial Intelligence Limited (AIL) and Asset Mapping Limited (AML)*” (emphasis added).¹⁴¹⁷ That proposal does not seem to have been approved: it was discussed again at a meeting on 12.09.18 when Robin Hudson reported that “*he had been reviewing the AI in relation to the trading programs and ... had identified some issues which meant that he could not recommend investing cash at the present time*”.¹⁴¹⁸ There seems to have been no awareness that £20 million of LOG’s monies had already been paid to D1, D2, D3 and D4 between 02.02.18 and 03.07.18.
- H9.11 The lack of mention or awareness of the use of LOG’s monies in this way is also apparent from David Elliott’s communications. He became aware of some of the drawdowns on

¹⁴¹³ D2D10-00046940; D2D10-00046941; EB0092616;
EB0092620

¹⁴¹⁴ D2D10-00046917

¹⁴¹⁵ EB0093298; EB0093299

¹⁴¹⁶ D2D10-00047494

¹⁴¹⁷ MDR00162086

¹⁴¹⁸ MDR00172668

LOG's facility that had taken place and began to ask questions about them (*"I have not fully reconciled the balance since mid-June but there have been four large drawdowns totalling circa £22m ... from late June to August"*).¹⁴¹⁹ He was concerned that LCF's record of LOG's drawdowns did not reconcile with LOG's books and records.¹⁴²⁰

H9.12 After LCF's collapse, David Elliott prepared a note setting out his findings.¹⁴²¹ He noted that *"the initial loans made in February/March 2018 are annotated 'pref shares' in the LOG nominal ledger ... and were treated as relating as an advance payment in relation to the payment for preference shares"*. He also explained that the existence of *"payments made directly from LCF to the recipients during June, July and August 2018"* had been discovered in late September/early October 2018, during the exercise of reconciling LCF's spreadsheets with LOG's accounting records: *"Neither the accounts team nor Jo Marshall were aware nor had they been advised about any of these payments or transactions at the time. The accounts team became aware of them in late September 2018 when Lucy Sparks passed over a copy of the spreadsheet received by her from LCF showing the loan analysis"*. He said that he had been unable to find any evidence to suggest that LOG's board had ratified these payments.

H9.13 On 08.01.19, D8 sent an email (cc D2 and D3) in which he suggested that LOG could be provided with *"a call option agreement to purchase the shares in LEP [sic] Enterprises for £1"*.¹⁴²² D8 prepared a draft call option agreement in those terms and circulated it on the same day.¹⁴²³ He also prepared a draft loan agreement between LOG and LPE Enterprises in respect of the on-lending to LPE Enterprises of the drawdowns that had been made on LOG's facility with LCF.¹⁴²⁴ The call option agreement entitling LOG to buy the shares in LPE for £1 was then signed by D2 and D3 and backdated to 21.06.18 to make it seem as though it had come into existence on the same day as the LPE SPA.¹⁴²⁵ The loan agreement was also signed by D2 and D3, dated 01.02.19.¹⁴²⁶

H9.14 A meeting of LOG's board was scheduled for 12.02.19 to discuss the *"existing undocumented and unapproved loans by LOG"*.¹⁴²⁷

¹⁴¹⁹ MDR00000478; MDR00000500; MDR00160649; MDR00160650; MDR00160651; MDR00160652; MDR00000890; MDR00001467; MDR00001468

¹⁴²⁰ MDR00000890; MDR00001446; MDR00001467; MDR00001468

¹⁴²¹ MDR00220555

¹⁴²² MDR00220087

¹⁴²³ MDR00220088; MDR00220090

¹⁴²⁴ MDR00220089

¹⁴²⁵ MDR00214273; MDR00214272

¹⁴²⁶ D8-0049073; D8-0049074

¹⁴²⁷ MDR00220834

H9.15 At that meeting, David Elliott reiterated his view that LOG’s board had not authorised the use of LOG’s monies in this way:¹⁴²⁸ *“The board could not have ratified the loans as they did not know the money had been borrowed”*.

H9.16 During the meeting, D2 called D8 on a speaker phone. D8 told the meeting that there was a loan facility agreement dated June 2018 and a call option agreement entitling LOG to buy the shares in LPE for £1. This prompted David Elliott to say that he was resigning as a director: *“I need a solid base from which to operate and I feel like I am on shifting sand. I do not agree that those documents were produced by RS back in June and I believe that RS produced the Loan Agreements recently”* (emphasis added).

H9.17 D2 then said, *“I think that’s unfair about RS, why would he back date them?”*

H9.18 However, D2 knew that David Elliott’s comment about D8 was true and not unfair.

H10 GCEN’s queries and D1’s responses

H10.1 D1 had forwarded the signed LPE SPA to Luke Tofts on 17.07.18 in response to Luke’s request for supporting documentation in relation to the payments.¹⁴²⁹

H10.2 Luke thanked D1 for sending this over and asked him some questions. Among other things, Luke asked D1 whether there had been any independent valuation.¹⁴³⁰

H10.3 D1 replied:¹⁴³¹

“I would like to give you more detail but I am under an NDA and it involves market sensitive info that could effect [sic] a connected listed company that LPC has convertible [sic] options in ... When the purchase was transacted the board considered various valuation methodology’s but as the technology is cutting edge the decision was based around the additional value they will bring to the company. As this includes market sensitive insider information i am not able to share it however I can confirm that EY and Mazars were involved”.

¹⁴²⁸ MDR00212113

¹⁴²⁹ MDR00160089; MDR00160092

¹⁴³⁰ MDR00161123; MDR00161173; MDR00161174

¹⁴³¹ MDR00161195

H10.4 Luke sent an email to his colleague, Andrew Fundell, asking to discuss: “*I am comfortable with this and Andy has never given us any reason to doubt what he has said over the years we have been working with him. Ideally, we would have a valuation on file which would put everything beyond doubt, however it appears that can’t be done*”.¹⁴³² Andrew Fundell seems not to have objected. Luke emailed D1 on 24.07.18 to ask D1 whether it would be possible for him to “*share some further documents **in future** when it would no longer be deemed inside information*” (emphasis added).¹⁴³³ D1 said he was happy to help where he could but was “*just mindful of the insider/NDA*”.¹⁴³⁴

¹⁴³² MDR00161228

¹⁴³³ MDR00161335; MDR00161346

¹⁴³⁴ MDR00161432

I. LPT SPA

I1 Introduction

- 11.1 With the LPE SPA having been created to retrospectively justify payments of £20 million that had already been made, it was time to come up with a new mechanism for extracting monies from LCF. The idea of justifying payments by reference to LPC preference shares had been floated but not yet utilised. It was therefore decided to play that card to justify some further payments from LCF to D1, D2, D3 and D4.
- 11.2 Again, the monies were drawn down on LOG's facility with LCF. Therefore, before turning to the LPT SPA, it is necessary to pick up the story of LOG's facility.

I2 Further history of LOG's facility

- 12.1 As explained above, D2 was keen for the new LOG facility to include the so-called G&T clause to suspend LOG's payment obligations in the event of LCF's collapse. The wording of this clause was discussed further during July 2018.¹⁴³⁵
- 12.2 D2 explained on 04.07.18:¹⁴³⁶ *"My fear is that if something were to happen to LCF ... and it was then unable to continue to lend to LOG sufficient sums to pay redemptions and interest when due"*. D8 articulated D2's concern for him:

"Your concern is the risk of Andy losing management or ownership control of LCF ... I think the consensus is that the clause should be triggered by ... 1. Insolvency of LCF ... 2. Change of control of LCF ... 3. Failure to meet two consecutive drawdown requests".¹⁴³⁷

¹⁴³⁵ MDR00133548; MDR00133549; MDR00133670;
MDR00133681; MDR00133712; MDR00157841;
MDR00157863; MDR00146079; MDR00146126;

MDR00146127; MDR00146129; MDR00158233;
MDR00000556; MDR00000557

¹⁴³⁶ MDR00140670

¹⁴³⁷ MDR00000559

- 12.3 The debate over the wording meant that the new facility for LOG was not finalised.¹⁴³⁸ LOG's facility limit ostensibly continued to be £50 million under the letter agreement signed on 09.03.18, which had been backdated to 01.12.17 to deceive BDO LLP.¹⁴³⁹
- 12.4 In summary, as mentioned above, on 09.03.18, Alex Lee had provided D8 with a draft letter agreement between LCF and LOG increasing the facility limit to £50 million, which had been backdated to 01.12.17 (in typescript at the top of the page).¹⁴⁴⁰ D1 and D2 had signed it in that form¹⁴⁴¹ and it had then been provided to BDO LLP (cc D2).¹⁴⁴²
- 12.5 However, the substantial drawdowns by LOG since that date meant that LOG's debt to LCF exceeded £50 million. By 30.04.18, LOG owed £57.8 million to LCF.¹⁴⁴³ By 23.05.18, LOG owed £63.7 million.¹⁴⁴⁴ By 15.06.18, LOG owed £76.7 million.¹⁴⁴⁵
- 12.6 LOG had borrowed significantly in excess of the limit. But that did not stop LOG from continuing to borrow more in order to fund further payments to D1, D2, D3 and D4.

I3 Payments D1, D2, D3 and D4 under LOG's facility continue

- 13.1 On 20.07.18, Katie Maddock of LCF emailed Luke Tofts of GCEN to say, "*I'm about to send over 4.5 Million to the same account details as before as per Andy's request*".¹⁴⁴⁶ LCF paid £4,500,005.50 to GCEN on the same day.¹⁴⁴⁷
- 13.2 Three days later, on 23.07.18, D3 emailed D1:¹⁴⁴⁸

"EB 7.5% = £375,000



SG 42.5% = £2,125,000



¹⁴³⁸ MDR00000568; MDR00000570; MDR00000571; MDR00162231; MDR00000572; MDR00000573; MDR00000594; MDR00000595

¹⁴³⁹ MDR00134357; MDR00134358; MDR00134414; MDR00134415; MDR00134416; MDR00134419; MDR00134435; MDR00134436

¹⁴⁴⁰ MDR00134357; MDR00134358

¹⁴⁴¹ MDR00134415; MDR00134419

¹⁴⁴² MDR00134414; MDR00134415; MDR00134416; MDR00134419; MDR00134435; MDR00134436

¹⁴⁴³ MDR00192281

¹⁴⁴⁴ MDR00149854

¹⁴⁴⁵ MDR00159345

¹⁴⁴⁶ MDR00160997

¹⁴⁴⁷ MDR00006994 page 5

¹⁴⁴⁸ MDR00161073

SHK 42.5% = £2,125,000 (Leave in GCEN)”.

I3.3 D1 then emailed Luke Tofts:¹⁴⁴⁹

“Please can you make the below payments from the LCF distribution account:

*Elten Barker
£375,000*



*Spencer Golding
£2,125,000*



*Michael Thomson
£375,000*



Hope the above is ok, if you need any further confirmation please do not hesitate to call”.

I3.4 GCEN duly paid £375,000 to D3, £2,125,000 to D4 and £375,000 to D1 (net of GCEN’s payment fee).¹⁴⁵⁰ These are the first entry shown in a spreadsheet entitled “LPC PREFERENCE SHARE PAYMENTS”.¹⁴⁵¹ Thus it seems that, having initially envisaged that the payments between 02.02.18 and 03.07.18 would be payments in respect of the LPC preference shares, before those payments were re-purposed to be payments under the LPE SPA, D1, D2, D3 and D4 were now deploying the LPC preference share concept to enable payments from LCF to continue to flow to their personal accounts.

I4 Preparation of the LPT SPA

I4.1 The purchaser under the LPT SPA was a company called London Power & Technology (2018) Limited (company number 11475996) (“LPT”).

¹⁴⁴⁹ MDR00161081

¹⁴⁵⁰ MDR00161188; MDR00161190; MDR00161191;
MDR00161196; MDR00173805 page 23;
MDR00220286 page 362; MDR00220172 pp 2-3

¹⁴⁵¹ EB0123429 row 4

- I4.2 LPT was incorporated on 20.07.18. Its name was changed to London Power & Technology Limited on 20.08.18. (It should not be confused with the other company known previously as London Power & Technology Limited (company number 11424900), which was re-named London P&T Limited on 20.08.18.)
- I4.3 Under the LPT SPA, LPT was to purchase the preference shares in LPC from D2 and D3. There were 25 million such preference shares, with a nominal value of £0.01 each. They were registered in the name of London Group LLP.
- I4.4 The first step was therefore to put the LPC preference shares into the names of D2 and D3. On 20.07.18, D8 provided D2 and D3 with a draft London Group LLP minute for the distribution of the shares in specie to D2 and D3.¹⁴⁵² It was executed by D2.¹⁴⁵³
- I4.5 On or shortly after 27.07.18, D2, in his capacity as the sole director of LPT, resolved that LPT should buy the LPC preference shares from D2 and D3 for the total sum of £32,225,096, comprising an initial payment of £5,000,000, six quarterly payments of £4,000,000 and a final payment of £3,225,096.¹⁴⁵⁴ The LPT board minute recorded that D3 and D8 had also attended the meeting.
- I4.6 On or around the same day, D2 and D3 signed the LPT SPA. They both signed in their capacity as sellers; D2 also signed on behalf of the purchaser, LPT.
- I4.7 The LPT SPA provided for LPT to buy the LPC preference shares from D2 and D3 for £32,225,096, comprising an initial payment of £5,000,000, six quarterly payments of £4,000,000 and a final payment of £3,225,096. It also provided in clause 3.1 that the price might be varied subsequently “*in the event that there is any change in the audited accounts for [LPC] when they are produced to the intent that the Purchase Price shall be in the sum which is 30% of the net asset value of [LPC] as at 31st May 2018*”.
- I4.8 At the very latest, the LPT SPA must have been signed at some point prior to 06.08.18, because it was sent by D8 to D1 (cc D2 and D3) by email on that date.¹⁴⁵⁵

¹⁴⁵² EB0094842; EB0094843

¹⁴⁵³ MDR00219659

¹⁴⁵⁴ MDR00163493 page 49

¹⁴⁵⁵ MDR00163961; MDR00163962

I5 Further payments under the LPT SPA

I5.1 With the LPT SPA in place, payments to D1, D2, D3 and D4 from LCF could continue.

I5.2 On 03.08.18, LCF paid £2,500,012.50 to GCEN.¹⁴⁵⁶ This arrived in GCEN's account on 03.08.18.¹⁴⁵⁷ Leyla of GCEN emailed D1 to say, "*We have received £2,500,012.50 for your LCAF distribution account. Your total balance is now £4,660,594.00. Please do let me know if you wish to make any payments out*".¹⁴⁵⁸

I5.3 D1 replied (cc Luke Tofts), "*Great the £2.5 [sic] will be distributed shortly. Its in connection with preference share purchases. Luke I have the paperwork for this*".¹⁴⁵⁹

I5.4 On 07.08.18, D3 emailed D1:¹⁴⁶⁰

*"Please can you send SHK's share payment, thank you. E
SHK £2,125,000.00*



I5.5 This seems to have been D2's allocation from the payment round on 23.07.18, when D3 had said, "*SHK 42.5% = £2,125,000 (Leave in GCEN)*".¹⁴⁶¹

I5.6 D1 emailed Leyla to say:¹⁴⁶²

*"Please can you send the below payment from the LCF distribution account:
Simon Hume-Kendall
£2,125,000
Sort Code [REDACTED]
Account n [REDACTED].*

I5.7 Leyla confirmed to D1 that this payment to D2 was being made.¹⁴⁶³ D2 received the money on the same day.¹⁴⁶⁴

¹⁴⁵⁶ MDR00007003 page 11
¹⁴⁵⁷ MDR00220172 page 3
¹⁴⁵⁸ MDR00163911
¹⁴⁵⁹ MDR00163911
¹⁴⁶⁰ MDR00164078

¹⁴⁶¹ MDR00161073
¹⁴⁶² MDR00164098
¹⁴⁶³ MDR00164099; MDR00164116
¹⁴⁶⁴ MDR00217308 page 4; MDR00220172 page 3

15.8 With D2 now having caught up with the others, the sum of £2.5 million, which had recently been paid by LCF to GCEN, would be distributed to D1, D2, D3 and D4.

15.9 D3 sent a text message to Lucy Sparks on 07.08.18 saying, “*Can you draw £2.5m for LOG paid to share holders via GCEN. I’ll send the amounts to Andy*”.¹⁴⁶⁵

15.10 Later that day, D3 emailed D1 in the following terms (with the subject, “*Thank you*”):¹⁴⁶⁶

“EB & AT 7.5% £187,500

[REDACTED]

SG 42.5% £1,062,500

[REDACTED]

SHK 42.5% £1,062,500

[REDACTED]

15.11 The next step was for LOG to make a formal drawdown request to LCF. Accordingly, LOG submitted a drawdown request to LCF in the sum of £2.5 million, signed by D3, stating, “*FUNDS TO BE DISTRIBUTED VIA GCEN*”.¹⁴⁶⁷

15.12 D1 then emailed Leyla of GCEN (cc Luke Tofts):¹⁴⁶⁸

“Please can you make the below payments from the LCF distribution account:

*Spencer Golding
£1,062,500*

[REDACTED]

*Simon Hume-Kendall
£1,062,500*

[REDACTED]

Elten Barker

¹⁴⁶⁵ EB0096381
¹⁴⁶⁶ MDR00164218

¹⁴⁶⁷ MDR00164222; MDR00164227; MDR00164228
¹⁴⁶⁸ MDR00164253

£187,500



Michael Thomson

£187,500



- 15.13 Leyla replied to D1, “I can confirm all of the below is being processed for you. These will all be processed in the morning for you as we are now past the cut off on the bank for putting on payments”.¹⁴⁶⁹
- 15.14 On the next day, GCEN paid £1,062,500 to D4, £1,062,500 to D2, £187,500 to D3 and £187,500 to D1 (net of GCEN’s payment fee).¹⁴⁷⁰ This was the second round of payments in the LPC preference share spreadsheet.¹⁴⁷¹
- 15.15 On 17.08.18, LCF paid £3,500,071.50 to GCEN.¹⁴⁷² LOG sent a drawdown request (signed by D3) to LCF in the sum of £3.5 million to be distributed via GCEN.¹⁴⁷³
- 15.16 D1 emailed Leyla cc Luke:¹⁴⁷⁴

“You should be receiving £3.5m into the LCAF distribution account today, please can you pay it the the [sic] below accounts.

Spencer Golding

£1,487,500



Simon Hume-Kendall

£1,487,500



Elten Barker

£262,500



¹⁴⁶⁹ MDR00164261
¹⁴⁷⁰ MDR00164293; MDR00164294; MDR00164259;
MDR00220286 page 366; MDR00217308 page 5
¹⁴⁷¹ EB0123429 row 5

¹⁴⁷² MDR00007091 page 13; MDR00166137;
MDR00220172 page 4
¹⁴⁷³ MDR00166026; MDR00166027; MDR00166028
¹⁴⁷⁴ MDR00165978; MDR00165994

Michael Thomson

£262,500



- I5.17 Leyla emailed to say, “Funds have arrived and I have processed all the below payments, they will be sent out today for you”.¹⁴⁷⁵ GCEN paid £1,487,500 to D4, £1,487,500 to D2, £262,500 to D3 and £262,500 to D1 (net of GCEN’s payment fee).¹⁴⁷⁶ This was the third round of payments in the LPC preference share spreadsheet.¹⁴⁷⁷
- I5.18 On 11.09.18, D1 emailed Chloe, a member of LCF’s administrative staff, to say, “Just to confirm LOG will be making a drawing request for £3,000,000 today which is ok to be sent. If we don’t have sufficient in the bond account you can temporarily use funds from our company savings account”.¹⁴⁷⁸
- I5.19 LOG then submitted a drawdown request in the sum of £3 million, this time payable to LPC.¹⁴⁷⁹ LCF paid £3,000,060 to LPC,¹⁴⁸⁰ which paid £1,275,000 to D4, £225,000 to D3 and £225,000 to D1.¹⁴⁸¹ Each payment had the reference PEF SHARE ADVANCE. This was the fourth round of payments in the LPC preference share spreadsheet.¹⁴⁸² (Nothing was transferred to D2 on this occasion. The spreadsheet recording the payments under the LPT SPA states, “SHK Payment Left In LPC”.¹⁴⁸³)

I6 Continued history of LOG’s facility

- I6.1 By this point, LOG owed a total of £104.9 million to LCF.¹⁴⁸⁴ This was vastly in excess of LOG’s facility limit of £50 million.

¹⁴⁷⁵ MDR00166010

¹⁴⁷⁶ MDR00166039; MDR00166010; MDR00220172 page 4; MDR00217308 page 8; MDR00220286 page 368; MDR00166008; MDR00166011; MDR00166036; MDR00166037; MDR00166003

¹⁴⁷⁷ EB0123429 row 6

¹⁴⁷⁸ MDR00171024

¹⁴⁷⁹ MDR00171028; MDR00171029; D2D10-00049529; D2D10-00049530

¹⁴⁸⁰ MDR00007058 page 1; MDR00172653 page 2

¹⁴⁸¹ MDR00172653 page 2; MDR00183282; MDR00220286 page 372

¹⁴⁸² EB0123429 row 7

¹⁴⁸³ EB0123427 row 7

¹⁴⁸⁴ MDR00171190

- I6.2 LOG’s board discussed LOG’s loans from LCF on 27.09.18.¹⁴⁸⁵ It was suggested that the facility limit should be increased £150 million.¹⁴⁸⁶ Discussions about a new facility agreement for LOG continued.¹⁴⁸⁷
- I6.3 The final draft of the new facility (with a limit of £150 million) was circulated on 02.10.18¹⁴⁸⁸ and approved by LOG’s board on the following day.¹⁴⁸⁹ It was signed by D2 on behalf of LOG on 11.10.18.¹⁴⁹⁰ All that remained was for it to be executed by D1 on behalf of LCF.¹⁴⁹¹ That seems to have happened on 18.10.18: this date was written on the first page of the signed version.¹⁴⁹²
- I6.4 That resolved the issue of the facility limit for the future, but it did nothing to change the fact that LOG’s borrowing had exceeded the facility limit in the period prior to 18.10.18. To resolve that problem, it would be necessary to falsify the historical record.
- I6.5 On 15.10.18, Alex Lee emailed D1 (with the subject, “*New LOG Facility*”) saying, “*Please see attached the LOG Facility dated 17 December in marked up and clean version for signature*”.¹⁴⁹³ The attachment (with the file name, “*LOG Facility – December 2017*”) was an unsigned draft facility agreement between LCF and LOG (in Word format), with a facility limit of £120 million, which bore the date 04.12.17 in typescript on the front page and again on the first page of its terms.¹⁴⁹⁴
- I6.6 D1, D2 and D3 signed this document (with the typescript date 04.12.17) at some point between 15.10.18 (when it was first circulated by Alex Lee) and 02.11.18 (when Eloise Wade scanned the signed version and sent it to herself¹⁴⁹⁵ before sending it to D1¹⁴⁹⁶).
- I6.7 Thus, by falsely backdating a facility agreement in the sum of £120 million, it was made to look as though LOG’s borrowings had never exceeded the facility limit.

¹⁴⁸⁵ MDR00177013; MDR00177925

¹⁴⁸⁶ MDR00174819

¹⁴⁸⁷ MDR00001027; MDR00001028; MDR00001030; MDR00001031; MDR00001036; MDR00001037; MDR00001038; MDR00001039; MDR00001041; MDR00001042; MDR00001046; MDR00001047; MDR00001049; MDR00001050; MDR00121858; MDR00175031; MDR00175032; MDR00175109; MDR00175147; MDR00175153; MDR00175154; MDR00175157

¹⁴⁸⁸ MDR00128563; MDR00128564

¹⁴⁸⁹ MDR00134608; MDR00134611; MDR00134613

¹⁴⁹⁰ MDR00185682; MDR00185683; MDR00185684; D2D10-00051395

¹⁴⁹¹ MDR00195052

¹⁴⁹² MDR00006101

¹⁴⁹³ MDR00178709

¹⁴⁹⁴ MDR00178710 pages 1 and 3

¹⁴⁹⁵ MDR00183473; MDR00183474

¹⁴⁹⁶ MDR00183469; MDR00183470

I6.8 D1 sent a letter to BDO LLP on 19.11.18 to say, “As at 30 September 2018 London Oil & Gas Limited has a secured credit facility in place up to £120,000,000”.¹⁴⁹⁷ That was a lie. D1 knew that the facility agreement with a limit of £120 million had been signed (and falsely backdated) at some point between 15.10.18 and 02.11.18.

I7 Continued payments under the LPT SPA

I7.1 There were then three more sets of payments.

I7.2 On 02.11.18, LOG submitted a drawdown request (signed by D3) in the sum of £1.3 million, again payable to LPC.¹⁴⁹⁸ On the same day, LCF paid £1,300,045 to LPC.¹⁴⁹⁹ On 05.11.18, LPC paid £200,000 to D2 (with the reference PREFER SHARE ADV).¹⁵⁰⁰ On 12.11.18, LPC paid a further £300,000 to D2 (with the same reference).¹⁵⁰¹ These seem to have been intended to address the fact that D2 had not received anything in the payment round on 11.09.18.

I7.3 On 16.11.18, LOG submitted a drawdown request (signed by D3) in the sum of £2 million, payable to LPC.¹⁵⁰² LCF paid £2,000,247.22 to LPC,¹⁵⁰³ which paid £510,000 to or on behalf of D4, £510,000 to D2, £90,000 to D3 and £90,000 to D1.¹⁵⁰⁴ This was the fifth round of payments in the LPC preference share spreadsheet.¹⁵⁰⁵

I7.4 The facts relating to the final payments begin on 26.11.18 when D1 asked Chloe, “Can we get a drawing of £1.5m out to LOG today?”¹⁵⁰⁶ She replied to say that this would be possible although it would be necessary to use £450,000 from LCF’s savings account.

I7.5 LOG then sent a drawdown request to LCF in the sum of £1.3 million, payable to LPC.¹⁵⁰⁷ It is inferred that D1 then told D3 that more was available, because LOG then sent a revised drawdown request in the sum of £1.5 million.¹⁵⁰⁸

¹⁴⁹⁷ MDR00001534

¹⁴⁹⁸ MDR00183484; MDR00183485; MDR00183488; MDR00183489

¹⁴⁹⁹ MDR00006900 page 11

¹⁵⁰⁰ MDR00184844 page 1; MDR00217307 page 4

¹⁵⁰¹ MDR00186492; MDR00217307 page 7

¹⁵⁰² MDR00187700; MDR00187703; MDR00187704; MDR00187738; MDR00187861

¹⁵⁰³ MDR00006895 page 5

¹⁵⁰⁴ MDR00188446; MDR00220286 page 384; MDR00217307 page 8

¹⁵⁰⁵ EB0123429 row 8

¹⁵⁰⁶ MDR00191052

¹⁵⁰⁷ MDR00191512; MDR00191513

¹⁵⁰⁸ MDR00191523

I7.6 Katie Maddock emailed Chloe to say, “*The £1.5M loan to LOG today is ok to go*”.¹⁵⁰⁹
Katie Maddock then emailed Luke of GCEN:¹⁵¹⁰

*“Further to our telephone conversation this morning we will be sending
£1,500,035.00 ...
Please could this then be distributed as follows;
EB £112,535
SHK £637,500
SG £637,500
MAT £112,500
I believe you have all of the account details from previous payments”.*

I7.7 LCF then paid £1,500,035 to GCEN.¹⁵¹¹

I7.8 Luke emailed to say, “*Leyla will give Andy a call now to verbally confirm*”.¹⁵¹²

I7.9 Leyla said, “*I have confirmed the below with Andy and they are being processed*”.¹⁵¹³

I7.10 GCEN then paid £637,500 to D4, £637,500 to D2, £112,500 to D3 and £112,500 to D1 (net of GCEN’s payment fee).¹⁵¹⁴ This was the sixth and final round of payments in the LPC preference share spreadsheet.¹⁵¹⁵

I7.11 By this point, the payments to D1, D2, D3 and D4 under the LPT SPA amounted to £16.7 million. As noted above, LOG’s borrowings from LCF were grossed up to account for the 25% commission payable to D6 and the 2% fee payable to LCF. As a result, the payment of these monies to D1, D2, D3 and D4 under the LPT SPA had increased the principal sum owed by LOG to LCF by more than £22 million.

I8 LPT SPA incoherence 1: ultimate beneficial ownership

I8.1 The LPT SPA was incoherent and unjustifiable for various reasons. Among other things, the ultimate beneficial ownership of the LPC preference shares remained unchanged.

¹⁵⁰⁹ MDR00191604
¹⁵¹⁰ MDR00191598
¹⁵¹¹ MDR00007023 page 9; MDR00220172 pages 4-5
¹⁵¹² MDR00191630
¹⁵¹³ MDR00191671

¹⁵¹⁴ MDR00220172 page 4; MDR00217307 page 14;
MDR00220286 page 386; MDR00191680;
MDR00191684; MDR00191687; MDR00191694
¹⁵¹⁵ EB0123429 row 9

- 18.2 As explained above, the LPC preference shares had been owned by London Group LLP, which distributed them to D2 and D3, who sold them to LPT.
- 18.3 LPT was owned beneficially by London Group LLP. D2 held the only share in LPT upon its incorporation. On 30.11.18, D2 executed a declaration of trust in favour of London Group LLP in respect of the share in LPT.¹⁵¹⁶ It stated that D2 had at all times held the share in LPT on trust for London Group LLP.
- 18.4 D8 explained on 04.12.18, “*There is just one share in LPT which is held by Simon Hume-Kendall subject to a deed of trust in favour of London Group LLP*”.¹⁵¹⁷
- 18.5 As a result, the LPT SPA did not change the ultimate beneficial ownership of the LPC preference shares. £16.7 million was paid to D1, D2, D3 and D4 (increasing LOG’s debt to LCF by £22 million) in order to move the LPC preference shares from London Group LLP to a new company which was beneficially owned by London Group LLP.

I9 LPT SPA incoherence 2: the price

- 19.1 Further, it was fanciful to suggest that the preference shares in LPC could be worth anything substantial, let alone the sum of £32,225,096 stated in the LPT SPA, or the payments of £16.7 million made to D1, D2, D3 and D4 in reliance on the LPT SPA.
- 19.2 The price of £32,225,096 in the LPT SPA had been calculated on the basis of the following reasoning. **(i)** Under the addendum to LPC’s articles, LPC was entitled to redeem the preference shares.¹⁵¹⁸ **(ii)** The sum payable by LPC on the redemption of each preference share would be “*a sum equivalent to 0.0000012% of the Net Asset Value of [LPC]*”. Since there were 25 million preference shares in existence, the total amount payable by LPC on redemption would be a sum equivalent to 30% of the Net Asset Value of LPC. **(iii)** The term “*Net Asset Value*” was defined in the addendum to LCF’s articles to mean “*the net asset value of [LPC] as assessed by the auditors of [LPC] from time to time acting as experts on the assumption that [LPC] is being sold as a going concern by a willing seller to a willing buyer*”. **(iv)** The estimated balance sheet for LOG

¹⁵¹⁶ MDR00197584; MDR00220937; MDR00163093
¹⁵¹⁷ EB0138489; EB0138490

¹⁵¹⁸ D2D10-00044901

as at 31.07.18 stated that LOG had net assets of £107,416,985.¹⁵¹⁹ (v) Since LPC owned LOG, LPC could be treated as having net assets of £107,416,985. (vi) If LPC decided to redeem the preference shares, then the auditors “*acting as experts on the assumption that [LPC] is being sold as a going concern by a willing seller to a willing buyer*” would conclude that LPC had net assets of £107,416,985. (vii) Therefore, on the redemption of the LPC preference shares, LPC would pay £32,225,095.50 to the holders of the LPC preference shares. (viii) On this basis, the LPC preference shares were worth £32,225,096 and LPT could properly agree to buy them from D2 and D3 at that price.

I9.3 This reasoning explains clause 3.1 of the LPT SPA, which provided that the price might be varied subsequently “*in the event that there is any change in the audited accounts for [LPC] when they are produced to the intent that the Purchase Price shall be in the sum which is 30% of the net asset value of [LPC] as at 31st May 2018*”.

I9.4 This reasoning was obviously artificial and wrong. LPC’s auditors had not concluded (whether “*acting as experts on the assumption that [LPC] is being sold as a going concern by a willing seller to a willing buyer*” or otherwise) that LPC had a net asset value of £107,416,985. There was also no realistic prospect of them doing so.

I9.5 The reality was that LPC’s shares in LOG had no value.

I9.6 LOG’s most valuable asset was its investment in IOG. The Claimants’ expert, Mr Osborne, considers that this was worth between £26.4 million and £53.6 million on 27.07.18. D2’s expert, Mr Wright, considers that it was worth £56.0 million and £62.2 million. The range of possible values is therefore £26.4 million to £62.2 million.

I9.7 LOG had also made an investment in P/F Atlantic Petroleum. As at 27.07.18, LOG had loaned a principal sum of £1.88 million to P/F Atlantic Petroleum, with accrued interest of £324,625.¹⁵²⁰ On any view, this was not a significant asset.

I9.8 LOG also had substantial debts: LOG owed £88.9 million to LCF as at 27.07.18.¹⁵²¹

¹⁵¹⁹ MDR00163956

¹⁵²⁰ MDR00002063

¹⁵²¹ MDR00171190

- I9.9 Accordingly, it is clear that LOG's liabilities were greater than the value of its assets.
- I9.10 LPC's shares in LOG therefore had no value. Since LPC had no assets other than its shares in LOG, it follows that the net asset value of LPC itself was nil.
- I9.11 Furthermore, the estimated balance sheet for LOG as at 31.07.18 was a work of fiction. It overstated the value of LOG's assets and understated the amount of its liabilities.
- I9.12 As regards liabilities, it stated that LOG owed only £47.5 million to LCF as at 31.07.18. That was wrong; it understated LOG's debt to LCF by £41.5 million.
- I9.13 As regards assets, it suggested that LOG's assets were worth £162.4 million. That is plainly not supportable: both Mr Osborne and Mr Wright agree on that point.

I10 LPT SPA incoherence 3: unauthorised use of LOG's monies

- I10.1 Although LOG had borrowed from LCF to fund the payments to D1, D2, D3 and D4 under the LPT SPA, LOG's board had not authorised the use of its monies in this way.
- I10.2 As explained above in connection with the LPE SPA, David Elliott of LOG became aware of the unauthorised loans when he discovered that there had been drawdowns which had never been paid into LOG's bank account.¹⁵²²
- I10.3 At the LOG board meeting on 12.02.19, David Elliott explained that LOG's board had never agreed to borrow monies from LCF to fund payments under the LPT SPA.¹⁵²³

¹⁵²² MDR00220555; MDR00220553;

¹⁵²³ MDR00212113

J. OTHER PAYMENTS TO D1, D2, D3, D4, D8 AND D10

J1 Introduction

J1.1 D1, D2, D3 and D4 received very substantial sums of LCF's monies from the transactions set out above. They also took substantial sums of LCF's monies in other ways, often on the slightest pretext or even without any ostensible justification.

J1.2 Payments were also made to D10 and D8.

J2 Other payments to D4

J2.1 D4 took additional monies from LCF in numerous other ways.

J2.2 Sometimes, LCF paid monies to D4 directly. For example, on 27.04.16, D3 provided Katie Maddock of LCF with an invoice from D4 headed "*SG Golding Consulting*" in the sum of £32,700 for "*professional services*".¹⁵²⁴ On 29.04.16, LCF paid £32,700 to D4 with reference SG CONSULTANT.¹⁵²⁵

J2.3 LCF's accountants queried this payment. D1 told them that it was for "*financial services consultancy relating to all bonds*".¹⁵²⁶

J2.4 LCF made a further payment to D4 in the sum of £10,000 with the reference SG CONSULTANT on 25.07.16.¹⁵²⁷

J2.5 On both of those occasions, LCF made matching payments to D1,¹⁵²⁸ so that they were both receiving precisely the same amounts on the same days.

¹⁵²⁴ MDR00037759; MDR00037761

¹⁵²⁵ MDR00007347 page 3

¹⁵²⁶ MDR00050344; MDR00050383; MDR00050385
page 3

¹⁵²⁷ MDR00007356 page 3

¹⁵²⁸ MDR00007347 pages 3-5; MDR00220286 page
212; MDR00007356 page 3; MDR00220286 page
229

- J2.6 On another occasion, D1, D3 and D4 took £30,000 each via London Capital Marketing Limited (“LCM”), another company controlled by D1, who was the sole director and shareholder. On 07.04.17, LCF paid £90,000 to LCM.¹⁵²⁹ D1 emailed D3 to say that the invoices should be addressed to LCM.¹⁵³⁰ D3 then emailed D1 attaching two invoices for “*fundraising consultancy*” and “*professional services*”.¹⁵³¹ LCM then paid £30,000 to D1, £30,000 to or for D3 and £30,000 to D4.¹⁵³²
- J2.7 Often, D4 received payments of money from LCF via LOG. For example, on 12.06.17, LCF paid £601,750 to LOG;¹⁵³³ and, on 13.06.17, LOG paid £200,000 to D4 and £25,000 to D3 (each with the reference LOG SHARE PAYMENTS).¹⁵³⁴ There does not seem to have been any attempt to explain or justify these payments.
- J2.8 LOG also made substantial monthly payments to D4, often accompanied by payments to D2’s company LV Management and D3’s company Wealden Consultants Limited (“Wealden Consultants”) (later known as LP Consultants).
- J2.9 For example, on 01.06.17, LOG paid £20,000 to D4, £20,000 to LV Management and £15,900 to Wealden Consultants.¹⁵³⁵
- J2.10 Similarly, on 29.06.17, LOG paid £20,000 to D4, £20,000 to LV Management and £15,900 to Wealden Consultants.¹⁵³⁶
- J2.11 Again, on 31.07.17, LOG paid £20,000 to D4, £20,000 to LV Management and £15,900 to Wealden Consultants.¹⁵³⁷ Spreadsheets indicate that these payments were to be made at the beginning of each month in priority to any other payments.¹⁵³⁸
- J2.12 D4 also received payments of money from LCF via London Group LLP. As explained above, LCF was routinely paying money to Sands Equity for a considerable period. During that period, Sands Equity made substantial payments to London Group LLP,

¹⁵²⁹ MDR00111033; MDR00190145; D1-0000086; D1-0003733 page 1

¹⁵³⁰ EB0042639

¹⁵³¹ MDR00083133; MDR00083136; MDR00083137

¹⁵³² D1-0003733 pages 1-3; MDR00220286 page 280; MDR00224827 page 71

¹⁵³³ MDR00007319 page 13

¹⁵³⁴ MDR00006015 page 2

¹⁵³⁵ D2D10-00034396 page 13

¹⁵³⁶ D2D10-00034396 pages 7-8

¹⁵³⁷ D2D10-00034396 page 2

¹⁵³⁸ D2D10-00034707; D2D10-00034462; D2D10-00035062; D2D10-00039082

which in turn paid some of the monies to D4. (London Group LLP often made payments to D2 and D3 at the same time.)

J2.13 For example, on 01.12.17, Sands Equity paid £70,000 to London Group LLP, which paid £24,000 to D4, £24,000 to D2's company, LV Management, and £15,900 to D3's company Wealden Consultants.¹⁵³⁹

J2.14 Similarly, on 03.01.18, London Group LLP paid 24,000 to D4, £24,000 to LV Management and £15,900 to Wealden Consultants.¹⁵⁴⁰ Indeed, these payments were often repeated by London Group LLP at the beginning of every month.

J2.15 D4 also received substantial payments from LCF via D6, as explained below.

J3 LCF's loan to D4

J3.1 One of the biggest other sources of payments of LCF monies to D4 related to a loan made by LCF to D4, which was later waived when the liability was assumed by a company controlled by D4.

J3.2 LCF began making advances to D4 on 27.11.15.¹⁵⁴¹ They were paid into the bank account of D4 named Home Farm Equestrian Centre. This was the name of a business carried on by D4 as a sole trader.

J3.3 By 29.01.16, LCF had advanced a total of £200,000 to D4.¹⁵⁴² There was not yet any signed facility agreement.

J3.4 On 08.04.16, Alex Lee sent a draft loan agreement to D1, attached to an email entitled, "*Loan to Spencer Golding*".¹⁵⁴³ It was not signed at this time, however.

¹⁵³⁹ MDR00220330 page 3

¹⁵⁴⁰ MDR00220330 page 6

¹⁵⁴¹ MDR00027148 row 135

¹⁵⁴² MDR00027148 rows 62, 87-88, 135;
MDR00007227 page 5; MDR00045671;
MDR00045681

¹⁵⁴³ MDR00034954; MDR00034957; MDR00034958

- J3.5 Notwithstanding the absence of (i) a signed facility agreement and (ii) any security, LCF continued to make substantial payments to D4. It paid a further £100,000 to him on 22.04.16¹⁵⁴⁴ and a further £250,000 on 19.05.16.¹⁵⁴⁵
- J3.6 Alex Lee sent further drafts of the facility agreement to D1 on 26.05.16 (with a limit of £2 million).¹⁵⁴⁶ But still it was not signed.
- J3.7 A further draft was sent to D1 on 21.06.16.¹⁵⁴⁷ But still nothing was signed.
- J3.8 By this point, D4 owed £738,225 to LCF on a gross basis.¹⁵⁴⁸ Although there was still no signed facility agreement and no security, LCF continued to make payments to D4, including another £100,575 on 29.06.19,¹⁵⁴⁹ bringing his total debt (gross) to £906,812,¹⁵⁵⁰ and £25,000 in cash on 15.07.16.¹⁵⁵¹
- J3.9 But still the agreement remained unsigned.¹⁵⁵²
- J3.10 LCF paid a further £201,150 to D4 on 01.09.16,¹⁵⁵³ bringing his total debt (gross) to £1.88 million.¹⁵⁵⁴ Still nothing had been signed and there was no security.
- J3.11 On 22.09.16, D1 emailed Alex Lee asking, “*Can you give me an update on the loan doc for Spencer*”.¹⁵⁵⁵ It appears that Alex Lee did not respond until 28.09.16.¹⁵⁵⁶
- J3.12 On 03.10.16, he emailed D1 again, attaching the latest draft facility, which continued to have a facility limit of £2 million.
- J3.13 It was eventually signed by D1 and D4 at some point on or after 03.10.16 but was falsely backdated to 20.11.15 to make it seem as though it had been signed before the first advances to D4.¹⁵⁵⁷ The year 2015 appeared in typescript on the front pages.

¹⁵⁴⁴ MDR00007241 pages 1-3

¹⁵⁴⁵ MDR00007247 page 3

¹⁵⁴⁶ MDR00042151; MDR00042152; MDR00042153; MDR00042154; MDR00042165; MDR00042166

¹⁵⁴⁷ MDR00045410; MDR00045559; MDR00045568; MDR00045569

¹⁵⁴⁸ MDR00045671; MDR00045681

¹⁵⁴⁹ MDR00007256 pages 11-13

¹⁵⁵⁰ MDR00051283

¹⁵⁵¹ MDR00052243

¹⁵⁵² MDR00053037

¹⁵⁵³ MDR00007272 pages 11-15; MDR00058506 pages 14-15

¹⁵⁵⁴ MDR00063018

¹⁵⁵⁵ MDR00058885

¹⁵⁵⁶ MDR00060300; MDR00060301

¹⁵⁵⁷ MDR00057727; D1-0002917; MDR00225727

- J3.14 LCF continued to make advances to D4 (including £1,400,779.50 on 21.07.17¹⁵⁵⁸ and £397,300 on 11.08.17¹⁵⁵⁹): D4’s liability to LCF continued to grow.
- J3.15 A plan was hatched to prevent D4 from having to repay any of this money.
- J3.16 A new company called River Lodge Equestrian Centre UK Limited (“River Lodge UK”) was incorporated on 11.01.17. The sole director of River Lodge UK was a man called Rafael Ariza-Sanctuary, who held 50% of the shares on trust for D4.¹⁵⁶⁰
- J3.17 Alex Lee then prepared a new facility agreement between LCF and River Lodge UK and emailed D1 about this.¹⁵⁶¹ The facility limit in the River Lodge UK facility agreement was to be £10 million. D4’s liability to LCF (in the total sum of £6,228,262.64) was expressly to be treated as having been drawn down under this new facility agreement.
- J3.18 Ultimately the River Lodge UK facility agreement was signed on or around 09.10.17, with a facility limit of £20 million.¹⁵⁶² D1 signed this document.
- J3.19 D4 was thereby relieved from liability in respect of the sums previously advanced to him, which was now to be treated as lent by River Lodge UK instead.
- J3.20 Katie Maddock emailed D4 (cc D1) on 11.10.17 to say that “*all loans ... [had] been now repaid in full*”.¹⁵⁶³ D4 forwarded this to D3, who replied, “*Nice!*”¹⁵⁶⁴
- J3.21 LCF paid monies to River Lodge UK, which made payments to D4. On 14.12.17, LCF paid £904,050 to River Lodge UK,¹⁵⁶⁵ which paid £470,000 to D4 on 09.01.18.¹⁵⁶⁶

¹⁵⁵⁸ MDR00007116 page 13

¹⁵⁵⁹ MDR00007331

¹⁵⁶⁰ D2D10-00035160; D2D10-00035161; D2D10-00035162; D2D10-00035163; D2D10-00035164; D2D10-00035165

¹⁵⁶¹ MDR00085977; MDR00085981; MDR00093037; MDR00093038; MDR00093041; MDR00093043; MDR00102564; MDR00102568; MDR00102569;

MDR00102570; MDR00102571; MDR00102573;

MDR00102604; MDR00102777; MDR00102781

¹⁵⁶² MDR00006313; MDR00007510; MDR00224398; MDR00006314; MDR00007535; MDR00106011; MDR00106012

¹⁵⁶³ MDR00106572

¹⁵⁶⁴ EB0061603

¹⁵⁶⁵ MDR00007049 page 9

¹⁵⁶⁶ MDR00224827 page 182

- J3.22 LCF also funded a loan by LCM to D4. LCF had made regular payments to LCM, which had built up in its bank account. On 14.11.18, D1 emailed Luke Tofts of GCEN to explain that LCM was going to be lending money to D4.¹⁵⁶⁷ He said that LCM would be transferring £452,000 to GCEN for onward transmission by GCEN to D4. Luke said he would “*speak to compliance and try to get it signed off ASAP*”.¹⁵⁶⁸
- J3.23 LCM paid £452,000 to GCEN on 14.11.18 and 15.11.18.¹⁵⁶⁹ D1 then emailed Luke Tofts to ask him to send the £452,000 from LCM’s account to D4.¹⁵⁷⁰
- J3.24 D1 and Luke Tofts had a telephone conversation¹⁵⁷¹ in which Luke asked D1 for a copy of the loan agreement between LCM and D4.¹⁵⁷² D1 promised that he would provide this to Luke Tofts in due course.¹⁵⁷³ GCEN then paid £452,000 to D4.¹⁵⁷⁴
- J3.25 D1 could not provide Luke Tofts with a copy of the loan agreement between LCM and D4, because no such document yet existed.
- J3.26 On 03.12.18, Luke Tofts of GCEN emailed D1 to again request this agreement,¹⁵⁷⁵ adding, “*I put my neck on the line for you with compliance to get these payments made and LCM on-boarded in a very short time frame with no supporting docs, so it looks very bad that I still don't have the docs as they were promised 2 weeks ago*”.
- J3.27 At this point, on 03.12.18, D1 drafted a loan agreement between LCM and D4, dated 01.11.18 in typescript. He sent this (as a Word document) to his assistant, Alex Mannering, presumably for printing.¹⁵⁷⁶ D1 signed it.¹⁵⁷⁷
- J3.28 Alex Mannering sent it to Luke Tofts.¹⁵⁷⁸
- J3.29 However, it had not been signed by D4. Luke Tofts spotted this and contacted Alex Mannering, who emailed D1 to say, “*Luke needs the countersigned version of the facility*”.

¹⁵⁶⁷ MDR00186408
¹⁵⁶⁸ MDR00186415
¹⁵⁶⁹ MDR00190996 page 1
¹⁵⁷⁰ MDR00187155
¹⁵⁷¹ MDR00187176
¹⁵⁷² MDR00192786

¹⁵⁷³ MDR00192786
¹⁵⁷⁴ MDR00187364; MDR00192786
¹⁵⁷⁵ MDR00192786
¹⁵⁷⁶ MDR00192802; MDR00192804; MDR00192805
¹⁵⁷⁷ MDR00193006; MDR00192994
¹⁵⁷⁸ MDR00193029; MDR00193030

agreement”.¹⁵⁷⁹ Alex reminded D1 about this on 05.12.18 (“Document needs countersigning for Luke Tofts”).¹⁵⁸⁰

J3.30 A further version, purportedly signed by D4, was prepared on 06.12.18,¹⁵⁸¹ when it was sent to Luke Tofts.¹⁵⁸² It is clear that it had been falsely backdated. Further, there is no evidence that this document was sent to D4 for signature or signed by D4. The signature purporting to be that of D4¹⁵⁸³ does not resemble any other known exemplar.¹⁵⁸⁴

J3.31 LCF paid a further £750,067.50 to D4 on 04.12.18.¹⁵⁸⁵ No explanation for this payment has been identified.

J4 Helicopter transactions for the benefit of D4

J4.1 D4 also received the benefit of monies from LCF in connection with helicopters.

J4.2 D4 purchased a Eurocopter NS355N with registration N766AM (“N766AM”) for £520,000,¹⁵⁸⁶ using £500,000 from LCF to fund this purchase.¹⁵⁸⁷

J4.3 Subsequently, D4 sold N766AM to D1’s company, London Financial Group Limited, for £650,000, which was paid to D4 by LCF with the reference N667AM [sic].¹⁵⁸⁸

J4.4 D4 also bought a EC135 Eurocopter with registration G-MSPT (“G-MSPT”) for £1,650,000 plus VAT, with a deposit of £800,000 and the balance in 3 instalments.¹⁵⁸⁹

¹⁵⁷⁹ MDR00193159

¹⁵⁸⁰ MDR00194039

¹⁵⁸¹ MDR00194431

¹⁵⁸² MDR00194500; MDR00194501

¹⁵⁸³ MDR00194501 page 21

¹⁵⁸⁴ MDR00226310; D2D10-00038963 page 4; D8-0011765 pages 3, 6, 7, 10 and 12; D8-0018336; D8-0018748; EB0026962 page 8; B2/5/44; B4/6/8; N4/2/15; N4/3/16; N4/4/4; O3/2/2

¹⁵⁸⁵ MDR00006892 page 5

¹⁵⁸⁶ D8-0010044; MDR_POST_00000530; D8-0009528 pages 12-15; D8-0010045; MDR00076660; MDR00076661; MDR00224826 page 95; MDR00076835

¹⁵⁸⁷ MDR00007266 page 13;

¹⁵⁸⁸ MDR00078822; MDR00224827 page 113;

MDR00007300 pages 13-15; MDR00224676 page

9; MDR00224827 page 188; D8-0010045; D8-0010055; D8-0010057; D-0010064; D8-0010143; D8-0010437; D8-0010438; MDR00076623; MDR00076625; MDR00076660; MDR00076661; MDR00076834; MDR00076835; MDR00076836; MDR00077363; MDR00078707; MDR00078795; MDR00078819

¹⁵⁸⁹ D8-0009506; D8-0009520; D8-0009528; D2D10-00025416; D2D10-00026349; D8-0009674; D8-0009691; D8-0010616; D8-0010939; D8-0011765; D2D10-00025416; D80009699; D8-0009601; D2D10-00025416; D2D10-00026349; D8-0009585; D80009699; D8-0009601; D8-0010671; D8-0011645; D8-0011646; D8-0011720; D8-0011735; D8-0011736; D8-0011781; D8-0011821; D8-0011916

- J4.5 This was funded by LCF. On 03.03.17, D8 emailed D1 and D4 to say that the vendor of G-MSPT was “*happy to accept payment from London Capital & Finance PLC without any further due diligence on the identity of the buyer*”.¹⁵⁹⁰
- J4.6 On the same day, D1 transferred £800,000 from LCF’s account to the vendor’s solicitors and told D8 that he had done so.¹⁵⁹¹ D1 transferred the first instalment of £393,333.33 from LCF’s account to the vendor’s solicitors on 16.03.17.¹⁵⁹² The second and third instalments were paid in May 2017 and June 2017, again funded by LCF.¹⁵⁹³
- J4.7 D1 and D4 retained professional helicopter pilots to ferry them around in these helicopters. For example, they used them in 2018 to travel to various horse trials.¹⁵⁹⁴

J5 Other payments to D1

- J5.1 D1 also received monies from LCF in numerous other ways. As mentioned above, he received payments from LCF and LCM to match those paid to D4.¹⁵⁹⁵
- J5.2 D1 also took other sums from LCF: £10,000 on 04.09.15,¹⁵⁹⁶ £10,000 on 19.11.15,¹⁵⁹⁷ £9,733.19 on 04.02.16,¹⁵⁹⁸ £20,000 on 01.03.16,¹⁵⁹⁹ £20,000 on 04.04.16,¹⁶⁰⁰ £52,700 on 29.04.16,¹⁶⁰¹ £20,000 on 01.06.16¹⁶⁰² and £20,000 on 01.07.16.¹⁶⁰³
- J5.3 D1 told LCF’s accountants, Oliver Clive & Co, that these sums had been paid to a marketing company called Media GPS, which he said had provided marketing and PR services. D1 provided invoices in the name of Media GPS to support this assertion: “*As discussed please find attached the invoices from Media GPS that cover the marketing*

¹⁵⁹⁰ D2D10-00025416

¹⁵⁹¹ D2D10-00058153; MDR00224734 page 2; D8-0010703

¹⁵⁹² MDR00080243; MDR00080245; MDR00224734 page 4

¹⁵⁹³ D2D10-00028174; D8-0014518; D8-0014520; D8-0016499; D8-0016223; MDR00224470; MDR00224826; MDR00221912; MDR00224942

¹⁵⁹⁴ MDR00175024; MDR00160732

¹⁵⁹⁵ MDR00007347 pages 3-5; MDR00220286 page 212; MDR00007356 page 3; MDR00220286 page 229; MDR00111033; MDR00190145; D1-0000086;

MDR00220286 page 280; MDR00224827 page 71; D1-0003733 pages 1-3

¹⁵⁹⁶ MDR00027104 row 171; MDR00195284 page 2; MDR00220286 page 167

¹⁵⁹⁷ MDR00051820; MDR00051822; MDR00220286 page 180

¹⁵⁹⁸ MDR00051820; MDR00051822

¹⁵⁹⁹ MDR00007344 page 3; MDR00220286 page 198

¹⁶⁰⁰ MDR00007346 page 3; MDR00220286 page 206

¹⁶⁰¹ MDR00007347 pages 3-7; MDR00220286 page 212

¹⁶⁰² MDR00007349 page 3; MDR00007352 page 3; MDR00220286 page 220

¹⁶⁰³ MDR00007355 page 1; MDR00220286 page 224

*and PR work for our bonds. The work this company has done to date cover all our bonds and we will be using them for the same work on our next series of bonds”.*¹⁶⁰⁴

- J5.4 However, Steven Davidson of Oliver Clive & Co knew that D1 had filed dormant accounts for Media GPS. He replied, “*Sorry canyt [sic] use these as you have submitted dormat [sic] accounts for media gps. Must have been a mistake*”.¹⁶⁰⁵
- J5.5 Accordingly, D1’s attempt to disguise the payments with false invoices was a failure. The payments were instead classified by Oliver Clive & Co as drawings on D1’s director’s loan account and repaid by him to LCF using monies from L&TD.¹⁶⁰⁶ The episode remains relevant because it demonstrates a clear propensity by D1 to take monies from LCF without any proper basis and then to lie about it.
- J5.6 Subsequently, LCF paid monies to Media GPS, which made payments to D1. On 25.11.16, LCF paid £100,000 to Media GPS.¹⁶⁰⁷ A few days later, on 29.11.16 and 30.11.16, Media GPS paid a total of £100,000 to D1.¹⁶⁰⁸ Similarly, on 11.12.17, LCF paid £175,000 to Media GPS, which paid £172,000 to D1 on the same day.¹⁶⁰⁹
- J5.7 As explained below, D1 also received large sums of monies from LCF through D6, which made payments to Media GPS, which then made transfers to D1.

J6 Other payments to D2/D10

- J6.1 Some of the other payments from LCF to D2 have been covered already above. LOG made frequent payments (funded by LCF) to D2’s company LV Management, usually in the sum of £20,000 per month.¹⁶¹⁰ Similarly, London Group LLP made payments deriving from LCF to LV Management, often in the sum of £24,000 per month.¹⁶¹¹

¹⁶⁰⁴ MDR00050909; MDR00050910; MDR00050912; MDR00050913; MDR00050914; MDR00050915; MDR00050916; MDR00050917; MDR00050918
¹⁶⁰⁵ MDR00051126
¹⁶⁰⁶ MDR00051820; MDR00051822; MDR00051978; MDR00052024; MDR00052027; MDR00060535; MDR00060536; MDR00007357 page 3; MDR00220286 pages 229-230; MDR00220284 page 9; MDR00220286 pages 227-228

¹⁶⁰⁷ MDR00007365 page 133
¹⁶⁰⁸ MDR00088777 pages 17-18; MDR00220286 pages 253-254
¹⁶⁰⁹ MDR00006944 page 1; MDR00220286 page 327 ; MDR00224651 ; MDR00224775 ; MDR00224791
¹⁶¹⁰ D2D10-00034396 pages 2, 7 and 13; D2D10-00034707; D2D10-00034462; D2D10-00035062; D2D10-00039082
¹⁶¹¹ MDR00220330 pages 3 and 6

- J6.2 D10 also received monies directly from LCF. On 12.05.17, D3 asked D1 to pay £190,000 to D10.¹⁶¹² D1 replied, “OK”. On the same day, LCF paid £186,200 to D10.¹⁶¹³ Nothing can be found to explain or justify this payment to D10.
- J6.3 D10 also received monies deriving from LCF indirectly, via LOG. On 12.06.17, LCF paid £601,750 to LOG,¹⁶¹⁴ which paid £200,000 to D10 just two days later.¹⁶¹⁵ The reference was “LOG Share Payment”. Nothing can be found to explain or justify this.

J7 Other payments to D3

- J7.1 The bank statements contain numerous payments to D3’s company Wealden Consultants. (As explained above, this company later became LP Consultants.)
- J7.2 During the period when LCF was lending monies to L&TD, L&TD was making payments to Wealden Consultants. For example, on 01.04.16, LCF paid £53,144.18 to L&TD,¹⁶¹⁶ which paid £12,000 to Wealden Consultants.¹⁶¹⁷
- J7.3 LCF also made payments to Wealden Consultants directly, as mentioned above, including £32,700 on 28.04.16 for “*consultancy work*”¹⁶¹⁸ (apparently in connection with an invoice from D4 for “*professional services*”¹⁶¹⁹). LCF paid £10,000 to Wealden Consultants on 25.07.16 (when it made matching payments to D1 and D4).¹⁶²⁰
- J7.4 On 12.05.17, D3 told D1 to pay £100,000 to Wealden Consultants.¹⁶²¹ D1 complied: LCF paid £98,000 to Wealden Consultants on the same day.¹⁶²²
- J7.5 As explained above, monies from LCF were also paid to Wealden Consultants via LCM,¹⁶²³ LOG¹⁶²⁴ and London Group LLP.¹⁶²⁵

¹⁶¹² EB0047842

¹⁶¹³ MDR00007314 page 9

¹⁶¹⁴ MDR00007319 page 3

¹⁶¹⁵ MDR00006015 page 1

¹⁶¹⁶ MDR00007237 pages 3-5; MDR00215815 pages 21-22; MDR00034858

¹⁶¹⁷ MDR00215815 page 21

¹⁶¹⁸ MDR00007347 pages 1-3

¹⁶¹⁹ MDR00037759; MDR00037760; MDR00037761

¹⁶²⁰ MDR00007356 page 3

¹⁶²¹ EB0047842

¹⁶²² MDR00007314 page 9

¹⁶²³ MDR00111033; MDR00190145; D1-0000086; D1-0003733 pages 1-3

¹⁶²⁴ MDR00007319 page 3; MDR00006015 page 2; D2D10-00034396 pages 2, 8 and 13; D2D10-00034707; D2D10-00034462; D2D10-00035062; D2D10-00039082

¹⁶²⁵ MDR00220330 pages 3 and 6

J8 Payments to D8

- J8.1 As explained above, D8 played a major role in the administration of the fraud. Among other things, he advised on the dishonest backdating of documents to evade tax liabilities; he participated in the production of dishonestly backdated documents to deceive professionals and the public; he participated in the production of dishonestly backdated documents to justify ever-increasing payments from LCF to D1, D2, D3, D4 and D10; and he administered the payments under the Prime SPA through GAD. This has all been explained in detail above and is not repeated here.
- J8.2 For his role in the fraud, D8 was paid very well. The payments to D8 have been set out in schedule 2 of the neutral statement of uncontested facts. Monies from LCF were routed to him through various entities. In total, D8 received at least £554,481.23.
- J8.3 Some of these payments were ostensibly justified by invoices from D8's company, Sedgwick Company Management Limited.¹⁶²⁶ However, given the extent of D8's participation and knowledge, the fact that these payments were ostensibly made in return for services makes no difference to LCF's proprietary claims to recover these sums.

¹⁶²⁶ MDR00005793; MDR00005792; MDR00005791;
MDR00005789; MDR00005784; MDR00005788;

MDR00005787; MDR00145321; MDR00005785;
MDR00149737; MDR00149738

K. MISREPRESENTATIONS

K1 Introduction

K1.1 As shown above, in the course of selling bonds, LCF engaged in numerous misrepresentations. There were also other misrepresentations which are covered below.

K2 Misrepresentations about security values

K2.1 LCF represented that the value of security substantially exceeded the amount of its loans, which were accordingly fully secured.

K2.2 LCF's first information memorandum stated that "*LC&F are offering to provide asset security to 150% of the value of all monies raised*".¹⁶²⁷ LCF also said that "*loans made by LC&F will have a maximum value of 75% of the value of the assets over which security is granted*". This representation was repeated in every information memorandum from series 3 onwards,¹⁶²⁸ including in all the ISA bond series.¹⁶²⁹ It was also contained in every LCF brochure ("*no more than 75% loan to value*").¹⁶³⁰

K2.3 In reality, however, as explained above, the companies to which LCF made loans were unable to provide LCF with sufficient security because their assets were either worthless or worth considerably less than the loans.

K2.4 The underlying 'assets' over which LCF supposedly had security consisted of the Lakeview resort, The Hill, The Beach, Paradise Beach and LOG's interests in IOG. The

¹⁶²⁷ MDR00207063 page 12

¹⁶²⁸ MDR_ST_00053302 pages 9, 14 and 18;
MDR_ST_00017000 pages 9, 14 and 18;
MDR_ST_00090094 page 8, 13 and 18;
MDR_ST_00040127 pages 9, 14 and 18;
MDR_ST_00047548 pages 9, 14 and 18;
MDR_ST_00033505 pages 9, 14 and 20;
MDR_ST_00145654 pages 11, 16 and 22;
MDR_ST_00155374 pages 10, 14 and 22.

¹⁶²⁹ MDR_ST_00154857 pages 7, 12 and 19;
MDR_ST_00154858 pages 7, 12 and 20;
MDR_ST_00154959 pages 10, 14 and 23;
MDR_ST_00154860 pages 7, 12 and 15)

¹⁶³⁰ MDR_ST_00053300 page 16; MDR_ST_00032654 page 16; MDR_ST_00032653 page 16;
MDR_ST_00032657 page 16; MDR_ST_00032650 page 16; MDR_ST_00033849 page 16;
MDR_ST_00098654 page 16

position in respect of these assets has been addressed above. Further, D1 was aware of the facts, given his close involvement.

- K2.5 D1 knew that LCCL had acquired the Lakeview resort for £1,609,269 because he had been closely involved in the Lakeview resort with D2. He knew that The Hill was owned by Inversiones and that the shares in Inversiones were held on trust for El Cupey for the benefit of the Sanctuary investors because he had been closely involved in those matters too. He knew that The Beach had not yet been acquired. Mark Ingham reminded him on 15.04.16 that “*Tenedora just has a contested purchase agreement*”.¹⁶³¹ He knew that CV Resorts had not acquired Paradise Beach, because the contract price was significantly in excess of the true value, as confirmed by Savills. And he knew that LOG’s investment in IOG would entitle it to acquire listed shares in IOG, the market price of which on any given day was a matter of public record which could be easily ascertained, and that the total value of LOG’s interest was consistently lower than the sum owed to LCF by LOG.
- K2.6 D1 ignored the truth in order to assert that LCF maintained a strong loan-to-value ratio. Even though LCF was not taking security over new assets, D1 continued to make ever more implausible assessments of the value of the security for public consumption.
- K2.7 On 09.02.17, D1 said that LCF had security over assets worth at least £215 million.¹⁶³² He prepared a breakdown, comprising £16.25 million for the Lakeview resort, £19,350,000 for The Hill, £37,950,000 for The Beach, £35,017,300 for Paradise Beach and £113,300,000 for LOG’s assets.¹⁶³³ These sums totalled £221,867,300.
- K2.8 LCF’s website was updated to say that LCF had security over assets worth more than £215 million (“*Total value of security held exceeds £215m*”¹⁶³⁴); and D1 told D6’s employees that they could tell prospective bondholders that LCF had security over assets worth more than £215 million.¹⁶³⁵ They duly did so.¹⁶³⁶

¹⁶³¹ MDR00035933
¹⁶³² MDR00074462; MDR00224094
¹⁶³³ MDR00077856
¹⁶³⁴ MDR00077875
¹⁶³⁵ MDR00082474

¹⁶³⁶ MDR00076524; MDR00076763; MDR00077241;
MDR00075616; MDR00075949; MDR00077022;
MDR00079262; MDR00081044; MDR00082821;
MDR00090250; MDR00092089; MDR00092139;
MDR00094413

- K2.9 LCF advertised in *The Times*, stating, “*Value of security £215m, Loan to value ratio 25.9%*”.¹⁶³⁷ D1 approved this in advance,¹⁶³⁸ even though he knew its claims were false. This appeared subsequently in *The Financial Times*, *The Telegraph* and *The Times*.¹⁶³⁹
- K2.10 The problem for D1 was that the total amount of LCF’s lending kept growing without any new security being taken. But this obstacle was easily surmounted by the expedient of increasing the purported value of the existing security. On 04.09.17, D1 said that LCF had security over assets worth £247,600,000.¹⁶⁴⁰ By 07.12.18, just a few days before the FCA’s raid of LCF’s premises, this figure had been increased to £685,300,000.¹⁶⁴¹
- K2.11 These figures were used by D6 and D7 to sell LCF’s bonds to the public. As D7 explained to one member of the public, “*So, when we say things like we’ve got £685 million worth of assets, security assets ... which, in effect, protect us and our investors against a loan book of 220 million ... They’re not figures we’ve made up. They’ve been checked and verified*”.¹⁶⁴² However, they were not figures which had been checked or verified. To the contrary, they were figures which D1 had made up.

K3 Other misrepresentations

- K3.1 D6’s sales people used LCF’s materials to sell LCF bonds to members of the public. They sent these documents to prospective bondholders by email¹⁶⁴³ and referred them to LCF’s marketing videos.¹⁶⁴⁴ These materials were full of misrepresentations.
- K3.2 For example, it was said that LCF was performing robust due diligence before making any loans. The first LCF investment memorandum asserted, “*In addition to the physical security identified, LC&F will conduct a full financial review of every application*” and “*if required will retain the services of Moore Stephens and Baker Tilly to provide further financial analysis prior to any decision to lend being made*”.¹⁶⁴⁵

¹⁶³⁷ D7D9-0009136

¹⁶³⁸ MDR00085731; MDR00085733; MDR00085742; MDR00085746; MDR00085747; MDR00085766; MDR00085773; MDR00085774; MDR00085780; MDR00085804; MDR00085807

¹⁶³⁹ MDR00087050; MDR00087051; MDR00087052; SUR00073529-0001; SUR00073530-0001

¹⁶⁴⁰ MDR00098992; MDR00098909

¹⁶⁴¹ MDR00195481

¹⁶⁴² MDR00224329 page 31

¹⁶⁴³ MDR00033166; MDR00033167; MDR00033169; MDR00033170; SUR00132218-0001; SUR00132219-0001; SUR00132220-0001; SUR00132221-0001; MDR00034121; MDR00034122; MDR00034795; MDR00034797; MDR00062355

¹⁶⁴⁴ MDR00033734; MDR00033735; MDR00033740

¹⁶⁴⁵ MDR00207063 page 12

- K3.3 Subsequently it was said that full due diligence was being carried out (“*LC&F has chosen to take a more hands-on approach to its loan commitments not only by conducting full due diligence prior to lending but also with the on-going monitoring of the loans it makes*”)¹⁶⁴⁶ and that a financial review of each borrower was conducted prior to lending decisions (“*When a company is referred to LC&F, its borrowing application and associated financials and assets will undergo a full financial review, lending assessment and, if required, a further financial analysis via an independent accountant and or surveyor will be undertaken prior to any decision to lend being made*”).¹⁶⁴⁷
- K3.4 This review process was said to include a number of elements, including a “*review of historical financial information ... over the last three years*” and “*an appraisal of property assets ... by an independent surveyor*”. LCF was said to only “*make loans to UK businesses that it considers creditworthy, that meet LC&F’s lending criteria and that have realistic and robust repayment proposals*”.¹⁶⁴⁸
- K3.5 The investment memoranda for the so-called ISA bonds contained identical representations.¹⁶⁴⁹ The statements in LCF’s brochures were much the same, stating that LCF only lent to “*creditworthy*” businesses with “*realistic and robust repayment proposals*” and that LCF “*endeavoured to create multi-layers of security and safeguards to protect Bond Holders’ capital, which range from upfront and ongoing due diligence on prospective borrowers to taking charges over borrowers’ assets*”.¹⁶⁵⁰
- K3.6 In reality, however, as the facts set out above make clear, these representations were untrue; and D1 knew that they were untrue. There is no record of LCF ever conducting

¹⁶⁴⁶ MDR_ST_00053302 page 9; MDR_ST_00017000 page 11; MDR_ST_00090094 page 10; MDR_ST_00040127 page 11; MDR_ST_00047548 page 11; MDR_ST_00033505 page 11; MDR_ST_00145654 page 13; MDR_ST_00155374 page 11

¹⁶⁴⁷ MDR_ST_00053302 page 11; MDR_ST_00017000 page 12; MDR_ST_00090094 page 11; MDR_ST_00040127 page 12; MDR_ST_00047548 page 12; MDR_ST_00033505 page 12; MDR_ST_00145654 page 14; MDR_ST_00155374 page 12

¹⁶⁴⁸ MDR_ST_00053302 page 12; MDR_ST_00017000 page 12; MDR_ST_00090094 page 11;

MDR_ST_00040127 page 12; MDR_ST_00047548 page 12; MDR_ST_00033505 page 12; MDR_ST_00145654 page 14; MDR_ST_00155374 page 12

¹⁶⁴⁹ MDR_ST_00154857 pages 9-10; MDR_ST_00154858 pages 9-10; MDR_ST_00154959 pages 11-12; MDR_ST_00154860 pages 8-9

¹⁶⁵⁰ MDR_ST_00053300 page 19; MDR_ST_00032654 page 19; MDR_ST_00032653 page 19; MDR_ST_00032657 page 19; MDR_ST_00032650 page 19; MDR_ST_00033849 page 19

any due diligence. Instead, monies were provided to connected companies so that they could be paid to D1, D2, D3, D4 and D10.

- K3.7 Similarly, LCF's investment memoranda asserted that LCF never advanced loans without having signed loan and security agreements in place ("*Investor funds ... will only be remitted to borrowers when all loan documents and security are in place*";¹⁶⁵¹ "*Once a potential Borrowing Company has been assessed as creditworthy, agreed security is taken and legal documents are prepared and signed. Only when all legal and security documentation has been completed to LC&F's satisfaction, will funds be transferred to the Borrowing Company*"¹⁶⁵²). The same representations were contained in the investment memoranda for the ISA bond series¹⁶⁵³ and in LCF's brochures.¹⁶⁵⁴
- K3.8 The numerous counter-examples set out above prove that this was untrue. Monies were often paid to borrowers before any loan agreement had been signed and without any security having been taken and no valuable security was put in place.
- K3.9 LCF's brochures claimed that the security would be held by an "*independent security trustee*".¹⁶⁵⁵ As explained above, this was often used as a selling feature when in reality GST was closely connected with LCF and its borrowers and it was misleading to assert that it was independent or that it monitored the value of security.
- K3.10 LCF claimed that it generated its income from lending activity to pay high returns. The first LCF investment memorandum stated that "*provision of finance to regional business development will ... provide a secure high rate of return for investors*". Subsequent investment memoranda stated, "*Income is generated by charging a Borrowing Company lending fees of 2% and making an interest 'tum' on the funds LC&F lends*".¹⁶⁵⁶

¹⁶⁵¹ MDR00207063 page 12
¹⁶⁵² MDR_ST_00053302 page 13; MDR_ST_00017000 page 13; MDR_ST_00090094 page 12; MDR_ST_00040127 page 13; MDR_ST_00047548 page 13; MDR_ST_00033505 page 13; MDR_ST_00145654 page 15; MDR_ST_00155374 page 13
¹⁶⁵³ MDR_ST_00154857 page 11; MDR_ST_00154858 page 11; MDR_ST_00154959 page 13; MDR_ST_00154860 page 11
¹⁶⁵⁴ MDR_ST_00053300 page 16; MDR_ST_00032654 page 16; MDR_ST_00032653 page 16; MDR_ST_00032657 page 16; MDR_ST_00032650

page 16; MDR_ST_00033849 page 16; MDR_ST_00098654 page 16
¹⁶⁵⁵ MDR_ST_00053300 page 16; MDR_ST_00032654 page 16; MDR_ST_00032653 page 16; MDR_ST_00032657 page 16; MDR_ST_00032650 page 16; MDR_ST_00033849 page 16; MDR_ST_00098654 page 16
¹⁶⁵⁶ MDR_ST_00053302 page 14; MDR_ST_00017000 page 14; MDR_ST_00090094 page 13; MDR_ST_00040127 page 13; MDR_ST_00047548 page 14; MDR_ST_00033505 page 14; MDR_ST_00145654 page 16; MDR_ST_00155374 page 13

- K3.11 The same statements appeared in the investment memoranda for the ISA bond series¹⁶⁵⁷ and brochures (“[LCF’s] *principal activity is to identify opportunities in structured finance within the UK SME sector and to generate income via loan interest and associated fees*”;¹⁶⁵⁸ “*To continue to grow a profitable commercial loan business to meet the increasing demand of successful, but cash-starved UK SMEs*”¹⁶⁵⁹).
- K3.12 This was also untrue. D1 knew that it was untrue. As explained above, LCF operated as a Ponzi scheme, with receipts being funded by monies from new bondholders.
- K3.13 The same story contained in LCF’s information memoranda and brochures was told to prospective bondholders directly to persuade them to buy LCF’s bonds. D6’s sales people relied on scripts and manuals containing these misrepresentations.
- K3.14 For instance, it was stated to bondholders that LCF’s security was very valuable and exceeded its loan book. In line with D1’s assessments of the value of LCF’s security, the security figure relayed to prospective bondholders evolved over time. At first, LCF was said to have £60 million in security.¹⁶⁶⁰ This was increased to £215 million.¹⁶⁶¹ The figure increased again, ultimately to £685 million,¹⁶⁶² as explained above.
- K3.15 Prospective bondholders were also told that LCF carried out due diligence and would only lend to creditworthy borrowers: “*Every company we loan to has to go through a very strict lending criteria before we would consider loaning to them*”.¹⁶⁶³ “*Our minimum loan amount is half a million pounds so it’s quite bulky, that means we don’t lend to start-up companies due to the risk. They have to be established companies with a track record, good credit ratings*”.¹⁶⁶⁴ LCF was also said to have ‘strict lending

¹⁶⁵⁷ MDR_ST_00154857 page 11; MDR_ST_00154858 page 11; MDR_ST_00154959 page 14; MDR_ST_00154860 page 10

¹⁶⁵⁸ MDR_ST_00053300 page 4; MDR_ST_00032654 page 4; MDR_ST_00032653 page 4; MDR_ST_00032657 page 4; MDR_ST_00032650 page 4; MDR_ST_00033849 page 4; MDR_ST_00098654 page 4

¹⁶⁵⁹ MDR_ST_00053300 page 4; MDR_ST_00032654 page 6; MDR_ST_00032653 page 6; MDR_ST_00032657 page 6; MDR_ST_00032650 page 6; MDR_ST_00033849 page 6; MDR_ST_00098654 page 6

¹⁶⁶⁰ MDR00065285; MDR00067074; MDR00070677

¹⁶⁶¹ MDR00076524; MDR00076763; MDR00077241; MDR00075616; MDR00075949; MDR00077022; MDR00079262; MDR00081044; MDR00082821; MDR00082299; MDR00090250; MDR00092089; MDR00092139; MDR00094413

¹⁶⁶² MDR00181389; MDR00182680; MDR00192945 ; MDR00224329 pages 31-33 and 50 ; MDR00186690; MDR00191794

¹⁶⁶³ MDR00088201

¹⁶⁶⁴ MDR00221949 page 3

criteria’: “We are a corporate financier and we lend money to small/medium size businesses. When we do so we have a strict lending criteria”;¹⁶⁶⁵ “We have never had a default due to our strict lending criteria”;¹⁶⁶⁶ “We have a very strict lending criteria and are currently rejecting over 60% of the companies that approach us”.¹⁶⁶⁷

K3.16 D6’s sales people used scripts stating that LCF applied “strict lending criteria”¹⁶⁶⁸ and was “currently rejecting over 60% of companies that apply”. They said that LCF only made loans to established companies with a good credit history: “we have a strict lending criteria before lending takes place (No startup companies, they must have been established for at least 3 years and must have a good credit history)”.¹⁶⁶⁹

K3.17 It was also represented to prospective bondholders that LCF’s loans would be subject to binding security. Hence, “The asset backed aspect protects the loan money. So for every loan we issue, we take a legally binding first charge over assets”;¹⁶⁷⁰ “For each loan that we issue, we take a legally binding first charge”;¹⁶⁷¹ “As security against the loan, we take a legally binding first charge over assets worth at least 25% more than the loan value”.¹⁶⁷² D6’s sales people often referred to the presence of security.¹⁶⁷³

K3.18 Prospective bondholders were told that LCF’s income came from its lending activity. As D6’s sales people stated, “We make our money through the lending side of the business, not from investors”;¹⁶⁷⁴ “We make our money solely from the corporate loans that we make to companies”;¹⁶⁷⁵ “we make our money on the loans we issue”;¹⁶⁷⁶ “Currently, our loan book is approximately 100 SMEs”.¹⁶⁷⁷ It was stated repeatedly that LCF charged these borrowers high interest rates, which enabled LCF to pay high interest rates to bondholders. Hence, “LCF’s business model is to then lend the bond funds out to companies at a premium rate”;¹⁶⁷⁸ “It is because of the interest rates charged to our borrowers we are able to pass on the benefits to our investors”;¹⁶⁷⁹ “We are a corporate

¹⁶⁶⁵ MDR00038337

¹⁶⁶⁶ MDR00059036

¹⁶⁶⁷ MDR00062355; MDR00071846

¹⁶⁶⁸ MDR00057471 page 7; MDR00058012 page 7;

MDR00059612 page 8; MDR00059844

¹⁶⁶⁹ MDR00162747; MDR00194951

¹⁶⁷⁰ MDR00043705

¹⁶⁷¹ MDR00053172

¹⁶⁷² SUR00024770-0001

¹⁶⁷³ MDR00038368; MDR00038526; MDR00038588;
MDR00038937; MDR00039235; MDR00040313;
MDR00040339; MDR00040433; MDR00043363;
MDR00048611

¹⁶⁷⁴ MDR00038754

¹⁶⁷⁵ MDR00077241

¹⁶⁷⁶ MDR00055886

¹⁶⁷⁷ MDR00032132

¹⁶⁷⁸ MDR00023081

¹⁶⁷⁹ MDR00026127

financier, loaning money to UK businesses at around 12-20% on average”;¹⁶⁸⁰ *“We typically charge borrowers between 12% and 20% per year which means we are able to pass on higher interest rates to our investors”*.¹⁶⁸¹

K3.19 These false statements were used by D6’s sales people to persuade prospective bondholders that LCF’s bonds were a safe and secure investment (*“The risk with us is minimal and well-managed”*;¹⁶⁸² *“the risk is very minimal”*;¹⁶⁸³ *“There is a risk, but it is minimal”*;¹⁶⁸⁴ *“that risk is very minimal”*;¹⁶⁸⁵ *“The bonds are very secure”*;¹⁶⁸⁶ *“very strong and robust asset backed protection”*;¹⁶⁸⁷ *“We are very confident in our future performance”*;¹⁶⁸⁸ *“no defaults to date”*;¹⁶⁸⁹ *“100% track record”*¹⁶⁹⁰ *“never had a loan default due to our strict lending criteria”*;¹⁶⁹¹ *“no one has lost a penny from us”*¹⁶⁹²).

K3.20 The only risk was said to be a big drop in the value of the security combined with numerous defaults. But they presented this as a purely theoretical or highly implausible risk: *“Mathematically it’s possible ... But we would argue it is highly unlikely”*.¹⁶⁹³ *“A worst-case scenario”*;¹⁶⁹⁴ *“highly unlikely, but technically possible”*.¹⁶⁹⁵

K3.21 D7 developed the picture painted by the information memoranda and brochures to make further misrepresentations to prospective investors about LCF.

K3.22 Among other things, D7 told prospective investors that *“we don’t carry a lot of overheads”*;¹⁶⁹⁶ that LCF’s status as a plc meant that *“every information ... we have to make publicly available”*;¹⁶⁹⁷ that LCF *“tended to work with much larger companies”*;¹⁶⁹⁸ that *“under data protection we can’t tell you who the borrowers are ... But they are quite significant”*;¹⁶⁹⁹ and that LCF’s security was *“extremely good”*.¹⁷⁰⁰ D7 made such representations during telephone calls with prospective bondholders.¹⁷⁰¹

¹⁶⁸⁰ MDR00070217
¹⁶⁸¹ MDR00057471 page 7; MDR00058012 page 7;
MDR00059612 page 8; MDR00059844 pages 2-3
¹⁶⁸² MDR00028147
¹⁶⁸³ MDR00026899
¹⁶⁸⁴ MDR00026984
¹⁶⁸⁵ MDR00049942
¹⁶⁸⁶ MDR00026340
¹⁶⁸⁷ MDR00082299
¹⁶⁸⁸ MDR00070217
¹⁶⁸⁹ MDR00038337
¹⁶⁹⁰ MDR00032871; MDR00076763; MDR00077241
¹⁶⁹¹ MDR00059036
¹⁶⁹² MDR00224329 page 76

¹⁶⁹³ MDR00224329 pages 70-71; MDR00224329 pages
70-71
¹⁶⁹⁴ MDR00066662
¹⁶⁹⁵ MDR00082299
¹⁶⁹⁶ MDR00224329 page 50
¹⁶⁹⁷ MDR00224329 page 30
¹⁶⁹⁸ MDR00224329 page 33
¹⁶⁹⁹ MDR00224329 page 33
¹⁷⁰⁰ MDR00224329 page 51
¹⁷⁰¹ MDR_CC_00000180; MDR_CC_00000977;
MDR_CC_00000002; MDR_CC_00000187;
MDR_CC_00000251; MDR_CC_00000294;
MDR_CC_00000250; MDR_CC_00000378;
MDR_CC_00000357; MDR_CC_00000503;

- K3.23 D7 represented that LCF's bonds were a secure investment and that it had a successful lending business. He said that LCF always took a personal guarantee from the borrower's owners¹⁷⁰² and that the independent security company monitored the value of the security to ensure that it was adequate to cover LCF's loan book.¹⁷⁰³ D7 also said that LCF was "*fully authorised and approved by the financial conduct authority*".¹⁷⁰⁴
- K3.24 On the lending side, D7 said that LCF was always flooded with applications for loans from its network of brokers and financial advisors¹⁷⁰⁵ and that LCF's lending team were therefore able to "*cherry pick the best of the bunch*".¹⁷⁰⁶ He also said LCF was lending to hundreds of different business to diversify risk.¹⁷⁰⁷ He said that these loans were short-term loans, typically no more than 6 months¹⁷⁰⁸ but no longer than 12 months.¹⁷⁰⁹
- K3.25 These statements were false. And, in light of D7's close involvement and knowledge of the truth of LCF's affairs, D7 knew that these statements were false.

¹⁷⁰² MDR_CC_0000038; MDR_CC_0000524;
MDR_CC_0000242
¹⁷⁰³ MDR_CC_0000180; MDR_CC_0000294
MDR_CC_0000294; MDR_CC_0000250;
MDR_CC_0000357
¹⁷⁰⁴ MDR00224329 pages 32 and 70;
MDR_CC_0000357; MDR_CC_0000180;
MDR_CC_0000187; MDR_CC_0000503

¹⁷⁰⁵ MDR_CC_0000180
¹⁷⁰⁶ MDR_CC_0000524
¹⁷⁰⁷ MDR_CC_0000378
¹⁷⁰⁸ MDR_CC_0000180
¹⁷⁰⁹ MDR_CC_0000524

L. D6'S COMMISSION

L1 D6's commission of 25%

- L1.1 D6 was responsible for selling LCF's bonds to members of the public. Ben Beal introduced D5 and Kerry Graham to D7, who was working as a salesman for SAFE, earning a commission of 25% of the amount of each investment.
- L1.2 Initially, D5 asked for a fee comprising (i) £500,000 upfront, (ii) £500,000 on the delivery of the first £5 million of cash; and (iii) 5% of all funds delivered.¹⁷¹⁰
- L1.3 However, D2 and D4 were not keen on the idea of an upfront payment.¹⁷¹¹
- L1.4 Ultimately, D7 agreed to work as D6's sales director, with D6 selling the SAFE investment product in return for 25% commissions,¹⁷¹² if D5 was prepared to agree that D7 could receive the same amount of profits as D5.¹⁷¹³
- L1.5 The figure of 25% was a sales commission. Kerry Graham explained, "*We do get paid a percentage of money into the pot which by most definitions is commission ...*"¹⁷¹⁴
- L1.6 D5 emailed Pat McCreesh of Blackmore on 09.07.15 to say, "*John has set up a deal with SAFE which will pay 25% commissions*".¹⁷¹⁵
- L1.7 D5 thought that a commission of 25% was "*huge*".¹⁷¹⁶ He discussed this by email with D6's accountant, Mark Partridge. On 23.07.15, D5 emailed Mark Partridge to say, "*Surge Financial Limited ... sell a 2 year bond (8% pa) called London Capital &*

¹⁷¹⁰ D7D9-0001827

¹⁷¹¹ D7D9-0001834; D7D9-0001840; SUR00128954-0001; SUR00158414-0001 page 3

¹⁷¹² SUR00001292-0001

¹⁷¹³ SUR00056027-0001; SUR00056028-0001; SUR00056031-0001

¹⁷¹⁴ MDR00224137

¹⁷¹⁵ SUR00001292-0001

¹⁷¹⁶ SUR00129143-0001

Finance (LCF) ... I earn 25% commissions of money into that fund. I know, that's huge right?" (emphasis added).¹⁷¹⁷

L1.8 Mark Partridge thought that this was “*insane*”. He replied on 24.07.15 to say:¹⁷¹⁸

“As you say this commission is insane. On a flat rate the fund would have to grow by 55% 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”
(emphasis added).

L1.9 D5’s colleague, Steve Jones, agreed (“*Agreed!*”). Steve Jones expressed the view that the figures were “*incredible*” whilst noting that LCF “[had] *been paying them for a number of years according to JRM*”.¹⁷¹⁹

L1.10 D5 was excited because such high commissions would result in high profits. He emailed Mark Partridge on 11.09.15 to say that he expected that D6 would earn “*£200k in comms minimum in September and with £50-60k in outgoings*” giving rise to a profit of £140,000 to £150,000 in a single month.¹⁷²⁰

L1.11 This proved to be an under-estimate. On 22.09.15, Steve Jones told D5 that they might reach £260,000 in commissions for the month. D5 replied, “*200k profit for one month ... Oh and we are embryonic*”.¹⁷²¹

L1.12 D5 hoped that a high level of commissions and profits might enable him to realise his dream of buying a helicopter, particularly when combined with other business ideas.¹⁷²²

L1.13 D5 told Mark about this on the same day (“*9 days of sales left too. Plus I have pensions and best savings rates. Hello helicopter...*” (emphasis added)).¹⁷²³

L1.14 On 28.09.15, Katie Maddock of LCF told Steve Jones that LCF’s account would shortly be credited with £170,000 from new bondholders. Steve Jones forwarded this to D5,

¹⁷¹⁷ SUR00129143-0001

¹⁷¹⁸ SUR00129198-0001

¹⁷¹⁹ SUR00129215-0001

¹⁷²⁰ SUR00129430-0001

¹⁷²¹ SUR00002362-0001

¹⁷²² SUR00129449-0001

¹⁷²³ SUR00129449-0001

adding, “*That should be another £47k comms tomorrow!*”¹⁷²⁴ D5 seems to have been excited about this news: he forwarded the email to his father, to his accountant Mark Partridge and to his friend Ronak Patel.¹⁷²⁵

L1.15 On 23.10.15, D5 told Steve Jones that if D7 and his team hit £1 million in sales per month, resulting in £250,000 in commissions, D6 would make a profit of £200,000 per month.¹⁷²⁶ Steve agreed in principle, but thought that D6’s monthly expenditure would be closer to £65,000 (rather than £50,000) (so that D6’s monthly profit would therefore be £185,000 rather than £200,000). He sent an email to D5 in these terms.¹⁷²⁷

L1.16 By the end of January 2016, D6 had made profits of £353,870.¹⁷²⁸ But D5 could see that this was only the beginning. D7 and the other sales people working for D6 (including Jo Baldock) were proving to be very successful in selling LCF bonds to members of the public, generating substantial commissions and profits for D6.

L1.17 On 29.01.16, Steve Jones provided D5 with an update. D5 forwarded it to his father, saying, “*Fyi Pops. £180k cash in bank. £140k certain next week. £350k probably next week. Feb we go for £1m revenues and £650k net profit*” (emphasis added).¹⁷²⁹

L1.18 LCF was proving to be an effective revenue-generator for D6. On 17.06.16, D5 sent a text stating, “*56k comms. One fucking day ... Dude, we are making a fucking fortune*” (emphasis added).¹⁷³⁰ As explained above, D5 set a new goal of £4 million per month¹⁷³¹ (“*We will hit our 4 million goal, it's achievable and we are on target. Double income, bonuses all round*”¹⁷³²). D7 emailed D5 on 16.05.17 to say, “[*My*] *main focus as always will be to push LCF, this is our cash cow and I won't stop until the 4m target is hit*” (emphasis added).¹⁷³³ D5 agreed with what D7 had said. He replied, “*I'm with you!*”¹⁷³⁴

L1.19 D5 could see that this success was largely due to the deal that D7 had negotiated for the payment of 25% commissions. He expressed this view to Kerry Graham on 10.08.16,

¹⁷²⁴ SUR00129510-0001
¹⁷²⁵ SUR00129510-0001; SUR00129511-0001;
SUR00129512-0001
¹⁷²⁶ SUR00002842-0001
¹⁷²⁷ SUR00002843-0001
¹⁷²⁸ MDR00224028; MDR00062219

¹⁷²⁹ SUR00131245-0001
¹⁷³⁰ SUR00026965-0001
¹⁷³¹ SUR00025841-0001
¹⁷³² MDR00044326
¹⁷³³ SUR00021043-0001
¹⁷³⁴ SUR00021045-0001

explaining, *“Without JRM we wouldn’t be here today . He increased comms to 25%, it’s the main factor in our current success”*.¹⁷³⁵

- L1.20 Steve Jones was angry about the fact that D6 was paying large sums to D7. Steve said to D5, *“Can’t help but be angry about it every time. It is so unfair. He does absolutely nothing to earn a penny of it”*.¹⁷³⁶
- L1.21 D5 told Steve that there needed to be equality between D5’s payments and D7’s payments, because that is what D5 had agreed with D7 in connection with the 25% commissions: *“I agreed him to be equal when he secured the 25% deal. You continually being angry at that situation won’t help ... He needs to be the same as me. Your anger doesn’t help. Deal with it, I have to ... It’s the deal we struck”*.¹⁷³⁷
- L1.22 With the continuing increase in LCF bond sales, the commissions payable to D6 grew and D6’s profits continued to increase. In the twelve months to 31.01.17, D6 made a post-tax profit of £2,440,680.¹⁷³⁸
- L1.23 On 11.05.17, Steve Jones emailed D5 to say that D6 was averaging net profit of £800,000 per month and was on track for net profit of £800,000 for May 2017. Steve Jones told D5 that if D6’s total sales were to reach £9.5 million a month, then D6’s profits *“[would] hit £1m a month, with costs pretty fixed at that point, anything over these figures will translate directly to bottom-line profit figures. Anything we are able to shave from costs will also drop directly in to the bottom-line”*.¹⁷³⁹
- L1.24 D6 was selling two bonds, LCF and Blackmore, but the LCF bond was proving to be far easier to sell. The traffic from the feeder websites like BSR was therefore directed to LCF instead of Blackmore. Ryan Holdaway explained on 18.10.17, *“With three feeder websites and only a finite amount of traffic I need to ensure that we are allocating traffic as efficiently as possible. Over the last 6 months we have leant [sic] LCF the vast majority of traffic as Blackmore simply wasn’t converting”*.¹⁷⁴⁰

¹⁷³⁵ SUR00035780-0001

¹⁷³⁶ SUR00056046-0001

¹⁷³⁷ SUR00056031-0001; SUR00056047-0001;
SUR00056059-0001

¹⁷³⁸ MDR00224028

¹⁷³⁹ SUR00073567-0001

¹⁷⁴⁰ MDR00107361

L1.25 When Ryan proposed an adjustment to the allocation of web traffic, Jo Baldock agreed on the basis that “*the main aim is to generate the maximum amount we can for Surge as a group*” and “*LCF is the cash cow of the business*” (emphasis added).¹⁷⁴¹

L1.26 On 29.07.18, Jo Baldock told her colleagues that “*LCF [is] the cash cow that supports Surge and has allowed the company to grow to where it is today*” (emphasis added).¹⁷⁴²

L2 RP Digital

L2.1 D6’s largest expense was the cost of advertising on Google. D6 also paid for advertisements on Facebook, although this cost was relatively low in comparison to Google. There were advertisements for LCF, as well as advertisements for the feeder sites like BSR, which promoted LCF and Blackmore.

L2.2 The advertisements on Google and Facebook were paid for by another company, RPDigitalServices Limited (“RP Digital”), which was controlled by Steve Jones.¹⁷⁴³

L2.3 RP Digital passed this cost on to D6 with a mark-up to provide additional monies for diversion to D5, Steve Jones and Aston Beckworth Limited (“Aston Beckworth”).

L2.4 RP Digital’s bank statements show that the receipts from D6 exceeded the payments to Google and other companies. The bank statements from 05.12.15 to 04.05.16 show that RP Digital paid most of this surplus to D5 and Steve Jones.¹⁷⁴⁴

L2.5 The bank statements from 05.06.16 to 14.08.18 show that RP Digital also paid large part of the surplus to Aston Beckworth,¹⁷⁴⁵ a company owned by D5 and Kerry Graham.¹⁷⁴⁶

¹⁷⁴¹ MDR00107361

¹⁷⁴² D7D9-0007557

¹⁷⁴³ SUR00129432-0001; SUR00129473-0001

¹⁷⁴⁴ SUR00009479-0001; SUR00009475-0001;

SUR00009476-0001; SUR00009477-0001;

SUR00020642-0001; SUR00020643-0001;

SUR00049882-0001; SUR00020641-0001;

SUR00049883-0001; SUR00020645-0001;

SUR00049884-0001; SUR00128917-0001

¹⁷⁴⁵ SUR00047209-0001; SUR00047214-0001;

SUR00049886-0001; SUR00047213-0001;

SUR00049887-0001; SUR00047218-0001;

SUR00047220-0001; SUR00049888-0001;

SUR00047229-0001; SUR00047211-0001;

SUR00049889-0001; SUR00057599-0001;

SUR00059441-0001; SUR00127015-0001;

SUR00067654-0001; SUR00067655-0001;

SUR00070674-0001; SUR00073453-0001;

SUR00079467-0001; SUR00079469-0001;

SUR00082913-0001; SUR00097493-0001;

SUR00082911-0001; SUR00089570-0001;

SUR00099862-0001; SUR00102375-0001;

SUR00107070-0001; SUR00117655-0001;

SUR00112686-0001; SUR00128917-0001

¹⁷⁴⁶ SUR00120839-0001

- L2.6 The sums paid by D6 to RP Digital were not calculated on a precise basis. There does not seem to have been any standard mark-up.
- L2.7 Instead, monies were simply transferred from D6's account to RP Digital's account to ensure that RP Digital's account remained in credit notwithstanding the payments to Google and Facebook, and the transfers to D5, Steve Jones and Aston Beckworth.
- L2.8 Steve Jones emailed his son, Ashleigh Newman-Jones, on 03.08.17 to provide guidance to this effect, with the subject, "*While I am away*":¹⁷⁴⁷

*"Need to keep an eye on RP Digital bank account. There is c£25k per day going out of the account so I don't like to let the balance drop below £40k. **Top it up with £50k (+ vat) invoices from Surge as and when needed.** Invoices to be kept in sequential order, see reference on last invoice paid from Surge Bank account and continue from there (template attached).
Top up funds to Aston Beckworth when drops below £10k, funds from RP Digital, £10 or £15k plus vat, again ensure correct invoice number used (from last payment reference), Invoice template attached" (emphasis added).*

- L2.9 In another email, Ashleigh said to Steve, "*I had to send Paul another £30k from RPD yesterday for his car so I topped RPD up with £30k from Surge*".¹⁷⁴⁸
- L2.10 D5 became nervous about connections between RP Digital and D6. On 30.03.16, D5 emailed Kerry to ask her to spend some time "*tomorrow morning seeing who or what is connected to RP digital as if you were someone looking into it, please? **I want to see where the contamination is.** Thinking SF [D6], IC [D5's other company, Info Connections], RP [RP Digital], LCF etc*" (emphasis added).¹⁷⁴⁹
- L2.11 Subsequently, Kerry reported to D5 that they did have what she called a "*connectedness issue*": "*Steve is a Director of RP, if an investigator looked at the Directors of RP then looked at their other Directorships; they would discover that he is also a Director of IC. IC is linked to Surge in two ways: 1. I am Director of both 2. There is an intercompany loan (which would be declared when turnover exceeds the auditable threshold). Mark,*

¹⁷⁴⁷ SUR00080516-0001

¹⁷⁴⁸ SUR00036741-0001

¹⁷⁴⁹ SUR00132236-0001; SUR00132237-0001

*if this intercompany loan is cleared before we get to auditable accounts threshold stage, I'm guessing it would not be traceable in any way?"*¹⁷⁵⁰

L3 There was no signed written agreement between LCF and D6

L3.1 Notwithstanding the fact that LCF paid 25% of all sums received from Bondholders to D6 (in a total sum of over £60.8 million over the life of LCF), there was never any signed written agreement between those two companies. The agreement for the payment of 25% of all receipts to D6 was only ever an oral agreement.

L3.2 As set out below, the only 'signed' agreement ever to have existed between LCF and D6 is the one which D1 faked (and backdated) on 07.10.16 to deceive LCF's auditor, PwC.

L3.3 On 27.07.15, Kerry Graham emailed D1 to say, "*We need to put an introducer agreement in place between Surge Financial Limited and London Capital and Finance Limited, do you have a standard agreement we can review?"*¹⁷⁵¹

L3.4 D1 did not respond. On 03.08.15, Kerry emailed him to remind him that "*we still need ... an introducer agreement*".¹⁷⁵² D1 prepared a draft agreement which provided (in schedule 1) for the payment of such fees and charges as may be agreed from time to time between the parties.¹⁷⁵³ He sent it to Kerry, adding, "*let me know what you think*".¹⁷⁵⁴

L3.5 Kerry sent it to D5 and D7, asking, "*Are you both happy for me to sign?"*¹⁷⁵⁵ D5 replied, "*I'm happy. Control the tap, control the bath!*"¹⁷⁵⁶ Steve was also happy with it.¹⁷⁵⁷

L3.6 However, Kerry decided not to sign D1's draft agreement, because the schedule referred only to "*such fees and charges as may be agreed from time to time between the parties*" and failed to record the agreement about the payment of 25% commissions.

L3.7 Kerry asked D1 to provide a new schedule but he did not do so. She told D1 on 24.08.15, "*We haven't signed the introducer agreement contract, you were going to attach an*

¹⁷⁵⁰ SUR00132291-0001
¹⁷⁵¹ SUR00001538-0001; D1-0000788; EB0006648
¹⁷⁵² D1-0000787; D1-0000788
¹⁷⁵³ D1-0000789

¹⁷⁵⁴ D1-0000790
¹⁷⁵⁵ SUR00001595-0001
¹⁷⁵⁶ SUR00001595-0001
¹⁷⁵⁷ SUR00001598-0001

*appendix which would itemise the commissions owed then send it back to me for review. As we are now selling and cash has been received for the first couple of clients and a lot of pipeline should close this week, it would be prudent to put this in place”.*¹⁷⁵⁸

- L3.8 The next day, D5 told Kerry that she should ensure that a contract was in place and that this was urgent.¹⁷⁵⁹ She replied to D5, “*Re the contract with LCF, the Body of the contract is fine but Andy is writing an appendix to it which confirms our commission at 25% and I should have that today”.*¹⁷⁶⁰
- L3.9 On 25.08.15, D1 sent a draft distribution agreement to Kerry.¹⁷⁶¹ In this version, Appendix A provided: “*A Commission of 25% of funds raised is payable to the distributor [sic] when funds are cleared into the Principles [sic] bank account”.*
- L3.10 Kerry signed it and returned it to D1 on 28.08.15.¹⁷⁶² (The version which she signed had been backdated to 03.08.15, in typescript on the front page.)
- L3.11 D1 failed to sign it. On 10.09.15, Steve Jones sent an email to Kerry asking, “*Do you have a copy of the Surge agreement with LCF?”*¹⁷⁶³ She replied, “*Andy has not returned a copy to me with his signature as yet. I have chased”.*¹⁷⁶⁴
- L3.12 On 15.09.15, Kerry chased D1 for a signed copy of the agreement.¹⁷⁶⁵ D5 asked Steve Jones to ensure that the agreement between LCF and D6 was signed by D1.¹⁷⁶⁶
- L3.13 Still D1 did not sign it. On 14.10.15, Kerry chased D1 again for a signed copy.¹⁷⁶⁷
- L3.14 Kerry’s agenda for a meeting with D1 and D4 on 15.10.15 (which she sent to D5 on 14.10.15: “*agenda for our 2pm with Spencer and Andy”*¹⁷⁶⁸) included: “*Andrew signature on Introducer Agreement. I requested he bring a hard copy today as this is now very overdue and I sent to him originally on 28th August”.*¹⁷⁶⁹

¹⁷⁵⁸ MDR00016773
¹⁷⁵⁹ SUR00001876-0001
¹⁷⁶⁰ SUR00001883-0001
¹⁷⁶¹ MDR00016800; MDR00016803; D1-0000917
¹⁷⁶² MDR00016952; MDR00016953
¹⁷⁶³ SUR00002141-0001

¹⁷⁶⁴ SUR00002141-0001
¹⁷⁶⁵ MDR00017384
¹⁷⁶⁶ SUR00129432-0001
¹⁷⁶⁷ MDR00018729
¹⁷⁶⁸ SUR00002675-0001
¹⁷⁶⁹ SUR00002676-0001

- L3.15 Yet still D1 did not sign it.
- L3.16 This became a problem at the time of LCF’s first audit, which was being conducted by PwC. On 28.09.16 PwC asked D1 for a copy of the contract between LCF and D6.¹⁷⁷⁰
- L3.17 However, the previous version of the agreement, as signed by Kerry on 28.08.15 (and never signed by D1), was now out of date. It referred to London Capital & Finance *Limited*, but LCF had since become a plc. It referred to LCF’s former registered office address, rather than to the current one. It also referred to LCF issuing loan notes, rather than bonds. And the definition of “*Services*” referred narrowly to making introductions between LCF and prospective bondholders but did not mention the other services that D6 was providing to LCF, such as the provision of marketing services, the creation and maintenance of LCF’s website, the conduct of online marketing services and the development and maintenance of a cloud-based client management portal including application procedures and investor accounts.
- L3.18 Accordingly, D1 prepared a further draft.¹⁷⁷¹ This new version reflected the fact that LCF had become a plc with a new registered office address. It referred to bonds, rather than only to loan notes. It included a new definition of the term “*Services*” which referred to the provision of marketing services, the creation and maintenance of LCF’s website and the conduct of online marketing services and the development and maintenance of a cloud based client management portal including application procedures and investor accounts. Appendix A now referred to a “*fee*” (rather than a “*commission*”).
- L3.19 D1 sent the new version of the agreement to Kerry on 28.09.16.¹⁷⁷²
- L3.20 She forwarded it to D5 on the same day, explaining:¹⁷⁷³

“Andy has asked me to sign a contract between LCF and Surge (attached).

He wants this signed today because his auditors need it.

I promised to review today and if all is well to sign it. I haven’t read it yet, I have some urgent things to do first, I might not look at until after 4pm. I will read it later in the afternoon and come back to you with my comments.

¹⁷⁷⁰ MDR00059484

¹⁷⁷¹ MDR00059587

¹⁷⁷² MDR00059585; MDR00059587

¹⁷⁷³ SUR00135646-0001

*Please also review for your own reassurance. This is potentially a very sensitive issue and we should look at how liability will fall before signing. **We need to make sure we are not unduly exposed if LCF are investigated or if they go bust*** (emphasis added).

- L3.21 D5 asked her to forward it to Steve Jones and Mark Partridge; and she did so.¹⁷⁷⁴
- L3.22 Kerry was keen to have it reviewed by a solicitor. She told D1 (cc D5 and D7), “*Sorry I know you really need this signed ASAP for your audit but I do have to run it by our solicitor. I will find out how quickly it can be turned around and get back to you*”.¹⁷⁷⁵
- L3.23 D1 emailed D5 about this a few minutes later saying, “*As discussed, please find attached the agreement that was agreed but not signed last year, its fairly basic but covers the basis. I have [tweaked] one section to add the provision of the online support you give us and the dashboard Ashleigh created*”.¹⁷⁷⁶
- L3.24 D5 discussed the position with Kerry, who said, “[It] *would be prudent to have our solicitor review. I won’t sign until I have that confirmation. Andy needs this ASAP so I will get it fast tracked. Let’s hope I can get it approved by tomorrow*”.¹⁷⁷⁷
- L3.25 D5 asked, “*Can we just sign this? It’s to help him*”.¹⁷⁷⁸
- L3.26 Kerry replied, “*Sorry, I don’t mean to be difficult, I would help him if I could but I believe the more important issue here is to have this reviewed by a solicitor*”.
- L3.27 D5 said, “*Yes, that’s fine ... I’ll let him know ...*”
- L3.28 The delay caused problems with PwC, who wanted to see the signed agreement.¹⁷⁷⁹
- L3.29 PwC asked D1 to bring the signed agreement to their offices at 9.00am on 29.09.16.¹⁷⁸⁰

¹⁷⁷⁴ SUR00135648-0001

¹⁷⁷⁵ MDR00059706

¹⁷⁷⁶ MDR00059715; MDR00059716

¹⁷⁷⁷ MDR00059717

¹⁷⁷⁸ MDR00059720

¹⁷⁷⁹ MDR00059776

¹⁷⁸⁰ MDR00059780

L3.30 On 30.09.16, D1 said to Kerry, *“I really needed it yesterday morning, not having it has created additional work and has prompted PWC looking into us in more detail. We have nothing to hide but this will add more time to the production of [the accounts]”*.¹⁷⁸¹

L3.31 D1 then sent a further message to Kerry:¹⁷⁸²

“You have completely missed the point of why I needed it, this was the contract we agreed last year, I thought it would be a simple request to simply sign it. I need Surges support to get the audit concluded and it didn’t happen and has knock on issues. As you are wanting to go down the solicitor route I will forward your revisions to Lewis Silkin who will not doubt advise me that LCF needs a far more robust contract to protect its position ...”

L3.32 Kerry replied to D1 to reiterate her position, saying, *“I’m not signing a contract that a solicitor hasn’t reviewed. Let’s get it right first time”*.¹⁷⁸³

L3.33 D1 seems to have concluded that he was getting nowhere with Kerry and decided to direct his communications to D5 instead. D1 emailed D5 on 30.09.16 to say that he had made only a few changes to the agreement which were all minor and that the new agreement was *“practically identical”* to the one that Kerry had previously signed.¹⁷⁸⁴ D1 sought to persuade D5 that *“legal input”* was unnecessary.

L3.34 D1 also told D5 that *“if we don’t have an agreement in place”* by Monday, PwC would have to *“put a qualification in the audit regarding the robustness of LCF as a going concern as it does not have an agreement in place with a business critical supplier”*.

L3.35 D5 forwarded this to Kerry, Steve and D7.¹⁷⁸⁵ Kerry emailed D5, Steve and D7:¹⁷⁸⁶

*“All he has to do is call me.
I will explain why I want the clauses he added in, removed and why.
I do want further revision re clause 5. Nothing unreasonable.
He’s really making a meal of this. A quick call would resolve / at least put him in the loop.
Also I’m shocked that he would send a contract where the liability re FCA is a big exposure and expect me not to get a solicitor to review?!? Sending Wednesday afternoon and getting a response Friday morning is good. He should be thanking*

¹⁷⁸¹ D7D9-0006795

¹⁷⁸² D7D9-0006795

¹⁷⁸³ D7D9-0006795

¹⁷⁸⁴ D1-0002988

¹⁷⁸⁵ SUR00135741-0001

¹⁷⁸⁶ SUR00135762-0001

us for the fast turnaround. He shouldn't be criticising the decision not to sign when he hasn't even asked why we won't sign. We have good reasons and I would love to tell him about them if he would answer my calls and not just cancel them and send me abusive text messages".

L3.36 Mark Partridge emailed D5 to point out the inconsistency in D1's position:¹⁷⁸⁷

"He just talks out of his arse. The original agreement is fine the other one is fundamentally different. If he wants to pay vat on top of the commission, he can sign the new one. Or just re-sign the original agreement if [it's] so close" (emphasis added).

L3.37 D5 forwarded Mark's email to D7, Kerry and Steve.¹⁷⁸⁸ Steve replied to D5, "*Kerry already signed and returned the original doc over a year ago, he has that already!*"¹⁷⁸⁹

L3.38 Mark's comment about LCF having to pay "*vat on top of the commission*" if the new agreement was signed reflects a particular concern about the definition of "*Services*".

L3.39 D6's position was that introduction commissions were not subject to VAT. On this basis, D6's invoices to LCF did not include VAT. Mark's comment related to the prospect of D6 agreeing in writing to provide services (such as marketing services, the creation and maintenance of LCF's website and the conduct of online marketing services, and the development and maintenance of a cloud based client management portal including application procedures and investor accounts) which *would* be subject to VAT.

L3.40 Accordingly, Kerry and her solicitor, Steven Kinch of SDK Law, prepared a further draft of the agreement.¹⁷⁹⁰ They changed back the definition of "*Services*" so that it again referred solely to the making of introductions between LCF and prospective bondholders, without mentioning any other services. They changed the terminology throughout to refer to D6 as the Intermediary, rather than the Distributor. They amended clause 5 to water down and qualify D6's obligations in respect of compliance with anti-money laundering legislation. They added new obligations of LCF in what was now clause 6 requiring LCF to help D6 to comply with FCA Rules. They amended exclusion of liability in clause 8. The draft was still dated 2015 in typescript on the front page.

¹⁷⁸⁷ SUR00135764-0001
¹⁷⁸⁸ SUR00135766-0001

¹⁷⁸⁹ SUR00135767-0001
¹⁷⁹⁰ MDR00060094

- L3.41 On 02.10.16, Kerry sent this to D1 (cc D5 and D7): *“I attach the amended contract for you to review. All changes are done as tracked changes so you will be able to easily identify the requested variations. Recognising that this is time critical, I also attached a signed version so you have this in place to use at your meeting on Monday”*.¹⁷⁹¹
- L3.42 On 03.10.16, D1 sent this to Alex Lee of Buss Murton.¹⁷⁹²
- L3.43 On the next day, D1 emailed Alex Lee again, saying, *“How are you getting on with the Surge agreement, I’m being pushed by PWC for it”*.¹⁷⁹³
- L3.44 The continued delay was causing problems for D1 with PwC. Jessica Miller of PwC emailed him on 05.10.16 to ask, *“Would it be possible for you to arrange for a scan of the Surge Financial contract to be emailed to me today / tomorrow, this was the one document that you didn’t have when we met last week. We have had one of our final quality reviews of the audit and we need this to be documented on our file”*.¹⁷⁹⁴
- L3.45 However, this was not going to be possible, because such a contract did not yet exist; LCF and D6 had not yet even been able to agree on the definition of *“Services”*.
- L3.46 D1 replied to Jessica, *“I completely forgot! I’m out of the office at the moment but I’ll try to have a copy scanned over, if not I can do it first thing tomorrow morning”*.¹⁷⁹⁵
- L3.47 Alex Lee prepared a heavy mark-up of the draft LCF D6 agreement.¹⁷⁹⁶ Among other things, he deleted much of the new wording in clause 5, stating that an obligation on the part of D6 to *“take all reasonable steps”* could not be agreed by LCF (*“They either act in compliance or they don’t. Taking reasonable steps is not a defence to any allegation by the FCA”*). He introduced a new clause 6 which (*inter alia*) required D6 to *“maintain professional indemnity insurance with reputable insurers lawfully carrying on business in the United Kingdom, in an amount each year of not less than Five million pounds for any one occurrence or series of occurrences arising out of one event for a period of*

¹⁷⁹¹ MDR00060092; MDR00060094; MDR00060093;
MDR00224135

¹⁷⁹² MDR00060232

¹⁷⁹³ MDR00060431

¹⁷⁹⁴ MDR00060609

¹⁷⁹⁵ MDR00060610

¹⁷⁹⁶ MDR00060631; MDR00060632

twelve (12) years after the last date upon which the Intermediary carries out the Services provided always that such insurance is available at commercially reasonable rates and terms". He amended the clause dealing with LCF's obligation to help D6 to comply with FCA Rules (which had been clause 6 and was now clause 7). He amended the exclusion of liability which had been clause 8 and was now clause 9.

L3.48 At 4.01pm on 05.10.16, Alex Lee sent his mark-up to D1.¹⁷⁹⁷

L3.49 D1 forwarded this to Kerry, adding, "*The immediate issue is I have been able to put off PWC until now but they are expecting a doc first thing tomorrow, they have completed the accounts but won't release until they have a scan of the agreement*".¹⁷⁹⁸

L3.50 Kerry reviewed Alex's mark-up and told D1 that Alex had made some helpful revisions.¹⁷⁹⁹ She mentioned that D6 did not have insurance at the level required by the new insurance clause. She identified in particular Alex's comment in the mark-up about acting in compliance with anti-money laundering regulations and the prospect of liability for this. She suggested that the clause might "*need re-writing from scratch as might be easier than amending now, what does Alex think? Can we agree the sentiment together and get your solicitor to propose the re-work?*" She provided some bullet points containing what she thought should be covered by the clause.

L3.51 On 06.10.16, D1 forwarded Kerry's email to Alex Lee,¹⁸⁰⁰ who replied with his thoughts on the compliance and liability issues.¹⁸⁰¹ He concluded, "*Perhaps I have missed something but it seems that Surge are trying to say that they do not want to take the requisite responsibility for the work you are asking them to undertake. In which case I am struggling to advise you that such a contract is ok to enter into*".

L3.52 D1 forwarded Alex's email to Kerry.¹⁸⁰²

L3.53 D1 then emailed PWC, "*Sorry not to have sent the surge doc over ... I'm on my way back now and will get it sorted later today*".¹⁸⁰³

¹⁷⁹⁷ MDR00060631

¹⁷⁹⁸ MDR00060633; MDR00060634

¹⁷⁹⁹ MDR00060649; MDR00060650

¹⁸⁰⁰ MDR00060666

¹⁸⁰¹ MDR00060722

¹⁸⁰² MDR00060723

¹⁸⁰³ MDR00060725

- L3.54 PwC replied, “*That would be great if we can get it today*”.¹⁸⁰⁴
- L3.55 At 3.48pm on 06.10.16, Alex Lee sent an email to D1 attaching “*the clean version of what I sent over yesterday*”.¹⁸⁰⁵ (Alex Lee had actually done a bit more than simply accept the changes. He had also deleted the words “*take all reasonable steps to*” (to which he had objected) in clause 5.1.1, rearranged clause 6 on insurance, and had deleted two stray words (“*The Inter*”) at the end of clause 7.)
- L3.56 Kerry emailed D1 about Alex’s new clause 6 to ask, “*if the PI cover has to be for 12 years*”.¹⁸⁰⁶ D1 provided her with the clean copy.¹⁸⁰⁷ Kerry said she would review it.¹⁸⁰⁸
- L3.57 By this time, PwC had finished the audit and were preparing a “*pretty version*” of LCF’s accounts.¹⁸⁰⁹ There was only one outstanding item: PwC still needed to see the signed agreement between LCF and D6 and would not sign off LCF’s accounts without it.
- L3.58 On 07.10.16, D1 sent an email to Jessica Miller of PwC with the subject “*Surge agreement*”:¹⁸¹⁰ “*I finally got back to the office this morning (it’s been an entertaining week!!!) and have scanned in the agreement below*”.¹⁸¹¹
- L3.59 The attachment was an agreement between LCF and D6 dated 03.08.15 which had purportedly been signed by D1 on behalf of LCF and Kerry Graham on behalf of D6.¹⁸¹²
- L3.60 It had clearly been backdated because it was the version that Alex Lee had sent to D1 at 3.48pm on 06.10.16 containing (for example) the new clause 6 on insurance (referring to “*professional indemnity insurance ... for a period of twelve (12) years*”), which Alex had first sent to D1 at 4.01pm on 05.10.16.
- L3.61 Further, in light of the chronology set out above, it is also clear that Kerry had not signed it. The signature purporting to be hers had been taken from the previous agreement in

¹⁸⁰⁴ MDR00060730
¹⁸⁰⁵ MDR00060815; MDR00060816
¹⁸⁰⁶ MDR00060823
¹⁸⁰⁷ MDR00060845; MDR00060846
¹⁸⁰⁸ MDR00060851

¹⁸⁰⁹ MDR00060875
¹⁸¹⁰ MDR00060881
¹⁸¹¹ MDR00060881
¹⁸¹² MDR00060883

very different terms which Kerry had signed and returned to D1 on 28.08.15¹⁸¹³ (and which D1 had never signed). Compare MDR00016953 page 11 (which Kerry had signed on 28.08.15) with MDR00060883 page 12 (which D1 sent to PwC, purportedly with it having been signed by Kerry, on 07.10.16): the signatures of Kerry Graham are identical.

L3.62 The fact that Kerry had not signed any new agreement (and that D1 had instead forged her signature without her knowledge) is confirmed by the subsequent correspondence.

L3.63 On 26.10.16, D1 emailed Kerry to say, “*I havnt [sic] heard anything from you on the proposed agreement I sent over a couple of weeks ago? do you have any questions or are you happy to agree it*”.¹⁸¹⁴

L3.64 Kerry responded, “*Re the contract. This has been parked for a while to allow our accountant to investigate the VAT issue. I will chase for an update*”.¹⁸¹⁵

L3.65 D1 replied:¹⁸¹⁶

“Appreciate you need to speak to your advisors but its been weeks now and I haven’t heard anything and we don’t have any agreement in place. I was put in an extremely difficult position with PWC over it which had the potential to damage everything, this needs resolving sooner rather than later. Can you please chase your advisors and advise of the urgency”.

L3.66 Kerry said, “*Yes I will do*”.¹⁸¹⁷

L3.67 But there was further delay. On 28.10.16 Kerry told Mark Partridge (cc D5), “*Andy is back pushing us over the contract issue ... [We] do need to once and for all establish the VAT situation so that we can finalise a contract*”.¹⁸¹⁸

L3.68 On 03.11.16, Kerry emailed Mark Partridge again (cc D5) saying, “*Andy is chasing me to complete the contract*”.¹⁸¹⁹ She asked Mark if he had made “*any progress with establishing if we are VAT exempt*”. D5 reiterated that it needed to be finalised.¹⁸²⁰

¹⁸¹³ MDR00016952; MDR00016953

¹⁸¹⁴ SUR00051281-0001; MDR00063283

¹⁸¹⁵ SUR00051281-0001; MDR00063283

¹⁸¹⁶ MDR00063304

¹⁸¹⁷ SUR00051295-0001

¹⁸¹⁸ MDR00224136

¹⁸¹⁹ MDR00224139

¹⁸²⁰ MDR00224140

- L3.69 Mark advised Kerry (cc D5), *“This really isn’t something that can be rushed as it is crucial and arcane ... BTW LCF accounts have been filed so he cannot use the auditor requirement on us”*.¹⁸²¹
- L3.70 On 11.11.16, Kerry chased Mark again about this.¹⁸²² Mark said he understood her frustration but he wanted to wait until they had obtained tax advice from Macfarlanes.¹⁸²³
- L3.71 On 21.11.16, Kerry’s “to do” list continued to include this issue (*“Must get to bottom of VAT issue to complete contract with LCF!”*).¹⁸²⁴
- L3.72 Kerry chased Mark Partridge again, saying, *“Luckily Andy hasn’t been chasing me this week but it’s been two months since this issue first arose and I do feel we ought to resolve now. It benefits all parties if we have an adequate contract in place”*.¹⁸²⁵
- L3.73 The next year, on 13.01.17, Mark asked for the *“latest draft contract with LCF”*.¹⁸²⁶ Macfarlanes wanted to see it in order to advise on the VAT position.
- L3.74 On 16.01.17, Mark chased Kerry, adding, *“Macfarlanes are now chasing me for the introducers agreement as is so that we can discuss VAT”*.¹⁸²⁷
- L3.75 Kerry replied to Mark (cc D5) on 17.01.17 to say, *“Agreements aside, we want to know if Surge is VAT exempt or not? Even if we never sign an agreement with LCF we need to know this ... I have previously emailed you ... a one page summary of all of the activities that Surge does. The activity list is perhaps more useful as it was to be used to establish if the blend of activities made us exempt or not”*.¹⁸²⁸
- L3.76 There was no real progress. On 01.06.17, Kerry emailed D5 to say that D1 was *“keen to get a contract in place before his next audit”*.¹⁸²⁹ However, the issue was not resolved.

¹⁸²¹ MDR00224141; MDR00224142
¹⁸²² MDR00224142
¹⁸²³ MDR00224143; MDR00224144; MDR00224145;
MDR00224146
¹⁸²⁴ SUR00054881-0001

¹⁸²⁵ MDR00224147
¹⁸²⁶ MDR00224148
¹⁸²⁷ MDR00224148
¹⁸²⁸ MDR00224148
¹⁸²⁹ MDR00224102

Kerry's "to do" list a few days later still included this item in paragraph 3.¹⁸³⁰ D5 advised her, "*The LCF contract needs to be in second spot please*".¹⁸³¹

L3.77 However, weeks elapsed without progress. D5 emailed Kerry, Mark, Steve and D7 on 27.06.17 to say, "*I want Andy to have signed a Surge/LCF contract. Kerry, can you forward what we have with salient points as soon as you can. Everyone needs to check it before Kerry gets a clean copy over to Andy to sign*".¹⁸³² Kerry circulated a draft contract; D7 and Mark provided her with their comments.¹⁸³³

L3.78 On 30.06.17, Macfarlanes provided Kerry with an entirely new draft agreement between LCF and D6.¹⁸³⁴ They had completely re-written it. This new draft agreement was entitled, "*Services agreement*". It was a very lengthy agreement. Schedule 1 provided that LCF would pay "*a marketing fee equal to 25% of each investment*". Schedule 2 contained a lengthy description of "*Services*". Clause 8.1 of Schedule 2 provided, "*The Customer hereby grants the Service Provider the exclusive right to market, advertise and promote Bonds to Investors during the Term*".

L3.79 Kerry emailed this to D1, saying, "*Some good news, long overdue but I do now have a services agreement for your review and signature. I have been conscious that we were not able to get this in place before your audit last year and have now made sure this is ready well in time of your next audit*".¹⁸³⁵ D1 replied, "*I note that it is a completely new agreement so I will have to send it to our solicitors at Lewis Silkin to look through*".¹⁸³⁶ He sent it to Lewis Silkin.¹⁸³⁷ On 05.07.17, Graham Reid of Lewis Silkin emailed D1:¹⁸³⁸

"In summary this is not an agreement you can sign not least as you would be encouraging and acquiescing in Surge Financial Limited ("Surge") (a party not regulated by the FCA) to carry out FCA regulated activities (a criminal activity)" (emphasis added).

L3.80 D1 forwarded Graham's email to Kerry.¹⁸³⁹ She forwarded it to D5 (cc D7), adding, "*Rather than amend our contract, Andy has received advice to reject it. See this detailed*

¹⁸³⁰ SUR00076337-0001

¹⁸³¹ SUR00076337-0001

¹⁸³² MDR00224105

¹⁸³³ MDR00224105; MDR00224150; MDR00224153;

MDR00224154; MDR00224155

¹⁸³⁴ MDR00092336

¹⁸³⁵ MDR00092487

¹⁸³⁶ MDR00092488

¹⁸³⁷ MDR00092489

¹⁸³⁸ MDR00092873

¹⁸³⁹ MDR00092875

explanation from Lewis Silkin. I fear a stand-off. If they made suggestions for revisions, we have the starting point for a negotiation. This is just a flat out obstruction".¹⁸⁴⁰ D5 seems to have suggested that Lewis Silkin should prepare a re-draft.¹⁸⁴¹

L3.81 Lewis Silkin began to prepare a new version,¹⁸⁴² but progress was slow. On 25.07.17, Kerry emailed D1 asking, "*Is there any progress with regards to a contract? I am wondering is [sic] Lewis Silkin have had a chance to draft this please?*"¹⁸⁴³ Eventually, on 03.08.17, D1 was able to provide Kerry and D5 with Lewis Silkin's re-draft.¹⁸⁴⁴ They had cut down the definition of "*Services*" in Schedule 2.

L3.82 Kerry replied to D1 (cc D5) to say that the "*sticking point is going to be around the Services i.e. Schedule 2. I assume you have scaled this back for regulatory reasons?*"¹⁸⁴⁵ She attached a document which contained the terms of the Schedule 2 drafted by Macfarlanes. She asked if Lewis Silkin could "*highlight any clauses that could compromise your regulation*".¹⁸⁴⁶

L3.83 On 23.08.17, Kerry re-sent this document to D1 (cc D5 and D7).¹⁸⁴⁷ D7 then emailed Kerry and D5 to say, "*I think we should be harder with Andy on the points raised ... Paul and I can discuss this with Spencer on Tuesday and get him to squeeze Andy if required*".¹⁸⁴⁸ Kerry accepted that one option would be to "*get Spencer to make him accept the Services section as it is*" but was concerned that this could cause regulatory problems for LCF.¹⁸⁴⁹ D7 and Kerry agreed that Kerry would attend a forthcoming meeting with D4 to discuss "*the service review part*" with him.¹⁸⁵⁰

L3.84 This issue remained unresolved. On 29.08.17, Graham Reid of Lewis Silkin emailed his colleague, Owen Watkins, to say that he might need Owen's input in respect of Kerry's document (containing the terms from Macfarlanes' Schedule 2),¹⁸⁵¹ commenting that Lewis Silkin's view "*was that much of this was not something that the service provider should be doing not least as they are not regulated*".¹⁸⁵²

¹⁸⁴⁰ SUR00139923-0001

¹⁸⁴¹ MDR00092896; MDR00092897

¹⁸⁴² MDR00093392; MDR00093466; MDR00093478;
MDR00093479

¹⁸⁴³ MDR00098885

¹⁸⁴⁴ MDR00098885; MDR00096119; MDR00096121

¹⁸⁴⁵ MDR00098885

¹⁸⁴⁶ MDR00098885; SUR00080508-0001;
MDR00098918

¹⁸⁴⁷ SUR00081984-0001

¹⁸⁴⁸ SUR00080533-0001

¹⁸⁴⁹ SUR00140352-0001

¹⁸⁵⁰ SUR00140352-0001; SUR00140357-0001

¹⁸⁵¹ MDR00098918

¹⁸⁵² MDR00098917

L3.85 On 29.08.17, Graham advised D1 that Macfarlanes' draft was seriously defective:¹⁸⁵³

“As drafted the document indicates that the Service Provider anticipates carrying out regulated activities while not regulated (a criminal offence) – for example clause 8.1. I'd suggest that we speak with their lawyers in order to amend the document in a way that it is compliant for all parties – this is a complex area of law which in many circumstances (frustrating though it maybe) only allows things to be done in certain ways”.

L3.86 Kerry and D1 initially agreed that Lewis Silkin and Macfarlanes should “*work through the redraft together*”.¹⁸⁵⁴ By 11.09.17, however, Kerry had become concerned that this would probably be “*quite an expensive way to go about it*” and that it would therefore be preferable for Lewis Silkin to simply set out their concerns.¹⁸⁵⁵

L3.87 On 02.10.17, therefore, Graham Reid emailed Chris Mortimer of Macfarlanes to explain that D6 “*should not be ‘bringing the deal together’ which was what we are all agreed is the regulated activity*”.¹⁸⁵⁶ The problem seemed to be that Kerry and Macfarlanes were keen for the contract to set out precisely what D6 was doing, but Lewis Silkin held fast to the view that D6 should not be doing those things because it involved “*carrying out regulated activities while not regulated (a criminal offence)*” and that the contract should therefore not say what Kerry and Macfarlanes wanted it to say.

L3.88 Kerry explained the problem to D1 (cc D5 and D7) on 22.02.18:¹⁸⁵⁷

*“The services section has been pretty much deleted so that they state that we only do web hosting, web development and assisting people to go through the online sign up process. We deliberately gave a detailed list of services which is what we need to be in the contract to prove the blend of services we provide make us VAT exempt. **We have been told that the list we provided made Lewes [sic] Silkin uncomfortable on the basis that it could be argued some are regulated activities and Surge is not regulated**” (emphasis added).*

L3.89 This obstacle seemed to be insurmountable. No agreement was ever signed.

¹⁸⁵³ MDR00099003

¹⁸⁵⁴ MDR00099758

¹⁸⁵⁵ MDR00101030

¹⁸⁵⁶ MDR00105314

¹⁸⁵⁷ MDR00131178

M. STATE OF KNOWLEDGE OF D5, D6, D7 AND D9

M1 Introduction

- M1.1 As explained below, D5 and his colleagues suspected that LCF was not legitimate.
- M1.2 Over time, they discovered a large number of facts which substantiated these concerns.
- M1.3 Ultimately, they were left in no doubt that LCF's affairs were deeply troubling.
- M1.4 However, in light of the vast commissions paid by LCF to D6, they continued to sell LCF's bonds to members of the public in order to keep enriching themselves.

M2 Suspicious at the outset

- M2.1 From the beginning of D5's involvement, D5 was acutely aware of the fact that the entire operation would seem inherently suspicious. He emailed Patrick McCreesh of Blackmore on 09.07.15 to tell him about LCF: "*The SAFE product is being re-branded and I am comfortable that it is not a 'rinse' ... John has set up a deal with SAFE which will pay 25% commissions ... I know you'll be screaming 'RINSE'! It's not*".¹⁸⁵⁸
- M2.2 The concerns about the legitimacy of LCF did not go away. On 23.09.15, Desmond Bailey, a salesman for D6, emailed D7 and D5 (cc Steve and Kerry) to say:¹⁸⁵⁹

"I had a call from a client investing in LCF this morning which has made me begin to question the integrity of this investment ... I reassured the investor I would not have any part in a scam that was taking people's hard earned money ... I feel totally uneasy about this and the potential issues our company could be faced with ... John, can I ask you what due diligence you have carried out on LCF?"

- M2.3 Soon, D6's accountant, Mark Partridge, expressed his views on LCF.

¹⁸⁵⁸ SUR00001292-0001

¹⁸⁵⁹ SUR00002372-0001

M2.4 D5 valued Mark's opinion. He explained, "*Mark is a shareholder, friend and a Chartered Accountant and I trust him implicitly*".¹⁸⁶⁰

M2.5 Mark's views on LCF were clear and Mark expressed them frankly, as D5 explained to Steve Jones on 27.10.15: "*Mark thinks Spencer is Maddoff*[sic]" (emphasis added).¹⁸⁶¹

M3 LCF's interest rates were too good to be true

M3.1 One obvious concern about LCF related to the extremely high rates of interest that it offered to investors.

M3.2 As explained above, D5, Kerry and Steve ran a website, www.investment-experts-online.co.uk. The basic premise of the website was that members of the public could seek free investment advice from experts. Each such enquiry was received by D5, Kerry and Steve by email. Members of the public began to submit enquiries about LCF, asking whether the extremely high rates of interest meant that LCF was too good to be true.

M3.3 On 07.12.15, for example, a member of the public submitted an enquiry: "*How safe is your money in an investment bond, such as those offered by London Capital and Finance. They are offering 8% p.a. on a 3 year fixed rate bond. Are these figures too good to be true?*"¹⁸⁶² This was received by D5, D7, Kerry and Steve. D5 said, "*Very interesting*". He forwarded it to Mark Partridge¹⁸⁶³ and his friend Ronak Patel.¹⁸⁶⁴

M3.4 Similarly, on 15.12.15, another member of the public asked: "*London Capital and Finance are doing a 3 year bond with an 8% interest rate, does this seem too good to be true? Is this a reputable company with financial equity in the event of going bust, as I wish to invest a large sum. Will my money be safe?*"¹⁸⁶⁵ Again, this was received by D5, D7, Kerry and Steve. Another prospective investor asked, "*What's the catch?*"¹⁸⁶⁶

¹⁸⁶⁰ MDR00027361; EB0012005

¹⁸⁶¹ SUR00129710-0001

¹⁸⁶² SUR00004092-0001

¹⁸⁶³ SUR00004095-0001

¹⁸⁶⁴ SUR00004096-0001

¹⁸⁶⁵ SUR00004450-0001

¹⁸⁶⁶ SUR00004233-0001

M3.5 LCF's unfeasibly high rates of interest caused a problem when setting up BSR, as Kerry explained to D5, Steve and others on 23.09.15 (with the subject, "Content for BSR"):¹⁸⁶⁷

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

2. The rate is 2.7%.

3. The minimum balance is £2k.

Why?

1. We currently sell the 2 year bond for 8.5% the average 2 year bond in the comparison table offers 2%. I was faced with a dilemma: I could not put 8.5% next to 2% and remain credible. I could not offer a 2 year option close to 2% because any client going to the LCF website would see that it is being marketed at 8.5%. Therefore we will only offer the 2 year bond via an assisted sale for 8.5% (business as usual) we will only offer a 1 year bond (2.7%) via the hands free online sale.

2. I have proposed a rate of 2.7% to LCF because it is higher than – but still in line with – the competition. 8.5% would stand out like a sore thumb next to 2%" (emphasis added).

M3.6 Similarly, on 25.11.15, Kerry observed that LCF "pays a significantly higher rate by comparison" with the other listings on BSR ("Could be a positive and could be a negative").¹⁸⁶⁸ (The other listings on BSR at that time were paying interests rates of 4.4%, 2.5%, 2.44%, 2.4%, 2.3%, 2.75% and 3% per annum.)

M3.7 Members of the public continued to submit enquiries on www.investment-experts-online.co.uk asking if LCF was "too good to be true".¹⁸⁶⁹

M3.8 Sometimes, members of the public who had learnt of LCF on BSR would then ask www.investment-experts-online.co.uk whether it was legitimate: "I am thinking of investing £10,000 with LCF in a protected bond. The interest for one year is 3.9% and 6.5% for two years. This seems very high compared with other rates on offer. How safe is my investment?"¹⁸⁷⁰ D5 thought that this phenomenon was brilliant ("Bouncing off from BSR. Brilliant!").¹⁸⁷¹ Equally, members of the public regularly sought to contact

¹⁸⁶⁷ SUR00129471-0001

¹⁸⁶⁸ SUR00003547-0001

¹⁸⁶⁹ SUR00004738-0001

¹⁸⁷⁰ SUR00005114-0001

¹⁸⁷¹ SUR00005117-0001

LCF, asking whether it was “*too good to be true*”; their queries went to D6.¹⁸⁷² Transcripts of their online conversations were sent to D5¹⁸⁷³ and Kerry.¹⁸⁷⁴

M4 The commission paid by LCF was “insane” and unsustainable

M4.1 Another obvious concern related to the commission that LCF was prepared to pay to D6, which, at 25% of all receipts from bondholders, was phenomenally high.

M4.2 On 23.07.15, D5 emailed Mark Partridge to say, “*I know, that’s huge right?*” (emphasis added).¹⁸⁷⁵ Mark Partridge expressed the view that it was “*insane*”.¹⁸⁷⁶

“As you say this commission is insane. On a flat rate the fund would have to grow by 55% 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”
(emphasis added).

M5 Absence of information about LCF’s borrowers

M5.1 These concerns were only compounded by D1’s failure – and, later, flat-out refusal – to provide *any* information about LCF’s loans to borrowers.

M5.2 On 16.07.15, Kerry emailed D7 to say that she was—

“trying to build a picture of the success [and] selling points of the business and always like to lead with facts and figures as these increase credibility, it would help to know: How many (approximate figure) loans to date, how many defaults, type of loan i.e. for what purpose, average term, interest rate (I believe it is arranged according to risk level, please elaborate), Size of companies borrowing?” (emphasis added).¹⁸⁷⁷

M5.3 She requested case studies and testimonials from borrowers.

¹⁸⁷² SUR00004982-0001; SUR00004985-0001;
SUR00006212-0001; SUR00005420-0001;
SUR00006131-0001; SUR00009193-0001;
SUR00013450-0001; SUR00018166-0001;
SUR00018964-0001; SUR00020208-0001
¹⁸⁷³ SUR00004983-0001; SUR00004986-0001;
SUR00009927-0001; SUR00009928-0001;
SUR00010440-0001; SUR00010738-0001;
SUR00011021-0001; SUR00011109-0001;

SUR00011224-0001; SUR00011841-0001;
SUR00013449-0001; SUR00013453-0001;
SUR00018164-0001; SUR00018965-0001;
SUR00020210-0001
¹⁸⁷⁴ SUR00006133-0001; SUR00006214-0001;
SUR00009194-0001
¹⁸⁷⁵ SUR00129143-0001
¹⁸⁷⁶ SUR00129198-0001
¹⁸⁷⁷ SUR00001422-0001

M5.4 D7 forwarded her email to D1.¹⁸⁷⁸ However, D1 did not provide any of the requested information about LCF’s borrowers.

M5.5 On 20.07.15, D7 sent a chaser email to D1.¹⁸⁷⁹ D1 replied (cc D3 and D4) to say that he was working on it, but he did not respond further.

M5.6 On 29.07.15, Kerry reiterated her requests to D1:¹⁸⁸⁰

“Reading about how Mr X – from a real company that they can see on the internet – was able to benefit from finance that the bank refused and it enabled him to purchase stock / take advantage of opportunities that resulted in him increasing his turnover by 25%, etc... Good success stories really help to sell the bond because investors can see the actual need and results”.

M5.7 Still D1 did not provide the requested information. Kerry mentioned it again the next day on 30.07.15.¹⁸⁸¹ Still he did not provide it.

M5.8 At some point, Kerry discussed this issue with D4. On 13.10.15, Kerry emailed D4, cc D7: *“Spencer, As discussed, I have been waiting for the Case Studies for some time. I had a look back through my emails and can see I first requested this on the 29th July”.*¹⁸⁸²

M5.9 But still D1 did not provide any of the requested information about borrowers.

M5.10 A related issue that was causing concern at this time was the absence of a lending page on LCF’s website. There was nothing to give credence to the idea that prospective borrowers could apply to LCF for a loan. This undermined LCF’s credibility.

M5.11 Given that D6’s role was to maximise LCF’s bond sales, it fell to D6 to resolve this issue by creating a plausible-looking lending page. Manuel Espinoza of D6 designed a lending page for LCF’s website.¹⁸⁸³ D7 provided comments on it.¹⁸⁸⁴

¹⁸⁷⁸ SUR00001422-0001

¹⁸⁷⁹ SUR00129105-0001

¹⁸⁸⁰ SUR00001538-0001; EB0006648; D1-0000788

¹⁸⁸¹ SUR00001555-0001

¹⁸⁸² EB0006648

¹⁸⁸³ MDR00027127; D7D9-0003267; D7D9-0003267

¹⁸⁸⁴ MDR00027127

M5.12 D5 said, “*We need the lending page on LCF going live and with it we need to add what a normal company we would lend to look likes. I.e. £10m turnover; looking for £500k over 6 months; Company has £4m in Company Assets for protection of our loan*”.¹⁸⁸⁵

M6 Some light-touch due diligence and a worrying discovery

M6.1 On 08.12.15, D5 emailed Mark Partridge to discuss the idea of conducting a bit of light-touch due diligence on LCF:¹⁸⁸⁶

“I couldn’t get hold of Spencer last night but will do today. I have a plan to make the necessity of the DD seem more run-of-the-mill and less holly-shit-this-better-not-be-a-ponzi [sic]. Ill basically say that as Spencer is looking to revise an offer to be involved exclusively with us in one way or another we want to run some DD to make the process easier down the line. Spencer doesn’t like getting emails. I know, I know. But you will be getting an intro email to Andy Thomson later. I would start with a call with him to get an overview before you request the evidence you need” (emphasis added).

M6.2 D5 emailed Mark (cc D7) about this issue again on 10.12.15 to say, “*We need to conduct this DD with a light touch*” (emphasis added).¹⁸⁸⁷

M6.3 Mark replied, “*If they have nothing to hide, they shouldn’t be concerned about DD*”.¹⁸⁸⁸

M6.4 Mark then told D5 about a worrying discovery that he had made:¹⁸⁸⁹

“The worse news is All their loan book is lent to Thomson’s company! This loan (or some of it not clear) was then shifted to International Resorts Group, a company that Thomson used to be a director for. So it could be that the liabilities now have no assets to back them up” (emphasis added).

M6.5 D5 emailed D1 (cc Mark Partridge and D7) on the same day to say:¹⁸⁹⁰

“We want to better understand how LCF operates to assist in both our sales and also from a commercial prospect. As it is way above my pay grade and JRM is

¹⁸⁸⁵ MDR00026970
¹⁸⁸⁶ SUR00127979-0001; SUR00158416-0001
¹⁸⁸⁷ SUR00004217-0001

¹⁸⁸⁸ SUR00130330-0001; SUR00130337-0001
¹⁸⁸⁹ SUR00130330-0001; SUR00130337-0001
¹⁸⁹⁰ MDR00024468; SUR00004241-0001

snowed under I have asked Mark Partridge, our accountant to liaise directly with you. We anticipate at least £50m into LCF bonds over the next 12 months and it would be helpful for us to ensure we know how the underlying assets work in more detail. Can I leave Mark in your capable hands to provide him with those details please” (emphasis added).

M6.6 D1 failed to provide Mark with any response to these requests. On 13.12.15, D5 emailed Mark, saying, “Give him a nudge ... for me please”.¹⁸⁹¹

M7 The lack of information was causing difficulties

M7.1 D1’s failure to provide any information about LCF’s borrowers was causing difficulties for D6’s sales people. Prospective bondholders often sought information about how their money would be used by LCF to generate a return. The inability to provide basic information in response to these questions was raising eyebrows.

M7.2 On 16.12.15, Kerry asked D1, “How many borrowing companies are there at this time and what is the average loan size please?”¹⁸⁹² D1 replied, “To date the company has c. £5,000,000 under management ... Currently we have in place funding lines for an additional £10,000,000 split over 5 company’s [sic]”.¹⁸⁹³

M7.3 Kerry forwarded this to D5 and Mark Partridge at 2.40pm, commenting, “See Andy’s comments regarding the £10m over 5 borrowing companies. I’m interested to know if all 5 are ultimately under the same/connected ownership” (emphasis added).¹⁸⁹⁴

M7.4 Later on the same day (at 3.31pm), the issue of LCF’s borrowers was raised again by a prospective bondholder. He emailed Kerry to ask, “Am I correct in thinking that you were reluctant to tell me how many borrowers you have on your books?”¹⁸⁹⁵

M7.5 At 4.16pm on the same day, Kerry seems to have been distracted by a new lead – a person who had £500,000 to invest (“That’s really amazing, £500k!!!!”).¹⁸⁹⁶

M7.6 D1 had still not answered Kerry’s question about the average loan size.

¹⁸⁹¹ SUR00130384-0001

¹⁸⁹² MDR00024960

¹⁸⁹³ MDR00024968

¹⁸⁹⁴ SUR00004510-0001

¹⁸⁹⁵ SUR00130462-0001

¹⁸⁹⁶ SUR00004522-0001

M7.7 The prospective bondholder kept pressing Kerry for this information.

M7.8 She asked D7 about how to respond.¹⁸⁹⁷ Eventually, on 22.12.15, D7 suggested that Kerry get the figures from D1.¹⁸⁹⁸ She emailed D1 that same day:¹⁸⁹⁹

“Generally I have been trying to steer customers away from questions about our lending book however one particular chap is very persistent and wants me to answer the following question, can you please suggest a reply that you are comfortable with:

What about telling me how much in total you have lent and what is the average sum per contract?”

M7.9 D1 did not answer this question. Instead, he said he would “*have a think*” and email her something in the morning.¹⁹⁰⁰ He did not email her anything in the morning.¹⁹⁰¹

M8 Further concerns about LCF’s legitimacy

M8.1 D5 had a lunch meeting with D4 scheduled for 29.12.15.¹⁹⁰² On 28.12.15, D5 emailed his team (cc D7 and Jo Baldock to say, “*We had a great end to 2015, breaking £1m into LCF in just 18 days (including two weekends!)*”).¹⁹⁰³ Mark Partridge replied.¹⁹⁰⁴

“DD is obviously very important here in my eyes anyway ... So you are seeing Spencer tomorrow. Do you want me there or is it a three wise monkeys meeting? I would not be offended btw but at some time we do have to address this issue” (emphasis added).

M8.2 D5 wanted Mark to attend. D5 emailed D7, Mark, Kerry, Steve and Jo Baldock to provide them with a link to a story in *The Telegraph* about a bond issuer called Wellesley,¹⁹⁰⁵ which they had been discussing by email.¹⁹⁰⁶ D5 added:

“JRM and I are meeting with Spencer on Tuesday mid-morning in Crowborough. I intend to bring Mark and use this article as a discussion point that if we had the recently referred to security in place, LCF would be in a far stronger place than

¹⁸⁹⁷ SUR00130462-0001
¹⁸⁹⁸ SUR00130541-0001
¹⁸⁹⁹ MDR00025395
¹⁹⁰⁰ MDR00025395
¹⁹⁰¹ MDR00025747
¹⁹⁰² SUR00004668-0001

¹⁹⁰³ MDR00025611; SUR00004663-0001
¹⁹⁰⁴ SUR00004668-0001
¹⁹⁰⁵ MDR00025617; SUR00127976-0001
¹⁹⁰⁶ SUR00004672-0001; MDR00025611;
SUR00004663-0001; SUR00004668-0001;
SUR00004672-0001

Wellesley. If you scroll right down and read the comments, you'll see the obvious concerns we need to address, 'Peter Smythe' in particular nails it. Having £30m on the balance sheet would defeat that argument and conversions would increase" (emphasis added).

M8.3 Peter Smythe's comment (which, according to D5, "nails it") was:

"If you bothered to look properly at the 'savings bond' offering, you would see that they can basically do whatever they want with the money. The funds invested in the 'savings bond' will be used to 'expand its business' and 'lending capabilities' i.e. they can use the money for television adverts and raising even more money to do, basically, whatever they like with it. How does the FCA allow this stuff? These guys dangerously masquerade around as peer-to-peer lenders but all they are in reality is an unregulated fund that offers terrible returns ... next scandal waiting to happen" (emphasis added).¹⁹⁰⁷

M8.4 Steve Jones responded to D5, "Interesting and timely article. I am sure they will be sniffing around LCF in no time at all".¹⁹⁰⁸

M8.5 D5 replied, "No they won't. Wellesley got spotted because it went above the parapet by advertising on TV. They'll stay under the radar for a while yet" (emphasis added).¹⁹⁰⁹

M8.6 Mark Partridge's scepticism about LCF was increased by D1's statements about capital gains allowances and withholding tax. D1 said that bondholders could use capital gains allowances (and that withholding tax would not be applicable) and that this had been confirmed by BDO and Lewis Silkin. D1 then performed a volte-face and emailed D7 to say that "all interest paid for the bonds is subject to withholding tax at 20%".¹⁹¹⁰ D7 emailed D6's staff saying, "Just to clarify – all bonds will be subject to 20% withholding tax ... Andy has also confirmed that their legal and accountancy advisers have stated that clients cannot utilise their capital gains allowance on maturity of the bonds".¹⁹¹¹

M8.7 D5 forwarded this to Mark Partridge, who replied, "No fucking [sic] shit Sherlock ... Sorry a bit rude but really! What happened to BDO and Lewis Silkin's advice?" D5 asked Mark to clarify what he meant by this. Mark explained:

¹⁹⁰⁷ SUR00004693-0001

¹⁹⁰⁸ SUR00004684-0001

¹⁹⁰⁹ SUR00004685-0001

¹⁹¹⁰ SUR00130885-0001

¹⁹¹¹ SUR00130885-0001

“It is completely the opposite of what was stated last week when utilising your capital allowance was all the rage – alleged backed by BDO and Lewis Silkin. Despite my scepticism. That’s why emails go out giving completely the wrong advice. Because people want to say the thing punters want to hear rather than reality. That’s the sort of thing that ends up shutting the company down. Bullshit. You can’t believe anything that comes out of Spencer’s lot and so JRMs mouth. Diversify asap. And consider your sales management” (emphasis added).

M9 Uncertainty about security

- M9.1 D5’s comment on 28.12.15 about getting “£30m on the balance sheet”¹⁹¹² is explained by subsequent emails which reveal D1 and D4 had said that they were putting a “land asset” worth £30 million into LCF in order to provide security to bondholders.
- M9.2 On 29.12.15, Mark said, “Certainly gives comfort to the proposition. Still big concern is one type £30m asset backing this. Wellesley implies a spread of risk as per original thought with spencer”. After the meeting, on 02.01.16, D7 emailed D1, asking, “how are you progressing with the 30 Million land asset being placed into the company?”¹⁹¹³
- M9.3 Kerry emailed D5 on 06.01.16 to say, “I am concerned that the targets might not be achieved without the £30mil security ... Do we have a timeline for the enhanced security?”¹⁹¹⁴ Just over a week later, D5 emailed D3 (cc D7 and Mark Partridge) on 14.01.16, saying, “I need to get the security on the balance sheet as fast as possible. I also need to understand what exactly it is, as the Account Managers will need to explain it to the clients it needs to be simple. It will defeat our main objection and increase conversions immediately; therefore, it being added quickly will help increase sales”.¹⁹¹⁵
- M9.4 D5 chased D3 (cc D7 Kerry, and Mark) again on 18.01.16, saying, “What is the update on this please? In particular, the security on the balance sheet”.¹⁹¹⁶ D5 forwarded this email to Steve;¹⁹¹⁷ D3 forwarded it to D1.¹⁹¹⁸ Mark emailed D5 to say:¹⁹¹⁹

“As per the literature LCF lend to 75% of asset value.

¹⁹¹² MDR00025617; SUR00127976-0001

¹⁹¹³ MDR00025708

¹⁹¹⁴ SUR00004894-0001

¹⁹¹⁵ MDR00027361; EB0012005

¹⁹¹⁶ MDR00027361; EB0012443

¹⁹¹⁷ SUR00005979-0001

¹⁹¹⁸ MDR00027361; EB0012446

¹⁹¹⁹ SUR00005975-0001

We should consider this. Per our conversation with LCF, 50% of this asset is liquid. The rest is deferred 'consideration'. We need to consider whether to stop placing funds at £7.5m x 75% = £5.625m or £15m x 75% = £11.25m”.

M9.5 It appears from this that the story about the additional security had changed. It was no longer a “30 million land asset”. Instead, it was now an asset worth £15 million which was “50% liquid” and 50% “deferred ‘consideration’” – hence Mark’s question whether D6 should “stop placing funds at £7.5m x 75% = £5.625m or £15m x 75% = £11.25m”.

M9.6 D5 chased D3 (cc D7, Mark and Kerry) on 21.01.16:¹⁹²⁰

“What would help us significantly is removing the objection about the Company being young and having an empty balance sheet. The sooner the security is added the better. Can I ask you to let me know what the security will be precisely and when it will be added by in a way in which members of the public can see and our team can quote it”.

M9.7 D5 chased D3 and D1 (cc D7, Mark and Kerry) again on 25.01.16:¹⁹²¹

*“I am just following up on my email from Thursday to you both. **Can I get a response this morning by email regarding the security which is being added to the company please.** We are growing very quickly and the quality of the balance sheet needs to be shored up to provide comfort for the clients. It remains the largest, most singular objection and hold backs the conversions considerably. It requires your urgent attention” (emphasis added).*

M9.8 D1 replied by saying that he wanted to discuss.¹⁹²² However, D5 was out of the office.¹⁹²³

M10 Shocking discoveries

M10.1 Kerry spoke to D1 on 25.01.16. The conversation was extremely concerning for many reasons. She sent a report to D5, D7, Mark and Steve immediately:¹⁹²⁴

“I have just spoken with Andrew Thompson [sic], we discussed some quite sensitive information which he initially didn’t want to be communicated by email but has given me permission to relay this information assuming your

¹⁹²⁰ MDR00028356

¹⁹²¹ MDR00028356

¹⁹²² MDR00028358; EB0120976

¹⁹²³ MDR00028358

¹⁹²⁴ SUR00131168-0001

commitment not to mention the details outside of this small group. Please don't even mention to the sales team yet ...

He has not replied to Marks request for DD because he did not receive the emails.

There is no £30million security. There is a transaction taking place with \$30mil (yes dollars) to the benefit of LC&F and inter related companies however the only 'asset' which they are able to use for the purposes of enhancing LC&F is a loan note for £15mil (yes sterling) in favor of LC&F. They have had it confirmed by their accountants that the loan note can be positioned in the balance sheet so that the assets of the company are boosted. The balance sheet currently shows assets of £6mil therefore an extra £15mil will take it to £21mil which is sizeable and therefore should assist sales but will not be as beneficial as the £30mil charge over property which was originally suggested. Andy says this was a miscommunication by Spencer and it was never an option.

The loan book:

- *Since inception LC&F (formerly SAFE) has lent £4.2 million.*
- *Currently there are 80 loans.*
- *The average loan size is £75k*
- *The largest loan ever was £220k*
- *Terms range from 3 months bridging finance to 2 years property development finance.*
- **Crucially all 80 loans are to Spencer related businesses i.e. they are funding their own operations ...**

...

BIG ISSUE:

The FCA contacted Andy 10 days ago to say that they have received numerous complains re TIE promoting LC&F. They have also been forwarded email communications from TIE staff. They have mystery shopped us. In the FCAs opinion, we are miss-selling [sic]. It is not OK to state that bond holders capital is 100% safe, there are risks and we are no longer allowed to be so categorical in our statements ...” (emphasis added)

M10.2 The fact that there would be “no £30million security” was obviously a concerning development, which was contrary to what had previously been asserted. More significant still was the knowledge that “all 80 loans are to Spencer related businesses i.e. they are funding their own operations”. But D5 was focussed on the final point: the fact that the FCA had “received numerous complains re TIE promoting LC&F” and had concluded that D6 was “mis-selling”. D5 responded quickly. He emailed his colleagues (including D7 and Jo Baldock) on 25.01.16 to say:¹⁹²⁵

“Something is coming our way ... The dots are forming a line and we have too much to lose to not [take] action. Therefore: -

1. Pause all TIE advertising

2. Pull TIE down, no pages live, have a page saying, “This site is currently offline.” ...

¹⁹²⁵ MDR00028517

It could be a competition or anyone, even someone who recently left. Some people when they are not allowed to play in goal, try and pop the ball. Either way, for now it closes.

*Lastly. All connections, IP, Limited Companies or people connected with TIE need considering or removing from all our other sites. **Consider it toxic.** ... Report when completed. These actions may not stop what may come but it may help. It can always and easily relaunch. Nothing is forever” (emphasis added).*

M10.3 Within 15 minutes, www.investment-experts-online.co.uk had been taken down.¹⁹²⁶

M10.4 D5 said Kerry was working on any cross-pollination which she would email around in the morning for resolution.¹⁹²⁷

M10.5 On 26.01.16, D5 emailed D7, Steve, Kerry and Jo Baldock, with the subject “TIE”:¹⁹²⁸

“As you know I have brought TIE down. It is a pre-emptive move as I am expecting repercussions from the FCA regarding some of our dealings with clients. Where we go from here is not decided but to head off a potential issue of breaching the grey area of advice with at least one of our Analysts is paramount ... Kerry – Please let me know what cross pollination is existing between TIE and other entities ... Then we wait and see what happens”.

M10.6 Kerry emailed everyone to tell them to remove any reference to TIE from LinkedIn.¹⁹²⁹

M11 Still no information from D1

M11.1 D1 was still failing to provide any testimonials from LCF’s borrowers.¹⁹³⁰

M11.2 On 29.01.16, Kerry emailed D5 (after a discussion between them) saying, “**Missing piece of the ‘is it a ponzi’ jig saw: we need access to the lending book, inclusive of details re the security in place, what percentage is property and at what gearing, if not property what is it and how was it valued? Is Mark following up, I put him back in contact with Andy on Andys new email address**” (emphasis added).¹⁹³¹

¹⁹²⁶ MDR00028519

¹⁹²⁷ MDR00028535

¹⁹²⁸ D7D9-0004170

¹⁹²⁹ D7D9-0004175

¹⁹³⁰ SUR00006835-0001; SUR00006836-0001

¹⁹³¹ SUR00158422-0001

M11.3 On 01.02.16, Mark Partridge asked D5 if he should continue to “*request DD information*” from D1.¹⁹³² Initially, D5 did not get back to him on this;¹⁹³³ it is unclear from the documents whether they discussed it subsequently.¹⁹³⁴

M11.4 In early March, Mark met with D1, who agreed to provide him with “*the security documents held by LCF against the loans provided to date*”.¹⁹³⁵ D1 failed to provide these to Mark, who chased him on 01.04.16, asking also to see a schedule of loans.¹⁹³⁶

M11.5 D1 apologised for the delay and said that he had been waiting for one particular document to become available.¹⁹³⁷ Mark asked him to send over whatever was available.¹⁹³⁸ D1 did not send anything to Mark.

M11.6 On 08.04.16, D1 told D5 (cc D7 and Kerry) that he had “*instructed [his] solicitor to send Mark all the docs*”.¹⁹³⁹ Mark objected, “*I have not heard from your solicitor yet!*”¹⁹⁴⁰

M12 Concerns about GST’s credibility

M12.1 As explained above, D6’s sales people sought to rely on the involvement of GST, a company controlled by D8,¹⁹⁴¹ to reassure prospective investors that their monies would be safe. D6’s sales people said that GST was an independent security trustee which monitored the adequacy of security on behalf of bondholders.¹⁹⁴²

M12.2 However, prospective bondholders who looked for information about GST found nothing. For a long time, Kerry had been saying that “*GST require an online presence*”.¹⁹⁴³ D5 agreed, saying, “*I will chat with Andy on Thursday about setting up a good online trail of provenance to ensure when Googled it provides comfort*”.¹⁹⁴⁴

¹⁹³² SUR00131253-0001

¹⁹³³ SUR00131394-0001

¹⁹³⁴ SUR00131395-0001

¹⁹³⁵ MDR00034184

¹⁹³⁶ MDR00034184; SUR00132306-0001

¹⁹³⁷ MDR00034189

¹⁹³⁸ MDR00034201

¹⁹³⁹ MDR00034970

¹⁹⁴⁰ MDR00035001

¹⁹⁴¹ MDR00038869

¹⁹⁴² MDR00023601; SUR00130207-0001;
MDR00026632; MDR00026697; D7D9-0002441;
D7D9-0002509; D7D9-0002479; D7D9-0002508;
D7D9-0002509; D7D9-0002510; D7D9-0002511;
MDR00025991; MDR00027146; MDR00026924;
MDR00044477; SUR00004744-0001;
SUR00004745-0001; SUR00005658-0001;
SUR00005659-0001

¹⁹⁴³ SUR00006472-0001; SUR00006473-0001

¹⁹⁴⁴ SUR00018796-0001

- M12.3 Prospective bondholders continued to ask about GST, but D6’s sales people were unable to answer their questions.¹⁹⁴⁵ On 05.05.16, Jo Baldock told D1 that it was “*embarrassing and unprofessional on our part when we don’t have enough information*”.¹⁹⁴⁶
- M12.4 D1 replied on 06.05.16 to say, “*GST is a company set up by lawyers who have 120 years combined experience in this industry and have specifically set up GST to provide a vehicle to independently represent investor interests*”.¹⁹⁴⁷
- M12.5 Kerry was not satisfied with this response. She told D5 on 07.05.16, “*GST need a proper online presence. They play an important role yet anyone going [sic] DD won’t find much about them and they are not FCA regulated*”.¹⁹⁴⁸
- M12.6 D5 reiterated this to D1 (bcc Mark Partridge and others) (“*Off record*”), adding that he was happy to set up the online provenance for free “*so the issue disappears*”.¹⁹⁴⁹
- M12.7 Mark Partridge read the email chain and was concerned by D1’s statement about GST having been set up “*to provide a vehicle to independently represent investor interests*”. He knew that this statement was not true: GST was in fact connected with LCF in various ways. He emailed D1 (cc D5 and D7) on 09.05.16 to raise his objection.¹⁹⁵⁰

*“Hope you are well. Just seen the trail below.
There is a statement that GST are independent.
Without casting aspersions or commenting on their magnitude there are a number of connections between LCF and GST.
 Whilst doing our DD we did note that:
 GST, LCF and LG (and subsidiaries etc) share the same registered office.
 The sole Director and shareholder of GST is also Company Secretary at LG and indeed most of LG’s group.
 LG’s group presumably owning the main UK asset as well as overseas assets upon which LCF is relying.
As I am sure you are very aware” (emphasis added).*

- M12.8 Following a call between Kerry and D1 on 18.05.16, Kerry emailed D5, D7 and others to say that “*GST will remain in place long term*”. She asked:¹⁹⁵¹

¹⁹⁴⁵ MDR00038884
¹⁹⁴⁶ MDR00038884
¹⁹⁴⁷ MDR00038884
¹⁹⁴⁸ SUR00019509-0001

¹⁹⁴⁹ SUR00019510-0001; SUR00019512-0001;
 MDR00038916
¹⁹⁵⁰ MDR00038990
¹⁹⁵¹ MDR00041231

*“1. How will we represent what they do to advantage sales when we can no longer claim they manage the security on behalf of the investor on a day to day basis?
2. How can we build them an online provenance when they are effectively a one or two solicitor firm without a track record? This is further exacerbated by the fact that the main solicitor is standing down due to a conflict of interest”.*

M12.9 The issues in respect of GST remained unresolved.

M13 Information from Mark Partridge

M13.1 In response to Mark’s comment about the connections between LCF and GST, D7 emailed Mark (cc D5) saying, *“Any other linked directorships etc would be useful”*.¹⁹⁵²

M13.2 Mark responded on 09.05.16 by providing D5 and D7 with a colour-coded spreadsheet identifying connections between LCF and various companies including GST, London Group plc, L&TD, London Trading, LCCL, Waterside Villages and CV Resorts, as well as various other companies connected with D1, D2, D3 and D8. Mark had also identified overlapping officers and shareholders (including D1, D2, D3 and D8).¹⁹⁵³

M13.3 By this time, therefore, D5, D7 and Kerry knew that, although D1 had said that LCF had made 80 loans, they had all been made to only *“5 company’s [sic]”*.¹⁹⁵⁴ Kerry had wondered *“if all 5 are ultimately under the same/connected ownership”*¹⁹⁵⁵ and D1 had later confirmed that *“all 80 loans are to Spencer related businesses i.e. they are funding their own operations”*.¹⁹⁵⁶ Mark Partridge had now identified LCF’s borrowers (and the relevant connections) in his very detailed colour-coded spreadsheet.¹⁹⁵⁷

M13.4 D5, D7 and Kerry also knew that LCF had initially proposed to grant security over a *“30 million land asset”*¹⁹⁵⁸ but that had then changed to an asset worth £15 million which was *“50% liquid”* and 50% *“deferred ‘consideration’”*¹⁹⁵⁹ before D1 had told them that there was actually no £30 million security (and that this had been *“a miscommunication*

¹⁹⁵² SUR00132806-0001
¹⁹⁵³ SUR00132808-0001; SUR00132807-0001
¹⁹⁵⁴ MDR00024968; SUR00004510-0001;
SUR00004525-0001
¹⁹⁵⁵ SUR00004510-0001

¹⁹⁵⁶ SUR00131168-0001
¹⁹⁵⁷ SUR00132808-0001; SUR00132807-0001
¹⁹⁵⁸ MDR00025708
¹⁹⁵⁹ SUR00005975-0001

by Spencer and it was never an option”) and that the security for the loans was instead going to consist of a “loan note for £15mil (yes sterling) in favor of LC&F”.¹⁹⁶⁰

M13.5 However, D1 had not provided them with access to LCF’s lending book or with any of details of any security or any valuations of any security.

M14 Knowledge of LCF’s payments to D4 and others

M14.1 D5 and Steve Jones also knew that LCF was making payments to D4 and others. On 22.07.16, Katy Eaves of LCF emailed Jo Baldock (cc Steve Jones) to say that LCF would pay the remainder of D6’s invoices for commissions on the following day, because LCF had “hit our limit on our bank account to send payments, hence why they are being paid tomorrow”.¹⁹⁶¹ Steve forwarded this to D5, commenting, “Ha, love that!”¹⁹⁶² D5 asked him, “What’s their limit?”¹⁹⁶³ Steve replied, “No idea. **Would include payments to spencer etc as well, not just our comms**” (emphasis added).¹⁹⁶⁴

M14.2 The “payments to spencer etc” which LCF had made on 22.07.16 (which, when combined with the payment of some of D6’s invoices, resulted in LCF hitting its bank payment limit for that day) comprised £51,250 to D4, £33,750 to D10, £7,500 to D3 and £7,500 to D1, funded by a payment of £246,500 from LCF to L&TD.¹⁹⁶⁵

M15 D1’s unsatisfactory answers to questions from D6’s sales team

M15.1 Awareness of the information set out above was tightly confined. As set out above, D1 had imparted much of this “quite sensitive” information to Kerry orally on 25.01.16 (because “he initially didn’t want [it] to be communicated by email”) on terms that it could be shared only with D5, D7, Steve and Mark and that they could “not ... mention the details outside of this small group”.¹⁹⁶⁶ In particular, D1 appears to have insisted that D5, D7, Kerry, Steve and Mark should not “even mention [it] to the sales team yet”.¹⁹⁶⁷

¹⁹⁶⁰ SUR00131168-0001

¹⁹⁶¹ SUR00032895-0001

¹⁹⁶² SUR00032895-0001

¹⁹⁶³ SUR00032895-0001

¹⁹⁶⁴ SUR00032895-0001

¹⁹⁶⁵ MDR00007263 pages 1-5; MDR00058502 pages 1-3; MDR00215810 pages 31-32; MDR00051159

rows 12-21; MDR00220286 page 228;

MDR00088779 page 23; MDR00215810 page 31;

MDR00055328 page 17; MDR00072440 row 29

¹⁹⁶⁶ SUR00131168-0001

¹⁹⁶⁷ SUR00131168-0001

- M15.2 As a result, D6’s sales team remained unaware of these facts. This caused problems in practice, because prospective bondholders were obviously keen to understand how their money would be used. D6’s sales team wanted to know the answers to some fairly obvious questions which were frequently asked by prospective bondholders.
- M15.3 Louise Finney, who sold LCF bonds for D6, compiled a list of frequently asked questions, which included the following key questions for D1: “*LENDING: HOW MANY CLIENTS HAVE WE LENT TO? WHO DO WE LEND TO? AVERAGE LOAN SIZE?*”; “*ASSETS: WHAT ARE THE ASSETS HELD? WHAT IS THEIR VALUE? WHERE CAN I FIND THIS INFORMATION*”.¹⁹⁶⁸ She sent this to Jo Baldock on 12.05.16 attached to an email entitled, “*Questions for Andy*”.¹⁹⁶⁹
- M15.4 On 13.05.16, Jo Baldock sent these to D1 (cc D7, D5 and Kerry) attached to an email with the subject, “*Common Questions*”.¹⁹⁷⁰ She explained that she had “*now spoken with the account managers and we have compiled a list of frequently asked questions*”.
- M15.5 D5 forwarded this to Mark, who replied, “*I’d like to see the answers!!!*”¹⁹⁷¹
- M15.6 At around this time, D5 seems to have become anxious about the idea of letting prospective investors ask questions about LCF. On 17.05.16, when a prospective bondholder asked Christopher Barnard (one of D6’s sales people) a question about D1’s role within LCF, D5 sent an email advising Christopher Barnard not to answer it:¹⁹⁷²
- “I’m going to jump in here. I don’t think it’s a good idea to let prospective investors dictate questions to us. What’s next? What is Andy’s star sign. I think the key is to not let the customer or prospect dictate the terms so easily”.*
- M15.7 By 18.05.16, however, Kerry was able to report to the others that D1 had “*agreed to send us his answers to the questions Jo sent through last week*”.¹⁹⁷³

¹⁹⁶⁸ MDR00040470
¹⁹⁶⁹ MDR00040469
¹⁹⁷⁰ SUR00020686-0001

¹⁹⁷¹ SUR00132905-0001
¹⁹⁷² MDR00041097
¹⁹⁷³ MDR00041231

M15.8 On the same day, D1 drafted his answers to the frequently asked questions:¹⁹⁷⁴

“HOW MANY CLIENTS HAVE WE LENT TO?

As at the beginning of May 2016 LCF has made 121 loans ...

WHO DO WE LEND TO, WHAT SECTOR?

LCF lends to all sectors.

AVERAGE LOAN SIZE?

The total size of the loan book at the beginning of May 2016 is £9,055,096.11, this drives an average loan size of c.£75,000

WHY IS THERE NO MENTION OF HOW TO MAKE A LENDING APPLICATION, THERE IS NO FACE TO THIS SIDE OF THE BUSINESS OR CONTACT NUMBER ETC?

LCF uses a network of professional introducers to source lending opportunities and as such does not need to advertise.

ASSETS

WHAT ARE THE ASSETS HELD AND UNDERLYING SECURITY?

The assets LCF currently hold as security is a mixture of property, land, contractual obligations, shares, warrant’s [sic] and corporate guarantees from listed company’s [sic].

WHAT IS THEIR VALUE?

The current value (borrowing directors confirmed updated valuations as at the end of April 2016) of the assets pledged as security against LCF’s loan book is c. £62,000,000 (£14m floating charge contractual value, £17.5m property & £34.5m development land). The security taken against these assets is a mixture of corporate guarantees & fixed and floating charges ...”

M15.9 D1 sent the document to Kerry Graham and D7 (cc Jo Baldock), adding, *“I’ve put together some answers to the account managers questions”*.¹⁹⁷⁵

M15.10 D1’s answers were plainly inconsistent with the information that he had previously provided to D5, D7, Kerry, Steve and Mark on a confidential basis only a few months earlier. Jo Baldock forwarded D1’s answers to D5, who forwarded them to Mark Partridge.¹⁹⁷⁶ Mark responded, *“Just the usual bs [bullshit] I’m afraid”*.¹⁹⁷⁷ D7 also forwarded D1’s answers to D5,¹⁹⁷⁸ who replied, *“Grrrr”*.¹⁹⁷⁹

M15.11 As explained above, this was not the first occasion on which Mark had advised D5 that D1 was lying to them. On a previous occasion, Mark had told D5 that he *“[could not] believe anything that comes out of Spencer’s lot and so JRM’s mouth”*.¹⁹⁸⁰

¹⁹⁷⁴ MDR00041257; SUR00021583-0001

¹⁹⁷⁵ MDR00041314

¹⁹⁷⁶ SUR00021720-0001

¹⁹⁷⁷ SUR00021720-0001

¹⁹⁷⁸ MDR00041314

¹⁹⁷⁹ MDR00041316

¹⁹⁸⁰ SUR00130885-0001

M16 D1's lies about LCF's accounts

M16.1 A further occasion on which D1 was revealed to be lying soon occurred, this time in connection with the delay to LCF's accounts.

M16.2 D6's sales people encountered questions from members of the public who had looked at LCF's most recent accounts on the Companies House website. The most recent accounts available on the Companies House website covered the period to 30.04.15. They disclosed net assets of £40,944. Prospective bondholders raised concerns about the position. D6's sales people sought to reassure them that LCF's accounts for the subsequent year, to 30.04.16, would show a far stronger position. But those accounts were not available yet. Initially, D1 said that they "would be submitted late April and available early May".¹⁹⁸¹ On 19.04.16, D1 said that this had been delayed to June.¹⁹⁸²

M16.3 Scott Allen, one of D6's sales people, emailed D5 and D7 on that day to complain:¹⁹⁸³

"I have a client who went on GCEN late March for £120,000. All she wants before transferring funds is sight of the LCF accounts. Her name is [REDACTED] Andy informed us on his last visit (about three weeks ago) that the accounts would be submitted late April and available early May. Today he tells us it is now June. This has put us all in a bit of a position as we have all told numerous clients that we will provide accounts early May. These are mainly the savvy/high net worth investors who understandably want to see the figures. Having looked at my 'activities' on GCEN, I have around 50 clients to send the accounts to, with roughly £3m of funds to invest. What do I say to [REDACTED]? Is there any way we can have something credible to show these clients? We are in danger of losing credibility to a degree".

M16.4 D5 forwarded Scott's email to D1, who told him that "the company accounts will be completed in May and the audited accounts will be available in June".¹⁹⁸⁴

M16.5 But this did not happen. On 11.06.16, a prospective bondholder, [REDACTED] chased Scott for a copy of LCF's latest accounts.¹⁹⁸⁵

¹⁹⁸¹ MDR00036428

¹⁹⁸² MDR00036428

¹⁹⁸³ MDR00036428

¹⁹⁸⁴ MDR00036461

¹⁹⁸⁵ MDR00044329

M16.6 On 27.06.16, another prospective bondholder, ██████████, chased Scott for a copy of LCF's latest accounts.¹⁹⁸⁶ On the basis of information from D1, Scott replied to ██████████ to say that he "[expected] to be emailing you our accounts later this week".¹⁹⁸⁷

M16.7 But still LCF's new accounts did not become available. Scott chased D1 on 11.07.16.¹⁹⁸⁸ But still there was no sign of them.

M16.8 On 18.07.16, ██████████ emailed Scott to ask again if there was any update regarding LCF's accounts ("*It's 2 weeks now. Any update?*").¹⁹⁸⁹

M16.9 Scott forwarded ██████████'s email to D7, who sent it to D1, adding, "*Based on what you had previously told us we emailed him and said the accounts would be available last month. We would like to go back to him today with a revised timescale. Please can you let me know what the latest situation is*".¹⁹⁹⁰

M16.10 D1 replied to D7 (cc D5), "*The position with the accounts is that we are having to wait for guidance from HMRC re a technical point on how to represent the balance sheet. PWC and our accountants are chasing HMRC on a regular basis but I cannot give you a timescale. As soon as the accounts are finalised, I will let you know*".¹⁹⁹¹

M16.11 D7 did not accept this explanation. He replied to D1 (cc D5), "*Guidance on a technical point should come from PWC, the HMRC accept the accounts anyway you present???*"

M16.12 D1 replied, "*With respect I don't want to go through the detail you, you will just have to accept the position as is and that I am doing what is right for my company*".¹⁹⁹²

M16.13 D7 was not prepared to let it lie there. He replied to D1 (cc D5):¹⁹⁹³

"The problem I have is back in April you addressed the account management team and said the accounts would be finalised at the end of April and would be available shortly thereafter. The AM's passed this information on to investors who enquired about the bond.

¹⁹⁸⁶ MDR00046580

¹⁹⁸⁷ MDR00050071

¹⁹⁸⁸ MDR00048994

¹⁹⁸⁹ MDR00050071

¹⁹⁹⁰ MDR00050071

¹⁹⁹¹ MDR00050076

¹⁹⁹² MDR00050078

¹⁹⁹³ MDR00050090

You then said in May the accounts were being finalised and would be available that month. You then said the account would be available in June and so on. I have to manage the AM's expectations, they are the ones on the front line dealing with clients on a daily basis. Why don't you share with me the real position, that way we can set realistic timescales and deal with AM's and clients accordingly".

M16.14 D5 forwarded the email chain to Kerry, who replied, "*Oh dear*".¹⁹⁹⁴

M16.15 D5 also forwarded the email chain to Mark Partridge, presumably to see if Mark could shed any light on D1's comment about "*having to wait for guidance from HMRC re a technical point on how to represent the balance sheet*".¹⁹⁹⁵

M16.16 Mark advised D5:¹⁹⁹⁶

"This is almost certainly crap. HMRC do not give opinion unless there is uncertainty with regard to the law i.e. tax law.

This would appear to be accounting treatment and so not likely to get an opinion. And anyway HMRC are interested in the P&L, rarely are they interested in the balance sheet unless someone is hiding profits there – that isn't something you would ask HMRC's opinion on...

PWC would know this – I am not so sure what PWC have to do with this anyway" (emphasis added).

M16.17 D5 forwarded Mark's email to D7.¹⁹⁹⁷

M17 Concerns about adequate security

M17.1 D6's sales team continued to encounter difficulties due to the lack of information. Prospective bondholders asked for the number of borrowers and their names.¹⁹⁹⁸ D6's sales team said that they were unable to disclose names of borrowers "*due to data protection*".¹⁹⁹⁹ The absence of recent accounts also continued to be problematic. D7 emailed D1 (cc D5) to ask for an update.²⁰⁰⁰ D1 said he was "*working on it*".²⁰⁰¹

M17.2 But still the accounts did not become available. On 05.09.16, D7 emailed D3 to complain about this: "*The accounts are long overdue, this is highlighted every week by potential*

¹⁹⁹⁴ SUR00032237-0001

¹⁹⁹⁵ SUR00134155-0001

¹⁹⁹⁶ SUR00134155-0001

¹⁹⁹⁷ SUR00032247-0001; SUR00134156-0001

¹⁹⁹⁸ MDR00052882

¹⁹⁹⁹ MDR00053999

²⁰⁰⁰ MDR00052179

²⁰⁰¹ SUR00034392-0001

new investors, this needs to be actioned asap. We also have an ever increasing amount of investors not willing to make a decision until the accounts are published. We are keep going back to these people and extending the timeframe which doesn't look good'.²⁰⁰²

M17.3 Eventually, on 13.09.16, Steve Jones's son, Ashleigh Newman-Jones, received LCF's draft accounts for the year ended 30.04.16 and forwarded them to D7, who forwarded them to D6's sales team.²⁰⁰³ They disclosed a profit of £148,550, which was obviously modest, particularly in comparison to the position of D6, which was now in the process of making a post-tax profit of £2,440,680 in a twelve-month period.²⁰⁰⁴

M17.4 LCF's draft accounts also disclosed net assets of only £7,226 as at 30.04.16. They contained an assertion by D1 (in his 'strategic report') that LCF held security over assets worth £60,752,482, but they contained no other information about those assets, and the draft auditor's report (which was to be signed in due course by PwC) made clear that D1's strategic report fell outside the scope of the audit.

M17.5 The final version of LCF's accounts for the year ended 30.04.16 contained slightly different figures: the final net profit figure was £166,916 and the final net assets figure was £25,592.²⁰⁰⁵ But the wording of the auditor's report from PwC continued to make clear that PwC had not audited D1's strategic report, which contained the assertion about LCF having security over assets worth £60,752,482.

M17.6 Mark Partridge's concern was that even security of £60,752,482 seemed inadequate to cover the total amount of LCF bonds in issue.

M17.7 Mark wanted to have something on file to show that D6 had made appropriate enquiries with LCF about this. So he drafted a suitable letter addressed to LCF.²⁰⁰⁶ D5 approved it.²⁰⁰⁷ Mark sent it to D1 on 06.02.17.²⁰⁰⁸ Mark's letter to D1 said:²⁰⁰⁹

“As at 30 April 2016, the last audited accounts stated that LCF held a lien on assets valued circa £60m. That gives implied security for up to £45m worth of bonds. As LCF is virtually at that figure of £45m, in terms of bond notes issued,

²⁰⁰² EB0028616
²⁰⁰³ MDR00057894; MDR00057895; MDR00057901
²⁰⁰⁴ MDR00224028
²⁰⁰⁵ MDR00004388

²⁰⁰⁶ SUR00137316-0001; SUR00137317-0001
²⁰⁰⁷ SUR00137367-0001; SUR00137368-0001
²⁰⁰⁸ MDR00073895
²⁰⁰⁹ MDR00073897

could you give us an indication of the fair value of assets you currently hold as security against the bonds”.

M17.8 On 09.02.17, D1 replied to Mark’s letter (cc D5 and Steve Jones) to say that LCF’s loan book stood at c.£43 million whilst the “*verified security value*” had risen to £215 million, giving a loan-to-value ratio of 20%.²⁰¹⁰

M17.9 Mark was immediately sceptical about this. He emailed D5 to say, “*The Banana Republic must have found some black gold*”.²⁰¹¹

M17.10 Mark also pointed out that D1’s willingness to provide such information was new (“*He wasn’t always happy back in the day providing any information*”).²⁰¹²

M17.11 D5 replied, “*Well, he’s [sic] neck on the line. I’m happy enough*”.²⁰¹³

M17.12 But, if Mark’s comment about “*black gold*” had been intended to suggest that the new security might have something to do with LOG’s investments in two oil exploration companies, Kerry was quick to dispel this suggestion.

M17.13 Kerry had been liaising with D2, D3 and D8 about a possible oil bond²⁰¹⁴ and explained to D5 and D7 that there had not yet been any independent valuations of the oil assets: “*They have said that they do not have the assets independently valued. To do this they need competent persons reports at each site and it will take a minimum of 5 months to get this done (geological studies take time) and actually they might not be able to get it fully complete at some sites where more in depth tests need to happen*”.²⁰¹⁵

M17.14 Kerry also reported that the proposed oil bond was “*layer upon layer of complicated*” including because “*the company issuing the bond doesn’t actually own the underlying assets to be used as security*”.

²⁰¹⁰ MDR00074462; MDR00224094

²⁰¹¹ SUR00137486-0001

²⁰¹² SUR00137486-0001

²⁰¹³ SUR00137487-0001

²⁰¹⁴ SUR00061869-0001; SUR00061870-0001; D2D10-00024262; D2D10-00024263; D2D10-00024268;

SUR00061880-0001

²⁰¹⁵ SUR00137494-0001

M17.15 The nature of the new security remained a mystery. But that did not stop D6’s sales team from deploying the figure of £215 million in their efforts to sell LCF bonds.²⁰¹⁶

M17.16 As explained above, LCF advertised the security figure of £215 million in *The Times*, *The Financial Times* and *The Telegraph*.²⁰¹⁷

M17.17 Subsequently, the FCA complained about one particular aspect of the advertisement. D1 emailed D5 and D7 to tell them to remove any references to the fact that LCF was regulated by the FCA from future advertising materials.²⁰¹⁸

M17.18 D5 forwarded this to D7 and Kerry, commenting, “*I knew that was a bad idea. Can of worms will be opened*”.²⁰¹⁹ (As explained above, D5 thought it was preferable for LCF to “*stay under the radar*” and that it should not go “*above the parapet*”).²⁰²⁰)

M18 Concerns raised on the MSE forum

M18.1 Money Saving Expert (“MSE”) is a website for consumers who are looking for a good deal on investments, insurance, utilities and so on. It has a forum (or message board) on which members of the public can post messages and comments.

M18.2 In early February 2017, someone posted a new comment about LCF. They criticised the BSR website, explaining that “*L&C are paying them for promoting the product and the RPDigitalServices Ltd site is little more than a referral links site to a selection of products. Anyone using this site should stop doing so*”.²⁰²¹ They had also made “*links to Cape Verde, International Resorts Group etc*”.²⁰²²

M18.3 Jo Baldock drew this to the attention of D1,²⁰²³ who replied, “*Thanks for sending this over, the IRG loan isn’t public information so someone who knows us has posted this. I’ll have to look into it*”.²⁰²⁴ However, having initially implied that the message

²⁰¹⁶ MDR00074758; MDR00074801; MDR00074822; MDR00075997

²⁰¹⁷ D7D9-0009136; MDR00087050; MDR00087051; MDR00087052; SUR00073529-0001; SUR00073530-0001

²⁰¹⁸ MDR00089120

²⁰¹⁹ SUR00075979-0001

²⁰²⁰ SUR00004685-0001

²⁰²¹ MDR00074512

²⁰²² SUR00064262-0001

²⁰²³ SUR00064274-0001

²⁰²⁴ SUR00064321-0001

contained accurate non-public information (from “someone who knows us”), D1 then changed his position and said that the message was factually inaccurate and libellous.²⁰²⁵

M18.4 However, he did not provide any information to rebut the concerns about LCF that had been set out in the comment on the MSE forum.

M18.5 On 11.07.17, someone posted a very lengthy and detailed analysis of LCF on the MSE forum, which included following comments:²⁰²⁶

“You will find little about LC&F business operations on the website, other than description. Little about the company track record and means of interest payment to the bondholders, and repayment of capital. The website is all about marketing the mini bond, not about the loan business side of LC&F and its practical discharge of financial obligations to investors. ...

The loan market is highly competitive. One online study indicates the current average small business bank loan rate is between 6-13% per annum, from lowest to highest, much less than the loan interest rates offered by LC&F. A business loan provider online comparison website indicates rates approx. between 3.5-5.5% APR on secured business loans. An application online with Santander by an applicant with good credit standing for an unsecured one year business loan for £25,000 results in a 4.9% APR interest rate. Much less than LC&F secured business loan rates at 12-20%.

With such low interest rates on loans now and the large number of loan companies, it is a very competitive market. The 12%-20% lending rates applied by LC&F to SME loans may not be competitive enough in the UK asset secured loan industry. But it is unlikely that lending rates below 12% would be sufficient to cover the LC&F company and minibond marketing expenses, wages, contractor fees, and profit, as well as interest payments to bondholders. No other business model has been put forward by LC&F to pay bondholder interest and secure return of principal end of bond term.

A reason a business would be required to pay a higher rate of 12-20 % APR on a loan is because the level of risk of loan default by the borrower is higher. That higher risk would not bode well for the LC&F bondholder interest payments, nor for return of the SME loan capital and bondholder principal, nor for company expenditure and profits. ...

It is difficult to find out any evidence for the marketing team claim that LC&F have lent approximately £15 million to approximately 120 small and medium sized business enterprises (SMEs) secured on £33 million asset value since public launch of the minibond. These figures from 2016 are out of date by a few months. As of June 2017, LC&F claim in excess of £66 million has been invested with over £215 million worth of borrowers’ and LC&F’s assets held as security, along with a part of the bondholder capital. Up to that latter date LC&F state no borrowers have defaulted on the loans. ...

²⁰²⁵ MDR00074634

²⁰²⁶ MDR00093505

*Regarding the LC&F lending side to SMEs, the bond marketing team reveals there is a trading interface between LC&F lending team and SME borrowers. From this LC&F accounts for bondholder interest payments, company profit and expenditure including contractor fees, wages and marketing costs. However, the marketing team do not appear able to substantiate this to potential or existing investors. **Unlike other SME business loan providers, there appears to be no available company website interface for LC&F business borrowers to apply for business loans. No physical location other than the Companies House registered office in Tunbridge Wells. No available names of existing SME borrowers. No names of the lending team employees. No lending team employee contact, no phone, no email address for the lending team. To apply for a SME loan you are asked to go through the bond marketing company team which is unusual. No internet searches have provided any evidence of how the bondholder interest is being paid through SME loan interest, nor is there such evidence on the LC&F website, nor can the bond marketing team provide such when asked ...*** (emphasis added).

M18.6 A prospective bondholder sent this to Scott Allen, who sent it to Jo Baldock, who sent it to D1. D1 said that the post was “*based on assumptions not facts*” and was “*technically incorrect on a number of issues*” but he did not identify any inaccuracies or provide any countervailing information.²⁰²⁷

M18.7 This negative commentary on the MSE forum became increasingly problematic. One of D6’s sales people reported to his colleagues and D7 that it was putting people off (“*I have had a large investor put off completely by it*”).²⁰²⁸

M18.8 On 16.07.17, Scott Allen told D7 and Jo Baldock, “*Andy needs to come back with a comprehensive reply ... as this MSE forum is clearly a problem now*”.²⁰²⁹ Jo Baldock asked D1 to provide “*some answers ... that are acceptable for us to reply ... with*”.²⁰³⁰

M18.9 On 18.07.17, D1 provided Jo Baldock with a document containing responses to the review posted on MSE.²⁰³¹ He said, “*Please don’t send it anywhere as its been written for internal purposes*”. Jo forwarded it to D5 and D7;²⁰³² D5 forwarded it to Kerry.²⁰³³

²⁰²⁷ MDR00093505

²⁰²⁸ MDR00093870

²⁰²⁹ MDR00093902

²⁰³⁰ MDR00093914

²⁰³¹ MDR00094237; MDR00094239

²⁰³² SUR00140129-0001

²⁰³³ SUR00140132-0001

M18.10 D7 reviewed D1’s draft responses and commented (cc D5, Kerry and Jo Baldock), “*He hasn’t responded particularly well*”.²⁰³⁴ That assessment was correct: D1 had not provided any useable information to rebut the criticisms of LCF on the MSE forum.

M18.11 Over a month later, there was still talk of D1 providing “*content ... to use to rebuttal [sic] specific threads and comments*”,²⁰³⁵ but he never actually did so.²⁰³⁶

M19 Continued absence of information about LCF’s position

M19.1 D1’s failure to provide even the most basic information about LCF’s lending operations continued to cause problems. Jo Baldock wanted to send out a newsletter containing success stories and an overview of what investors’ funds had achieved for UK SMEs during the year. She asked D1 for this information,²⁰³⁷ but, as explained below, he failed to provide it. Prospective bondholders continued to ask questions about LCF’s loan portfolio. Jo Baldock sent such questions to D1, but he did not respond.²⁰³⁸

M19.2 On 10.03.17, D1 provided D5 and D7 with LCF’s management accounts for the period ended 30.11.16.²⁰³⁹ D5 sent them to Mark Partridge,²⁰⁴⁰ who replied, “*Probably worth Jack. No accountants name to it, also some of the figures just look wrong which makes you wonder who prepared. Technically short term insolvent which doesn’t look right either*”.²⁰⁴¹ D5 shared this with D7 and Steve.²⁰⁴²

M19.3 On 31.05.17, D1 told D7 that LCF’s draft accounts would be ready by the end of the week and that he would provide them when they had been finalised, although it would then take a further three to four weeks for them to be audited. D7 conveyed this to D5, Kerry, Steve, Jo Baldock and Ashleigh.²⁰⁴³

M19.4 However, D1 did not provide the draft accounts and therefore Mark Partridge sent a letter to him on 06.06.17 asking him to state “*the current levels of both loan book and*

²⁰³⁴ MDR00094248
²⁰³⁵ SUR00082749-0001
²⁰³⁶ SUR00082751-0001
²⁰³⁷ SUR00057349-0001
²⁰³⁸ MDR00076826

²⁰³⁹ MDR00079552; MDR00079553
²⁰⁴⁰ SUR00137938-0001
²⁰⁴¹ SUR00137948-0001
²⁰⁴² SUR00137961-0001
²⁰⁴³ MDR00089032

the fair value of assets that you currently hold as security against the bonds".²⁰⁴⁴ Mark also asked D1 when LCF's audited accounts to 30.04.17 were likely to be published.

M19.5 Almost two weeks later, on 19.06.17, D1 provided D7 with LCF's management accounts for the year ended 30.04.17, saying, *"I am still waiting on the valuation so I think we should just use the draft set we have"*.²⁰⁴⁵ These management accounts disclosed a profit of £164,260 for the year and net assets of £189,853 as at 30.04.17.²⁰⁴⁶ D7 sent these to D5 and Mark Partridge, adding, *"Andy has asked me not to share this with anyone at the moment"*.²⁰⁴⁷ D5 forwarded them to Steve.²⁰⁴⁸

M19.6 Mark Partridge was unimpressed. LCF's profits were modest. By comparison, D6 had made profits of £2,440,680 in the year to 31.01.17.²⁰⁴⁹ Among other things, Mark was aware that D1 had just bought a helicopter. He emailed D5 and D7 to say, *"Not sure how he can afford a helicopter out of these accounts"*.²⁰⁵⁰

M19.7 There also continued to be an absence of information about LCF's lending business from D1. Jo Baldock continued to push him for information for a newsletter, explaining:²⁰⁵¹

"We are looking to add a bit of a newsletter... would like a little info on the lending side, it would be good to be able to say, look what your investment has done, what SMEs you have helped progress etc, can you give us some examples please, we don't need specific borrowers names just something like, we lent £100k to a property company in Sussex who have used the funds to improve a school, if I could have these asap that would be great so the email marketing team can get to work on the design".

M19.8 But no such information was forthcoming from D1. On 01.09.17, Jo Baldock emailed D1 to point out that he had not replied to her email about the newsletter.²⁰⁵²

M19.9 D1 was not even prepared to provide the number of loans,²⁰⁵³ even in general terms.²⁰⁵⁴ He emailed Jo Baldock on 06.09.17 to say that *"this will not have a good impact as the*

²⁰⁴⁴ MDR00224095

²⁰⁴⁵ MDR00091091

²⁰⁴⁶ MDR00091092

²⁰⁴⁷ SUR00126207-0001

²⁰⁴⁸ SUR00139659-0001

²⁰⁴⁹ MDR00224028

²⁰⁵⁰ SUR00127978-0001

²⁰⁵¹ MDR00098081

²⁰⁵² MDR00099583

²⁰⁵³ MDR00100222

²⁰⁵⁴ MDR00100241

volume of loans is not huge (sub 20) for the amount of debt out there".²⁰⁵⁵ Jo Baldock forwarded his reply to D5²⁰⁵⁶ and D7.²⁰⁵⁷

M19.10 D1 seemed to have something to hide. On 23.08.17, Kerry emailed D5, D7 and Jo Baldock to say, "*I doubt Andy has started the process to get an ISA. To have an ISA you must have first a retail prospectus bond. You place the retail bond in an ISA wrapper. I don't know why he hasn't done this yet because it's the next obvious step. I suspect that the validation process required to get through the UKLA, might scrutinise his loan book and possibly that's why he hasn't done it yet*" (emphasis added).²⁰⁵⁸

M19.11 On 27.09.17, LCF was featured in *The Daily Mail*. Mark Partridge asked D5, "*Is it good sticking head above the parapet?????*"²⁰⁵⁹ D5 replied, "*We didn't ask to do it....*"²⁰⁶⁰

M19.12 Information about LCF's borrowers was still not forthcoming. On 26.10.17, Neil of D6 sent an email (cc Kerry) to say, "*We've been asking LCF for some of their success stories for a while now, for some reason they're loath to give any details*".²⁰⁶¹

M19.13 On 08.11.17, Jo Baldock reiterated her idea for a newsletter to "*show how the investment funds have assisted UK businesses, nothing client specific but a simple strapline / case study ... as clients love to see what their funds are doing*".²⁰⁶² D1 failed to provide this. D7 reported on 15.02.18 that D1 "*wasn't keen to give a case study of a client loan*".²⁰⁶³

M19.14 But Kerry discovered something interesting. On 07.12.17, the finance website *Citywire* published an article about the FSCS having to pay compensation due to a collapsed investment firm which had promoted LUKI.²⁰⁶⁴ Kerry saw this article and sent it to D5 and D7.²⁰⁶⁵ She commented, "*One of the failed investments in this payout was Lakeview UK investments. That's Spencer's firm. I checked at companies house and Roger (Spencer's in house, drunk, solicitor) is the director*".²⁰⁶⁶ D5 replied, "*Hmmm*".

²⁰⁵⁵ MDR00100263
²⁰⁵⁶ SUR00082808-0001
²⁰⁵⁷ SUR00082809-0001
²⁰⁵⁸ SUR00127756-0001
²⁰⁵⁹ SUR00141994-0001
²⁰⁶⁰ SUR00141995-0001

²⁰⁶¹ SUR00085053-0001
²⁰⁶² MDR00110217
²⁰⁶³ SUR00092959-0001
²⁰⁶⁴ MDR00226934
²⁰⁶⁵ SUR00088188-0001; D7D9-0010491
²⁰⁶⁶ SUR00088188-0001; D7D9-0010495

M20 Kerry's concerns about D6 becoming LCF's AR

- M20.1 In early October 2017, D1 raised the idea of D6 becoming an appointed representative (“AR”) of LCF within section 39 of FSMA. Kerry was deeply troubled by this idea.
- M20.2 On 05.10.17, D5 sent a WhatsApp message to Kerry to say, “*Hey, you need some time to relax. I’m worried about you. I’ve never seen you unwell*”.²⁰⁶⁷
- M20.3 She replied, “*Andy hasn’t asked us to be an AR before. I’m very sensitive to stress but I don’t usually experience it. Andy has tipped me over the edge. It’s just a bad headache ... The issue is that being an AR of Andy could be a permanent headache*”.
- M20.4 She added, “*I’ve never felt stronger about any decision than this: it’s simply wrong to be an AR of your own customer. A company that we don’t trust*” (emphasis added).
- M20.5 Kerry decided to investigate the possibility of becoming the AR of a different company, Alexander David Securities.²⁰⁶⁸ She emailed Angus Rose of Alexander David Securities on 17.01.18 to report that that D6 would not be appointed as the AR of LCF.²⁰⁶⁹

M21 Knowledge of the truth about LCF’s so-called ISA bond

- M21.1 As explained above, LCF decided to proceed with an ISA bond. On 20.11.17, D1 told D7 that HMRC had given the necessary approval in respect of the ISA bond and that Lewis Silkin had finalised the ISA bond documentation.²⁰⁷⁰
- M21.2 There were two particular legal rules of relevance to ISA bonds at the time. First, in order to qualify for tax-free status under the ISA Regulations 1998, the bonds had to be transferable: Regulation 8A of the ISA Regulations 1998. Secondly, any person issuing *transferable* bonds for a total consideration of more than €8 million over a period of 12 months had to publish a prospectus: see Articles 2 and 3 of the Prospectus Regulation 2017/1129. (That limit was previously €5 million under the Prospectus Directive,

²⁰⁶⁷ SUR00084244-0001

²⁰⁶⁸ SUR00084397-0001

²⁰⁶⁹ SUR00090585-0001

²⁰⁷⁰ SUR00086365-0001

implemented in the UK through the Financial Services and Markets Act 2000 (“FSMA”), but was raised to €8 million in the UK under the Prospectus Regulation.)

M21.3 Accordingly, if an issuer of bonds of more than €8 million over a period of 12 months were to issue *non-transferable* bonds, to avoid having to publish a prospectus, those bonds would not qualify for tax-free status under the ISA Regulations and could not accurately be marketed as ISA bonds.

M21.4 The so-called ISA bonds issued by LCF were expressly non-transferable. It was decided that they should be non-transferable in order to avoid having to publish a prospectus. However, this had the effect of preventing those bonds from having tax-free status under the ISA Regulations 1998. As a result, they could not accurately be described as ISA bonds. Any representation to the effect that LCF’s ISA bonds enabled investors to earn interest on a tax-free basis was therefore inaccurate.

M21.5 As explained above, that was the reason given by the FCA in the first supervisory notice for requiring LCF to withdraw the ISA bond.²⁰⁷¹ The FCA explained:

“In order for bonds to be qualifying investments for an innovative finance ISA they have to meet certain conditions, including that they are transferable (Regulation 8A(2) and (4) of the Individual Savings Account Regulations 1998/1870). LCF’s website makes clear that its Bonds are non-transferable. It therefore appears that LCF’s Bonds do not qualify to be held in an ISA account and that investors are being misled by being told the interest they earn will be tax free”.

M21.6 As explained below, D5, D6, D7 and Kerry knew that LCF’s so-called ISA bonds were not eligible for tax-free status and that the claims made by LCF (and by D6’s sales team on LCF’s behalf) about “tax free” status were untrue. D1 had always known this.²⁰⁷²

M21.7 This part of the story begins on 20.11.17 when D7 told D5, Kerry and others that HMRC had approved LCF as an ISA manager.²⁰⁷³ D5 said, “*That is good news*”.²⁰⁷⁴

²⁰⁷¹ MDR00195123

²⁰⁷² MDR00024974

²⁰⁷³ SUR00086365-0001

²⁰⁷⁴ SUR00086370-0001

M21.8 Kerry said, “*I’m impressed. Blackmore’s lawyers told us that it was necessary to have a retail prospectus but Andy has obviously found another route. Great news!*”²⁰⁷⁵

M21.9 D1 emailed D5, Kerry, Jo Baldock and others to say, “*See below from HMRC, another chapter in LCF fundraising is beginning*”.²⁰⁷⁶ D5 said, “*Brilliant news*”.²⁰⁷⁷

M21.10 Kerry asked Kobus (who dealt with compliance for LCF) how LCF had managed to avoid the requirement for a prospectus. He told her that LCF’s ISA bond was not transferable and that the requirement for a prospectus did not apply.²⁰⁷⁸

M21.11 Roger Blears of RW Blears LLP had been advising Blackmore on its retail prospectus.²⁰⁷⁹ Kerry looked back at her notes of her discussions with Roger Blears and found that bonds must be transferable to be tax-free under the ISA Regulations 1998 and that this was the effect of Regulation 8A(4) of the ISA Regulations 1998.²⁰⁸⁰

M21.12 If LCF’s ISA bond was non-transferable, to avoid the requirement for a prospectus, then this meant that it did not qualify for tax-free status under the ISA Regulations 1998.

M21.13 Kerry spoke to Roger Blears to check this point with him. He was adamant that a bond had to be transferrable to qualify for tax-free status under the ISA Regulations 1998.²⁰⁸¹

M21.14 Kerry emailed Kobus on 01.12.17:²⁰⁸²

“When you mentioned that the bonds are not transferable and this is how you have been able to offer £50m and not just up to the s.21 exemption of EUR 5m; I just looked back at my notes to double check and I found that our solicitor had given us contradictory advice: ISA Regulations 8A(4a) state that bonds must be transferable to be offered as an IF ISA. The only exemption being to issue under the EUR 5m exemption. I have just got off the phone to Roger Blears who has been advising Blackmore on their retail prospectus to double check my understanding and he was adamant that this is the case. I thought I should let you know ...”

²⁰⁷⁵ SUR00086380-0001

²⁰⁷⁶ MDR00112765

²⁰⁷⁷ SUR00142769-0001

²⁰⁷⁸ MDR00115449

²⁰⁷⁹ MDR00115449

²⁰⁸⁰ MDR00115449

²⁰⁸¹ MDR00115449

²⁰⁸² MDR00115449

M21.15 Kobus disagreed (cc D1). Kerry emailed Jo Baldock, D5 and D7 to say:²⁰⁸³

“I could quote the legislation back at him explaining why (as 3 separate solicitors explained to me) he isn’t exempt from the EUR 5m limit. However, it’s not appropriate for me to push it and ultimately we did our job by double checking. So as directed by Kobus and Andy we do have a £50m limit which is really fantastic news. Is there a risk that this cause a big issue down the line having to repay bondholders over the EUR 5m and possibly having to write to all to explain? Possibly but I suspect this risk is low because he is nearly ready with his retail prospectus and once he submits that in two months’ time he could have a new ISA offering anyway”.

M21.16 D5 said, *“It’s great news!”*²⁰⁸⁴

M21.17 Kerry replied, *“Yes in a strange way this is fantastic news!”*

M21.18 Jo Baldock drafted an email about the LCF ISA bond to be sent to existing LCF bondholders.²⁰⁸⁵ As well as stating that the ISA bonds were tax free, Jo’s draft email said, *“Please be aware that this initial offer is limited to £50 million total investment and we’re expecting a high demand”.*²⁰⁸⁶

M21.19 D7 asked Jo Baldock, *“Isn’t the limit 5m not 50 on this one?”*²⁰⁸⁷ D7 then saw another version referring to *“£50 million total investment”* and said to Jo, *“Again, 5m raise”.*²⁰⁸⁸

M21.20 Jo Baldock responded to D7, *“All been checked out with Kobus and questioned by Kerry and apparently this is correct. Just as well as the phones have been ringing off the hook since 10am!”*²⁰⁸⁹ D7 replied, *“They’ve got it wrong, you have to issue a full prospectus to do 50m. What does the IM say?”*²⁰⁹⁰

M21.21 Jo Baldock provided D7 with the email chain containing the exchanges between Kerry and Kobus.²⁰⁹¹ D7 responded, *“Thanks jo, it’s there [sic] problem”.* Jo Baldock replied, *“Exactly, we have evidenced that we have challenged it that’s all we can do”.*

²⁰⁸³ MDR00115449
²⁰⁸⁴ MDR00115449
²⁰⁸⁵ SUR00087339-0001
²⁰⁸⁶ SUR00087339-0001
²⁰⁸⁷ SUR00087339-0001

²⁰⁸⁸ SUR00087341-0001
²⁰⁸⁹ SUR00087341-0001; MDR00115377
²⁰⁹⁰ MDR00115381
²⁰⁹¹ MDR00115449

M21.22 Kerry also sought to check the point with a solicitor called Mark Holleran, who decided to consult Roger Blears. On 10.12.17, Roger Blears replied:²⁰⁹²

“There are two offers: (1) Non-transferable securities – series 1 ISA, 3-year 8% Bonds; and (2) Non-transferable securities – series 2 ISA, 2-year 6.5% Bonds Both IMs have been approved as financial promotions pursuant to section 21 FSMA. The target raise is £50 million in each case. They are not prospectuses. There is no need that they should be because the bonds being issued are not transferable and the Prospectus Rules only apply to transferable securities. On page 7 of each IM there is a statement that investors are able to hold the Bonds in a LC&F innovative Finance ISA. However, the ISA Regulations provide that debentures (i.e. bonds) may only be held in an innovative ISA account if the conditions in Regulation 8A(4) are met and the first condition is that the debenture is a transferable security. See page 54 on the attached document which is a consolidated version of the ISA regs which I printed off in April when we were first instructed.

Jake is the ISA expert and so in case there has been a recent amendment to the ISA regs which enables bonds to be held in an IFISA account even where they are not transferable I am copying Jake into this email with the request that he confirms whether or not he knows of any rule change which dispenses with the need for IFISA bonds to be transferable.

This tax point aside, if IFISA bonds are transferable then a company can issue up to €5million in any rolling period of 12 months without the need to publish a prospectus.

I have confirmed this advice to Kerry on several occasions in the last few weeks. If LC&F are doing something clever which we have missed then we should learn what it is and copy them. I have not as yet read the IMs from cover to cover. If you would like me to do so I gladly will but I think this preliminary point needs to be addressed first.

Jake, please can you opine on the ISA regs”.

M21.23 On 11.12.17, Jake sent an email to Mark Holleran and Roger Blears to confirm that it was necessary for the bonds to be transferrable.²⁰⁹³ He added:²⁰⁹⁴

“Ineligible securities being held within an ISA can result in the ISA manager receiving penalties, and the tax saved being charged to the ISA manager; the aggregate of these can create a large potential liability for the ISA manager”.

M21.24 Mark Holleran forwarded the email chain to Kerry, explaining that *“the bonds are clearly stated in the IM on page 2 to be non-transferrable which both Jake and Roger are telling us is not allowed for ISAs”*.²⁰⁹⁵

²⁰⁹² SUR00143410-0001

²⁰⁹³ SUR00143410-0001

²⁰⁹⁴ SUR00143410-0001

²⁰⁹⁵ SUR00143410-0001

M21.25 Kerry told Mark Holleran that Lewis Silkin had been advising LCF in connection with LCF's ISA bonds. She said, "*Perhaps LCF have got this wrong but this surprises me because Lewis Silkin are a great firm*". Mark Holleran commented (cc Kerry) that Lewis Silkin were "*not specialists in this area*".

M21.26 Mark Holleran forwarded Kerry's email to Roger Blears, who replied (cc Kerry), "*the reality is that LC&F may simply have missed the point about transferability under the IFISA Regs ... I am inclined to think LC&F have simply missed the point on transferability and/or that their offer documents are a sham attempt to sidestep the prospectus directive*". Mark agreed, adding in a message to Pat McCreesh, "*I really do think that they have missed the point here*". Mark forwarded this email chain to Kerry.

M21.27 On 20.02.18, Kerry raised the point again with Kobus, who told her (cc D1 and D5), "*We don't need a prospectus, because our securities are not transferable ... The ISA is only a tax break on top of the underlying security. The ISA is not the security and does not have any bearing on the structure of the underlying security*".²⁰⁹⁶

M21.28 Kerry was not satisfied with this response, so she checked the point again with Roger Blears, who confirmed his advice, explaining on 20.02.18: "*LCF seem to be selling non-transferable bonds in order to avoid the prospectus directive and yet claiming they qualify for holding in an IFISA notwithstanding that IFISA eligibility requires bonds to be transferable!*"²⁰⁹⁷ Roger suggested that Kerry email Kobus in these terms and tell him expressly that there was "*a serious problem here*".

M21.29 D6's sales people sold the LCF ISA bond to members of the public in large numbers. The main selling point in respect of the LCF ISA bond was always that the interest paid by LCF to bondholders would be **tax free**. It is extraordinary that D5, D6, D7 and Kerry allowed D6 to continue to sell the LCF ISA bond. They knew that this central claim was not true and that the so-called ISA bond was in fact no such thing. That the FCA ultimately shut LCF down on this basis must have come as no surprise to them.

²⁰⁹⁶ MDR00130647

²⁰⁹⁷ SUR00093452-0001

M22 LCF 2, part 1

- M22.1 At around this time, D5, D7, Kerry and Jo Baldock were engaged in another project involving D2 and D4 which came to be known as “LCF 2”.
- M22.2 The motivation for LCF 2 was the concern that LCF might collapse at some point in the future. They wanted to have a back-up bond operation ready and waiting to seamlessly replace LCF in such a scenario in order to ensure that the flow of monies to D2, D4 and D6 was not interrupted. In D5’s words, LCF 2 would be the “*LCF back-up bond*”.²⁰⁹⁸
- M22.3 The process began in late 2017. They incorporated a new company, Countrywide Corporate Finance plc (company number 11055513), on 09.11.17. Paul Sayers was appointed as a director. In or around mid-November 2017, D5 and D7 had a meeting with D2 and D4 to discuss this project. D7 typed up his notes of the meeting and sent them to D5 on 24.11.17.²⁰⁹⁹ D7 made clear in his notes that “*CCF will be a back-up in the event of LCF having any issues in the future*”.²¹⁰⁰ D7 also mentioned that he was not convinced on the name ‘Countrywide’ and thought that they could do better.
- M22.4 On 11.12.17, D7 and D2 spoke several times about the LCF 2 project.²¹⁰¹ D7 reported this to D5.²¹⁰² D7 also told D5 that he was “*researching various corporate lenders online to get a feel of the content and look of what other companies are doing*”.
- M22.5 He also said, “*Spencer is seeing Andy this afternoon and will be in touch afterwards to let us know how Andy responded to the new company being set up*”.
- M22.6 D7 seems to have anticipated that D1 might not respond well to this news. At this time, D1 was not going to be involved with LCF 2. It was proposed that D5’s former colleague, Mike Tovell, would head up the new operation. D5’s meeting notes of 02.01.18 stated: “*LCF 2 (currently Countrywide Corporate Finance) in development with Mike proposed to head up. New name required to replace Countrywide*”.²¹⁰³

²⁰⁹⁸ SUR00090053-0001
²⁰⁹⁹ SUR00086628-0001; SUR00086629-0001
²¹⁰⁰ SUR00086629-0001

²¹⁰¹ SUR00088439-0001
²¹⁰² SUR00088439-0001
²¹⁰³ SUR00089456-0001

M22.7 On 09.01.18, D5 and D4 discussed the choice of name and the non-involvement of D1. D7 reported back to D5 and Kerry afterwards.²¹⁰⁴

“I met Spencer earlier but unfortunately Simon HK wasn’t available. Spencer said he was not bothered about the name ‘Countrywide’ and said we can rebrand the company anyway we like. He also said it makes sense to have a clear divide between the new co and LCF, with this in mind we will not be using Andy to approved [sic] the marketing material ...

He was not aware of a business plan for the new company and suggested I call Simon in the morning which I will do. I suspect there is no plan in place and we will need to build this from scratch. I will send another email once I have spoken with Simon”.

M22.8 Subsequently there was some discussion about using the name Portland Corporate Finance plc,²¹⁰⁵ but ultimately the name Westminster Corporate Finance plc was chosen.²¹⁰⁶ D5 commented, *“I love the new name”*,²¹⁰⁷ *“It’s perfect!!!”*²¹⁰⁸

M22.9 There was continuing discussion about the identity of the CEO of this new company. There was initially discussion about using Neil Harris²¹⁰⁹ or John Lutterloch.²¹¹⁰

M22.10 On 29.01.18, Kerry suggested to D5 and D7 that a man called Dave Woodcock would be a good choice, adding, *“I believe he has the balls for the risks involved”*.²¹¹¹

M22.11 D7 replied to Kerry (cc D5), *“Thanks Kerry but they won’t agree. They want their own man, so funds get utilised their way”*.²¹¹² D5 agreed, saying, *“Yes, precisely what John says”*.²¹¹³ D7 reiterated to Kerry, *“They won’t agree, will explain why face to face”*.²¹¹⁴

M22.12 D7 seems to have been concerned not to say any more in writing. D5 shared this concern, adding, *“Can we stop the emailing and discuss in the morning please”*.²¹¹⁵

M22.13 On 08.02.18, D5 sent an email stating, *“Westminster: This need setting up quickly and holding in reserve a backup to LCF”*.²¹¹⁶ Jo Baldock said she would help.²¹¹⁷

²¹⁰⁴ SUR00090042-0001

²¹⁰⁵ MDR00123295; SUR00091490-0001

²¹⁰⁶ SUR00091490-0001; SUR00091574-0001;
SUR00091590-0001

²¹⁰⁷ SUR00091492-0001

²¹⁰⁸ SUR00091497-0001

²¹⁰⁹ MDR00123295

²¹¹⁰ SUR00091490-0001

²¹¹¹ SUR00091509-0001

²¹¹² SUR00091510-0001

²¹¹³ SUR00091511-0001

²¹¹⁴ SUR00091514-0001

²¹¹⁵ SUR00091516-0001

²¹¹⁶ SUR00092350-0001

²¹¹⁷ SUR00092352-0001

M22.14 Subsequently there was some concern about using Paul Sayers as a director of the new company. He had previously been a director of LCF. This connection was not ideal. D7 said to Kerry on 01.02.18, *“Hold off on including Paul Sayers, I don’t want to use him as he was noted as a director with LCF. I will speak with Simon regarding this”*.²¹¹⁸

M22.15 There was also a concern about mentioning D4’s name in this context. On 16.02.18, D7 emailed D5 and Kerry with the subject *“WCF”* to say, *“Simon has called regarding the meeting on Tuesday, he said can we not mention SG to any of the board members, his name will not be involved in the company”*.²¹¹⁹ (D2 also told D7 that one of LCF’s borrowers, Prime RDL, had been *“buying assets from Simon/Spencer’s company”*.²¹²⁰)

M23 Further concerns on the MSE forum

M23.1 At around this time, there was another post about LCF and D6 on the MSE forum:²¹²¹

“I mentioned Surge Financial Ltd in an earlier London Capital and Finance post above. This company is responsible for the marketing and administration of the LC&F mini-bond investment. It mans the LC&F 0800 number. According to Companies House Annual Return, Surge has two officers, Paul Careless and Kerry Jane Graham. The company has on average 10-15 employees according to LinkedIn, although more than this number is said to be involved with LC&F. Surge, based in Brighton, has been in existence for three years and according to Companies House Annual Accounts has made in the last financial year most of the 1.5 million pounds income since formation. Perhaps that has mostly come from its employer, LC&F. Credit where due, good performance for a start-up company by the officers and staff.

We have all heard of the adage: don’t bite the hand that feeds you. However, you would think the officers and staff of Surge would want to know something about how LC&F, a commercial lender, a very small start-up with debts and no previous track record of SME lending is making the money to pay Surge, company expenses and profits, and the investor interest, especially as that is not clear at all. Yet staff in Surge appear to have no information about the bond related commercial lending business of LC&F, even basics such as how many lending team employees, who they are and where they are based. In fact there are only two employees in LC&F, both students according to LinkedIn.

I can understand Surge Financial not pursuing it, but it should be careful. If LC&F does fail and any wrongdoing or negligence is shown in the receivership process then for sure the daily newspapers will jump on it, as in the case of recent mini-

²¹¹⁸ SUR00144351-0001

²¹¹⁹ SUR00144610-0001

²¹²⁰ SUR00144610-0001

²¹²¹ MDR00129338

bond failures (Secured Energy Bond and Providence Financial), and Surge could end up being a casualty in the media fallout.

If I was an officer in Surge Financial that would make me a little concerned. Why? For the same reason investors and prospective investors in LC&F should be concerned. Everything depends on the success of this vague commercial lending business: company profits, wages, contractor payments, tax payments, investor periodic interest and repayment of capital.

Yet LC&F have not disclosed evidence of the [SME] lending business existence ... Data protection is a lame excuse as data protection laws in the UK only apply to live individuals not to companies.

Many companies like to showcase their trading clients names on their websites, including the company website of one former director of LC&F. You see many invited investor Feefo reviews on the LC&F website. Do you see any names of the hundreds of companies LC&F is lending investor capital to on the LC&F bond website? No, only numbers, how many and how much and not a single loan failure, even though the LC&F loan interest rate as high as 12 to 20 per cent, well above average, would indicate a greater lending risk.

It is true that employees and directors are bound re disclosure by their employment contracts, but we are here talking about disclosure of the basic fundamentals of the very existence of a business which is supposedly the only source of LC&F income and bond interest payments. But what if a company had no choice but to not provide or disclose evidence of a commercial business because the business actually did not exist? The only business that can be really seen to exist in the case of LC&F is the bond marketing business exclusively dealt with by the LC&F website run by the contracted Surge Financial. Millions of pounds of bondholder capital brought in by Surge for LC&F with no proof of what it is actually being used for and no proof where the company earnings and capital interest payments are coming from. ...

If I invest in a company especially a start-up I expect honesty, openness, disclosure, verified trading facts and figures, and so on from the beginning. Like others I get very concerned not just for me but for other potential investors if legitimate questions are answered evasively and there is no proof of trading. If I ask what is one plus one, I expect the answer to be two not three or whatever evasiveness or excuse as an answer. Never rely on just a company statement as to what are its business doings. Never assume it is true. Always seek verification, third party preferably. Due diligence is essential. Otherwise you may be risking all your investment returns and capital on a promise. Investment is not the same thing as gambling” (emphasis added).

M23.2 D7 reviewed this and commented to D5, “*It mentions that there is very little evidence that LCF lends to SMEs as there is no lending site. Not sure if this is an issue or not*”.²¹²²

M23.3 D7 then added, “*It does bring up a good point about the lending site, this is why I have been pushing for WCF to have a strong lending element to their website*”.²¹²³

²¹²² MDR00129284

²¹²³ MDR00129289

M23.4 D5 responded (cc Kerry and Jo Baldock), “How long have I been saying that LCF needed a client site for lending????”²¹²⁴ Jo Baldock replied, “I know! FOREVER!!!”²¹²⁵

M23.5 Kerry reviewed the new MSE post. She commented to D5 and D7:²¹²⁶

“One negative criticism was that Surge could be turning a blind eye to get fees for marketing a bad asset. The criticism is all about speculation that LCF could be a sham, mostly based on the fact that there is no evidence of who LCF lend to which the writers consider to be strange. They don’t like the fact that account managers will not answer even the most basic questions about who many companies have been lent to”.

M23.6 Ashleigh Newman-Jones circulated a link. D5 could not open it and asked, “What is it?”²¹²⁷ Ashleigh explained (cc D5, D7, Kerry and Jo Baldock), “It’s a lending site that Andy half set up but never completed”. Kerry said, “I know we don’t want call to actions that take investors away from the bond website but possibly we need a link to this corporate website in some place? ... Would this tick a box? More importantly, we must have a case study, surely we can press to get just one case study, JRM?”

M23.7 D7 replied, “Yes, I’m sure we can get a case study, I will ask Andy ... A lending site should have one clear message – LCF wants to lend money to businesses, that’s it”.

M23.8 On 14.02.18, D7 emailed D5 (cc Kerry):²¹²⁸

***“Paul, I’ve just been talking to Kerry about how to protect ourselves better following the blog that was on MSE.
We need to create a role for an individual who has the responsibility of ongoing due diligence on our clients – LCF and BB.
The information that we should be collecting is quarterly management accounts, company responses to any bad press or blogs, recording of minutes when meeting our clients etc.. This should be collated and put in a shared management file.
If one of our client bonds fail in the future, we could then show a history of ongoing DD. This won’t help the investors but will help protect our reputation and soften the blow if a bond does fail”*** (emphasis added).

²¹²⁴ MDR00129319

²¹²⁵ MDR00129319

²¹²⁶ MDR00129307

²¹²⁷ MDR00129319

²¹²⁸ SUR00092845-0001

M23.9 D5 replied, “*We already do what we can. For example I have Mark Partridge request accounts, underlying security reports from both bonds. I have been running this for two years*”.²¹²⁹ D5 explained to Kerry that it could be helpful in future to be able to show that they had asked D1 for information about LCF’s position. Accordingly, Kerry emailed D1 (cc D5, D7 and Mark Partridge).²¹³⁰

“Paul is away at the moment but has asked me to contact you ... Can you please confirm when the audited accounts will be ready? In the interim, please can you give us information about current performance and the security, ideally management accounts and a summary of the loan book? We are processing large amounts of investor funds and need to be assured of the current position as a duty of care to your investors” (emphasis added).

M24 Concerns about LCF’s accounts

M24.1 LCF’s audited accounts had again been delayed. On 30.10.17, Mark had told D5 and Steve, “*Accounts were due for filing tomorrow. But on 16th October they changed their accounting reference date by 1 day to 29th April. The change gives them an extra 3 months’ grace. New filing date 16 January 2018*”.²¹³¹

M24.2 On 11.01.18, D5 was told that “*LCF have changed their year-end date again to get another 3 months grace before filing*”.²¹³² On 18.01.18, D7 told a colleague, “*I don’t think we will get the accounts anytime soon, Andy has altered his filing date by 3 months*”.²¹³³ On 13.02.18, Katie Maddock of LCF had told Jo that LCF’s accounts would be signed “*this week*”.²¹³⁴ D5 commented to Jo, “*This week, let’s see*”.

M24.3 On 14.02.18, D1 signed LCF’s annual report and financial statements for the year ended 30.04.17 disclosing a profit of £273,234 for the year and net assets of £298,827 as at 30.04.17.²¹³⁵ LCF was said to have six employees (including directors), up from two in the previous year. It had a wages and salaries bill of £87,869 and had paid a sum of £8,790 in respect of social security, with directors’ remuneration being nil.

²¹²⁹ SUR00092850-0001

²¹³⁰ MDR00129373

²¹³¹ SUR00142491-0001

²¹³² D7D9-0007083

²¹³³ SUR00090663-0001

²¹³⁴ SUR00092670-0001

²¹³⁵ MDR00004384; MDR00130367; SUR00144675-0001

- M24.4 D1 asserted in the strategic report that LCF had a total of 11 corporate borrowers (up from five in the previous year) and held security worth £284,725,329 as at 30.04.17. The auditor’s statement made clear that the strategic report had not been audited.
- M24.5 D7 emailed D5 and Kerry (cc Jo Baldock) on 19.02.18 to say, *“I have just spoken with Andy, he said the LCF accounts have now been fully audited and are available at companies house. I have checked, they are not on there at the moment. He said the revised security figure is 287 million with a loan to value percentage of 21. I asked about a case study for the website and he said he is struggling to find a suitable example”*.²¹³⁶
- M24.6 Jo Baldock emailed sales@lcaf.co.uk to say, *“We have now had confirmation from Andy that the current security figure is £287m. The accounts have now been signed off and submitted to companies house they should be available to view in the next 48 hours”*.²¹³⁷
- M24.7 D5 and Kerry each asked Mark Partridge to *“take a look at LCF’s accounts”*.²¹³⁸
- M24.8 Jo Baldock emailed Mark (cc D5) to draw his attention to five items that she thought would concern prospective bondholders.²¹³⁹
- M24.9 Jo Baldock had spotted major inconsistencies in D1’s assertions.
- M24.10 For example, D1 had been saying throughout April and May 2017 that LCF had security over assets worth £215 million (and, indeed, LCF had advertised the figure of £215 million in *The Times*, *The Telegraph* and *The Financial Times*).²¹⁴⁰
- M24.11 Now, however, D1 was saying in the accounts that LCF had held security over assets worth £284,725,329 as at 30.04.17.

²¹³⁶ SUR00093302-0001

²¹³⁷ MDR00130309

²¹³⁸ SUR00093339-0001; MDR00224100;
SUR00144674-0001

²¹³⁹ MDR00130465

²¹⁴⁰ MDR00082474; MDR00085731; MDR00085733;
MDR00085742; MDR00085746; MDR00085766;
MDR00085773; MDR00085774; MDR00085780;
MDR00085781; MDR00085804; MDR00085807;
MDR00087050; MDR00087051; MDR00087052;
SUR00073529-0001; SUR00073530-0001

M24.12 Jo drew this to the attention of Mark and D5, saying, “*The asset figure quoted was only confirmed to us the recent up to date figure yesterday by Andy , back in April 2017 we were quoting an asset figure of £215m as confirmed by Andy at the time?*”²¹⁴¹

M24.13 Jo also knew that D1 confirmed on numerous occasions that LCF had a large number of borrowers. Among other things, D1 had said, “*As at the beginning of May 2016 LCF has made 121 loans ... to all sectors*” with an “*average loan size of c.£75,000*”.²¹⁴²

M24.14 D1 had also confirmed to D7 on 03.08.16 that there were “*around 120 loans currently issued*”.²¹⁴³ And D1 had apparently told D6’s sales people in or around June 2017 that LCF was lending to around 150 companies.²¹⁴⁴

M24.15 Now, however, D1 was asserting there that had been “*a total of 11 corporate borrowers*” in the year ended 30.04.17 and only five in the previous year.

M24.16 Jo drew this to the attention of Mark and D5, saying, “*Page 1 states that LCF only lent to 11 companies , we are quoting many more than this to our clients (100’s) – is there any further explanation to this?*”

M24.17 Jo also pointed out, “*The accounts quote there are 6 employees with salaries of £87k but the directors took no funds – clients will ask how the directors made an income*”.

M24.18 Other sales people working for D6 became concerned about the apparent uncertainty concerning the basic facts of LCF’s lending and security.

M24.19 Aaron Phillips collated the sales team’s questions, including: “*How many companies do we currently lend to? We were told ~150 companies in June 2017*”; “*Why would a company borrow from LC&F at our high rates?*”; “*with less active loans over longer periods of time, and a fee paid to surge, how do LC&F make a profit after paying high interest rates to bondholders?*”²¹⁴⁵

²¹⁴¹ MDR00130465
²¹⁴² MDR00041314; MDR00041257; SUR00021583 - 0001

²¹⁴³ MDR00052599
²¹⁴⁴ SUR00144764-0001
²¹⁴⁵ SUR00144764-0001

M24.20 He sent these to Jo Baldock, who sent them to Kerry.²¹⁴⁶ On 21.02.18, Kerry sent an email to D1 raising these questions.²¹⁴⁷ Later, on 07.03.19, Kerry said that she had become aware of “*key inconsistencies from the 2016 communication and the 2018 audit*” and that she had raised these inconsistencies in her email to D1 on 21.02.18.²¹⁴⁸ However, in Kerry’s words, D1 “*didn’t reply, he was always reluctant to put anything in writing*”.²¹⁴⁹ On reflection, D1’s conduct “*seems evasive in the extreme*”.²¹⁵⁰

M25 A “believability issue” about LCF’s security

M25.1 In the absence of a written reply from D1 in respect of these questions and concerns, Kerry and D7 spoke to him on 22.02.18.²¹⁵¹ Kerry and D7 seem to have made this call from D6’s offices: it was recorded; and there is a transcript.

M25.2 As regards the amount of the loans and the number of borrowers, D1 told them, “*Our loan book is 117 million off seven companies*”.²¹⁵²

M25.3 As regards the value of the security held by LCF in respect of these loans, D1 said:²¹⁵³

“ANDY THOMSON: The security – I’ve got a bit of an issue with the security and it – it’s a believability issue. So if I – if I actually tell you, but don’t repeat it----

JOHN RUSSELL-MURPHY: Yeah.

ANDY THOMSON: -- the security – the valuation of the security that we hold is a billion pounds.

JOHN RUSSELL-MURPHY: Is a billion?

ANDY THOMSON: And going to take that – yeah.

JOHN RUSSELL-MURPHY: Okay.

ANDY THOMSON: And it takes that loan to value----

JOHN RUSSELL-MURPHY: What, 11 per cent.

ANDY THOMSON: -- down to----

JOHN RUSSELL-MURPHY: 11.7.

ANDY THOMSON: -- it – it’s not a lot. So then you’ve – then you’ve got – then – then you’ve got that – “that’s too good to be true” questions. So----

JOHN RUSSELL-MURPHY: Well, yeah, that is from----

ANDY THOMSON: -- so I’m trying to----

JOHN RUSSELL-MURPHY: Yeah.

²¹⁴⁶ SUR00144763-0001

²¹⁴⁷ MDR00131073; MDR00131077

²¹⁴⁸ SUR00154633-0001

²¹⁴⁹ SUR00154633-0001

²¹⁵⁰ SUR00154633-0001

²¹⁵¹ SUR00125394-0001

²¹⁵² SUR00125394-0001 page 28

²¹⁵³ SUR00125394-0001 pages 20-21

ANDY THOMSON: -- I'm trying to – to – to structure – restructure things, because I think in – in the – in the mid to high thirties is a nice comfortable level.

KERRY VENN: Yeah.

ANDY THOMSON: And it's----

JOHN RUSSELL-MURPHY: Yeah, definitely.

ANDY THOMSON: -- nice and believable.

JOHN RUSSELL-MURPHY: It's – certainly.

ANDY THOMSON: You turn round a 117 million loan book and say our loan to value is 10 per cent, everyone's going to go, "Fuck off".

M25.4 On the day after the call, Kerry emailed Mark Partridge (cc D5 and D7) to say:²¹⁵⁴

"Just to keep you in the loop, we had a call with Andy yesterday where we quizzed him ... He is going to put this in writing but on the phone he said: Current loans out: £117m; Security: £1b (yes billion, not a typo)" (emphasis added).

M25.5 This information was soon contradicted. On 20.03.18, Kobus sent an email to D7, Jo Baldock and Kerry Graham (cc D1), the attachment to which stated, "*The secured asset values as at the end February 2018 was c.£300m*".²¹⁵⁵

M26 Concerns about LCF's solvency

M26.1 The document circulated by Kobus on 20.03.18 also stated, "*We charge 1.75% on top of the bond interests and a 2% facilitation fee*".²¹⁵⁶

M26.2 This must have been another major cause for concern. First, it was inconsistent with LCF's marketing materials, which said that LCF charged interest of 12% to 20% per annum on loans. Secondly, if true, it meant that LCF was inevitably insolvent.

M26.3 Take a simple example of a bondholder investing £100,000 with LCF for three years at 8% per annum. 25% is paid to Surge immediately. The remaining £75,000 is lent to a borrower for (say) three years. According to Kobus, LCF charges a facilitation fee of £1,500. The borrower also pays interest of 9.75% per annum in the total sum of almost £22,000 over the term of the loan. On maturity, the loan is repaid. LCF has now received

²¹⁵⁴ SUR00093580-0001

²¹⁵⁵ MDR00136622; MDR00136624

²¹⁵⁶ MDR00136622; MDR00136624

a total of £98,500 from the borrower. But, at the same time, LCF is liable to pay £124,000 to the bondholder in principal and interest, leaving it £25,500 short.

M26.4 The only way in which LCF's business model could have made sense even in theory would have been for LCF to require the borrowers to pay D6's commission as well. But that would have resulted in a total one-off fee of 35.3% of the amount of the loan, in addition to interest on the loan. And there had been nothing in any of LCF's materials or in D1's explanations or elsewhere to suggest that this is what was happening.

M26.5 After LCF had collapsed and gone into administration, Kerry stated that she had been completely unaware that LCF was in fact requiring LCF's borrowers to pay D6's commissions.²¹⁵⁷ But if she thought that LCF's borrowers were *not* paying D6's commissions, she must have thought that LCF was inevitably doomed to insolvency.

M26.6 An exchange between Kerry and D7 in mid-2018 suggests that the prospect of LCF's insolvency loomed large in their minds in this period.

M26.7 On 07.06.18, Kerry told D7 that a sale of D6 to D4 for £30 million was "*currently floating around as a good plan*".²¹⁵⁸ She said that it would be good to sell D6 before regulation prevented LCF from paying such high commissions to D6. She added, "***If they go bust we want to be well out of it. Leave now on a high. Put the money into all of the other businesses and grow them. The staff stay on and carry on as usual. They aren't exposed to the risks that directors are so they will be fine***" (emphasis added).²¹⁵⁹

M27 LCF's claims were internally inconsistent

M27.1 As explained above, a post on the MSE forum had pointed out that interest rates being charged by banks were substantially lower than the rates mentioned in LCF's marketing materials and had asked why any companies would borrow from LCF in those circumstances.²¹⁶⁰ D6's sales people had asked the same question. A prospective bondholder, [REDACTED], also raised this with one of D6's sales people, Dan Blunden.²¹⁶¹

²¹⁵⁷ SUR00122130-0001

²¹⁵⁸ D7D9-0007347; D7D9-0010490

²¹⁵⁹ D7D9-0007347; D7D9-0010490

²¹⁶⁰ MDR00093505

²¹⁶¹ MDR00145520

“My query is how LCF would remain to be competitive when other funding companies are offering from 3% to 5% lending rate to their borrowers when LCF is asking from 12% to 20% lending rate from their clients which is 3 times higher than the market rate and yet LCF doesn’t need to advertise which is a common practice even for a well know funding firm or a commercial bank”.

M27.2 Dan Blunden was unable to answer this question, so ██████ sent it to Katie Maddock of LCF.²¹⁶² She replied (cc Dan Blunden and Jo Baldock) to say, *“I believe that the rates of other funding companies that you are referring to are more mainstream banking and if a UK business is able to secure lending from them then they are not a target client of ours”.*²¹⁶³ ██████ replied, *“When you said those companies are not accepting by the mainstream financiers will be your company’s clients, so are referring to those companies which having bad credit records and for that reason these companies or individuals are will to pay much higher lending rate to LCF in order to get funding?”*²¹⁶⁴

M27.3 ██████’s questions drew attention to another peculiar inconsistency at the heart of LCF’s claims. If the only companies prepared to borrow at the high rates charged by LCF were companies who were unable to access mainstream funding at far lower rates, then, by definition, those companies must have been bad credit risks, with a high risk of default. Yet, at the same time, LCF was claiming that it had never any experienced any defaults. D1 had said repeatedly that no borrower had ever defaulted.²¹⁶⁵

M27.4 How could it be that the only likely candidates for loans from LCF would be bad credit risks, and yet they never defaulted in the performance of their obligations to LCF?

M27.5 The inconsistencies and illogicalities in LCF’s position were obvious, and the lack of any reliable information remained concerning.

M27.6 The experience of dealing with LCF was markedly different from D6’s dealings with its other client, Blackmore. On 29.06.18, Blackmore provided an update in respect of their financial affairs. Kerry commented to D7, *“the transparency they grant us is fantastic. LCF won’t even say who the 11 borrowers are and Blackmore let us see their bank*

²¹⁶² MDR00145520

²¹⁶³ MDR00145520

²¹⁶⁴ MDR00145596

²¹⁶⁵ SUR00131168-0001; SUR00007459-0001;
MDR00052599; MDR00138426

*account and are happy to breakdown all of their costs for us. This is one reason why I feel very keen to support Blackmore”.*²¹⁶⁶

M27.7 D7 replied, “*You’re right, they are very transparent compared to LCF*”.²¹⁶⁷

M27.8 Kerry also provided D5 and D7 with information about a lender called Hadrian’s Wall Capital, explaining that they “*show transaction examples (without naming clients)*”.²¹⁶⁸
The question was obvious. Why was LCF was so unwilling to do the same?

M28 LCF 2, part 2

M28.1 The concerns about the sustainability of LCF drove the continued work on LCF 2, which was going to be called Westminster Corporate Finance plc.

M28.2 On 19.07.18, D7 emailed D5 and Kerry (with the subject, “*Update from SHK and Elten*”) saying, “*They are keen to get WCF up and running asap*”.²¹⁶⁹

M28.3 D7 emailed Jo Baldock and D5 on 14.08.18 to say:

“WCF needs to issue a loan to SHK/SG prior to going live and take on some decent security. This way the AM’s can talk about XXXX amount of security protecting the investors” (emphasis added).²¹⁷⁰

M28.4 Subsequently, D7 became concerned about the links between LCF and Westminster Corporate Finance plc (including the appointment of Ian Sands as a director of the latter), which (in his eyes) undermined the whole project.

M28.5 D7 drew this concern to D1’s attention on 29.08.18,²¹⁷¹ saying:

“The original reason for setting WCF up was to have a back up to LCF in the event of the company having any type of fund raising issue in the future. The structure of LCF and the business model links the two companies too closely together” (emphasis added).

²¹⁶⁶ SUR00102482-0001

²¹⁶⁷ SUR00102483-0001

²¹⁶⁸ D7D9-0007450

²¹⁶⁹ D7D9-0007523

²¹⁷⁰ SUR00106992-0001

²¹⁷¹ SUR00108013-0001

M28.6 D7 also explained this concern to D5 and Kerry on 29.08.18:²¹⁷²

*“The original reason for setting up WCF was to have a back up to LCF and a second pot for collecting funds ... I have sent an email to Andy and Spencer with my concerns ...
The main problem is WCF is pretty much an exact copy of LCF ... Ian Sands has 17 appointments with other companies which are mainly linked to LCF and have borrowed money from them – Lakeview, Waterside, Prime Resort development etc. If LCF was to run into problems in the future, WCF is so closely linked I can’t see how it will not be effected” (emphasis added).*

M29 LCF’s collapse

M29.1 As explained above, the FCA raided LCF’s premises on 10.12.18.²¹⁷³

M29.2 D5 heard the news and sent a message to Kerry on the same day, asking, “*What do you think has happened?*”²¹⁷⁴

M29.3 She replied, “*If I was the FCA I would have a massive issue with only 11 borrowing companies ... LCF is suspicious because only 11 borrowing companies doesn’t look good*” (emphasis added).²¹⁷⁵

M29.4 On 12.12.18, Kerry sent a text message to D5, saying, “*No more business with people we don’t 100% trust or like*”.²¹⁷⁶ D5 said, “*100% agreed*”.

M29.5 Kerry’s lack of trust in D1 was longstanding: as set out above, she had previously described LCF as a “*company that we don’t trust*”.²¹⁷⁷

M29.6 D1 had provided her with many good reasons for not trusting LCF. D1 lied repeatedly and had been caught out. He had failed to answer questions. When he had provided information, it contradicted other things that he had said. He had been extremely evasive.

²¹⁷² SUR00149321-0001

²¹⁷³ MDR00001606

²¹⁷⁴ SUR00115269-0001

²¹⁷⁵ SUR00115269-0001

²¹⁷⁶ SUR00152773-0001

²¹⁷⁷ SUR00084244-0001

M29.7 D4's involvement in LCF also gave clear reasons for a lack of trust. He was the puppet-master who hid in the shadows, controlling LCF whilst also being the principal beneficiary of the entire operation: Kerry knew that 100% of LCF's lending was "to Spencer related businesses".²¹⁷⁸ D5 knew this too. And as set out above, D5 and Steve Jones were aware that LCF was making "payments to spencer etc".²¹⁷⁹

M30 The proposed Isle of Wight deal

M30.1 A further topic which casts light on D5's knowledge of the use of monies from bondholders relates to a proposed deal in respect of a property on the Isle of Wight. In summary, D5 and D7 were both embroiled in a plan to buy a property for £2.5 million before selling it to Prime RDL for £5 million, giving rise to a profit of £2.5 million, which would then be split between D4 on the one hand and D5 and D7 on the other. D5 and D7 were both aware that Prime RDL would borrow the purchase monies of £5 million from LCF. In other words, D5 and D7 would be receiving £1.25 million of bondholder monies from the immediate re-sale of the property at an inflated price.

M30.2 In around July 2018, View Property Group Limited ("View Property"), a company owned by D5, had an opportunity to buy a property on the Isle of Wight.²¹⁸⁰ The property was at Brading Marsh and planning permission for 60 lodges was in the pipeline.

M30.3 View Property decided not to pursue this deal but D7 took it to D4.²¹⁸¹ D4 proposed to buy the property before re-selling it at a profit to Prime RDL in late August 2018.²¹⁸²

M30.4 D4 agreed to split the profit with D5 and D7. D5 was excited: he thought that the profits from the Isle of Wight deal could enable him to buy a helicopter.²¹⁸³

M30.5 The property was held by a company, IOW Eco Reserve Limited ("IOW Eco"); the owners of IOW Eco were prepared to sell the company for £2.5 million.²¹⁸⁴

²¹⁷⁸ SUR00131168-0001

²¹⁷⁹ SUR00032895-0001

²¹⁸⁰ SUR00119305-0001

²¹⁸¹ SUR00119305-0001

²¹⁸² D7D9-0007627

²¹⁸³ SUR00119305-0001; D7D9-0007753

²¹⁸⁴ D7D9-0007646; D7D9-0007663; D7D9-0007645; D7D9-0007796

- M30.6 The plan was to buy IOW Eco in the name of View Property SPV5 Limited (“View SPV5”) and then to sell View SPV5 to a company owned by Prime RDL at a profit.²¹⁸⁵
- M30.7 The shares in View SPV5 were transferred to D3 (50 shares), D5 (25 shares) and D7 (25 shares) to facilitate the profit share (with D3 holding his shares on trust for D4).
- M30.8 On 10.10.18, D7 messaged D5 on WhatsApp to report that the sale price to Prime RDL would be £5 million,²¹⁸⁶ giving rise to a profit of £2.5 million, which would be divided between D4 on the one hand and D5/D7 on the other.
- M30.9 D5 replied immediately to say, “YES ... YES!!!!”
- M30.10 LCF was going to be lending the purchase monies to Prime RDL.²¹⁸⁷ D7 commented to D5 that they would have to “give LCF a big push” to raise the monies.²¹⁸⁸
- M30.11 D5 made clear that the Isle of Wight deal was a priority.²¹⁸⁹ Towards the end of October 2018, D5 made clear that if LCF’s fundraising did not pick up, D6 would need to move LCF to the top of its Best Interest Rates website in place of Blackmore for a few days (although nothing was to be said about this to Pat McCreesh of Blackmore).²¹⁹⁰
- M30.12 In late November, D7 endorsed a suggestion from Jo Baldock that LCF be “switched back to the top of BIR until the end of November”.²¹⁹¹
- M30.13 The deal was proceeding towards an exchange of contracts in December 2018.²¹⁹²
- M30.14 However, the intervention of the FCA and the subsequent entry of LCF into administration meant that LCF could no longer provide the purchase monies to Prime RDL. The collapse of LCF also had a dire effect on the finances of D5 and D7, who were desperate for the deal to proceed so they could obtain their share of the profit.²¹⁹³

²¹⁸⁵ SUR00114868-0001

²¹⁸⁶ D7D9-0007803

²¹⁸⁷ MDR00192564

²¹⁸⁸ D7D9-0007803

²¹⁸⁹ SUR00114440-0001; D7D9-0007753;

SUR00112146-0001

²¹⁹⁰ SUR00112146-0001

²¹⁹¹ D7D9-0008032

²¹⁹² D7D9-0008034; SUR00114440-0001; D7D9-0008061; MDR00193482; D7D9-0008137; D7D9-0008138; MDR00196065; MDR00195797; MDR00196039; MDR00205268; MDR00208134; MDR00214400; MDR00215272

²¹⁹³ SUR00117270-0001; D7D9-0008736; D7D9-0008767; D7D9-0008849; SUR117926-0001; SUR117974-0001; SUR118045-0001; SUR118216-

M30.15 Terry Mitchell initially hoped that Prime RDL would be able to raise the funds elsewhere so that the deal could proceed.²¹⁹⁴ However, the deal never completed.²¹⁹⁵

M30.16 At some point in March 2019, having realised that the Isle of Wight deal was dead, D5 sought to re-write history, telling the head of compliance at Northern Provident that he had withdrawn on discovering that “*the proposed buyer was a borrower of LCF*”.²¹⁹⁶

0001; D7D9-0009048; SUR118626-0001; D7D9-0009127
²¹⁹⁴ D7D9-0008736; D7D9-0009048
²¹⁹⁵ D7D9-0008887; D7D9-0009027; D7D9-0009066;
D7D9-0009132; D7D9-0009665; SUR00119305-0001; MDR00198766

²¹⁹⁶ SUR00119759-0001; SUR00119305-0001;
SUR00117270-0001

N. PAYMENTS BY D6 TO D1 AND D4

N1 Introduction

N1.1 D5 and D6 were also very closely involved in the diversion of bondholder monies to D1 and D4. Initially, D6 paid 0.5% of bondholder monies to D1. This was replaced by an arrangement involving the payment of 1% of bondholder monies to D4. These payments were routed through D6 and were disguised by the use of false invoices.

N2 Payments by D6 to D1

N2.1 On 14.06.16, D1 sent an email to D5 saying, “*As agreed I’ve raised an invoice for professional fees for May, if you need any more detail on it just let me know*”.²¹⁹⁷

N2.2 The attachment was an invoice (number #0001) from Media GPS to D6 for “*professional services*” in the sum of £8,909.48.²¹⁹⁸

N2.3 The significance of the sum £8,909.48 is clear and would have been understood by D5. During May 2016, LCF had received a total sum of £1,781,896 from new bondholders.²¹⁹⁹ Half of one percent of £1,781,896 is £8,909.48.

N2.4 Thus, D1 was asking D6 to pay 0.5% of LCF’s receipts from new bondholders in the previous month to D1’s company, Media GPS.

N2.5 D5 forwarded the invoice to Steve Jones.²²⁰⁰

N2.6 On the same day, D6 paid £8,909.48 to Media GPS.²²⁰¹

²¹⁹⁷ SUR00026165-0001

²¹⁹⁸ SUR00026166-0001

²¹⁹⁹ SUR00029112-0001

²²⁰⁰ SUR00026261-0001

²²⁰¹ MDR00221776 page 15; SUR00056792-0001 page 2

N2.7 On 04.07.16, D1 provided D5 with an invoice (invoice #0002) from Media GPS to D6 for “*professional services*” in the sum of £13,100.²²⁰² D1 explained:²²⁰³

“I’ve attached the Media GPS invoice for June and have based it on the funds through the account and not on the cleared figure from the deals spreadsheet as this better reflects the actual position”.

N2.8 D1 sent a further email to D5 to confirm:²²⁰⁴

“I based it on cash through the account for the month so it mirrors what we pay in comms for the prior month, this way I’m invoicing for what has actually been paid for the prior month and will only raise an invoice at the beginning of each month. From an accounting point it should work better for your books as it balances against the comms you received the prior month”.

N2.9 In a subsequent email, D1 explained to D5, “*I’ll submit one at the beginning of each month to capture what was paid the previous month, so after this one the next will be in the first week in August and then monthly thereafter*”.²²⁰⁵

N2.10 D5 sent the invoice to Steve Jones for payment.²²⁰⁶

N2.11 D6 paid £13,100 to Media GPS.²²⁰⁷ Steve sent a text message to D5 stating, “*Andy’s invoice has been paid*”.²²⁰⁸

N2.12 Media GPS then paid £13,000 to D1.²²⁰⁹

N2.13 On 08.08.16, D1 provided D5 with an invoice (invoice #0003) from Media GPS to D6 for “*professional services*” in the sum of £18,109.²²¹⁰ D5 forwarded it to Steve.²²¹¹

N2.14 D6 paid £18,109 to Media GPS.²²¹² D5 told D1 that this payment had been made.²²¹³ Media GPS then paid a total of £18,000 to D1.²²¹⁴

²²⁰² SUR00029677-0001; SUR00029678-0001

²²⁰³ SUR00029677-0001

²²⁰⁴ SUR00029693-0001

²²⁰⁵ SUR00029732-0001

²²⁰⁶ SUR00029734-0001; SUR00029800-0001;
SUR00029801-0001; SUR00029802-0001

²²⁰⁷ MDR00221776 page 38

²²⁰⁸ SUR00029823-0001

²²⁰⁹ MDR00088779 page 21; MDR00220286 page 226

²²¹⁰ MDR00053077; SUR00134870-0001;

SUR00134872-0001; SUR00134876-0001;
SUR00134877-0001

²²¹¹ SUR00134873-0001; SUR00134874-0001;
SUR00134876-0001; SUR00134877-0001

²²¹² MDR00221776 page 73

²²¹³ SUR00134891-0001; SUR00134892-0001;
SUR00134894-0001

²²¹⁴ MDR00088779 page 27; MDR00220286 page 232

- N2.15 On 05.09.16, D1 provided D5 with an invoice (invoice #0004) from Media GPS to D6 for “*professional services*” in the sum of £21,078.²²¹⁵ D5 forwarded it to Steve.²²¹⁶ D6 paid £21,078 to Media GPS.²²¹⁷ Media GPS then paid £21,000 to D1.²²¹⁸
- N2.16 On 04.10.16, D1 provided D5 with an invoice (invoice #0005) from Media GPS to D6 for “*professional services*” in the sum of £17,521.²²¹⁹ D5 forwarded it to Steve.²²²⁰ D6 paid £17,521 to Media GPS.²²²¹ Media GPS then paid £12,500 to D1.²²²²
- N2.17 On 02.11.16, D1 provided D5 with an invoice (invoice #0006) from Media GPS to D6 for “*professional services*” in the sum of £21,011.²²²³ D5 forwarded it to Steve.²²²⁴ D6 paid £21,011 to Media GPS.²²²⁵ Media GPS then paid £16,000 to D1.²²²⁶
- N2.18 On 05.12.16, D1 provided D5 with an invoice (invoice #0007) from Media GPS to D6 for “*professional services*” in the sum of £23,494.²²²⁷ D5 sent it to Steve, “*Check and pay please*”.²²²⁸ D6 paid £23,494 to Media GPS.²²²⁹ Media GPS paid £18,500 to D1.²²³⁰
- N2.19 On 09.01.17, D1 provided D5 with an invoice (invoice #0008) from Media GPS to D6 for “*professional services*” in the sum of £12,778.²²³¹ D5 forwarded it to Steve.²²³² D6 paid £12,778 to Media GPS.²²³³
- N2.20 On 07.02.17, D1 provided D5 with an invoice (invoice #0009) from Media GPS to D6 for “*professional services*” in the sum of £29,719.²²³⁴
- N2.21 The covering email confirmed that D1 was requiring D6 to pay 0.5% of LCF’s receipts from new bondholders to Media GPS: D1 said in the email, “*Record collections month*

²²¹⁵ MDR00056834; SUR00041473-0001
²²¹⁶ SUR00041493-0001
²²¹⁷ MDR00221776 page 102
²²¹⁸ MDR00088777 page 3; MDR00220286 page 239
²²¹⁹ MDR00060434; SUR00047035-0001
²²²⁰ SUR00047044-0001
²²²¹ MDR00221776 page 131
²²²² MDR00088777 page 8; MDR00220286 page 244
²²²³ MDR00063909; SUR00052383-0001;
SUR00052384-0001
²²²⁴ SUR00052385-0001; SUR00052386-0001
²²²⁵ MDR00221776 page 162

²²²⁶ MDR00088777 page 12; MDR00220286 page 248
²²²⁷ MDR00067320; SUR00056698-0001;
SUR00056699-0001
²²²⁸ SUR00056700-0001
²²²⁹ MDR00221777 page 20
²²³⁰ MDR00088777 page 20; MDR00220286 page 256
²²³¹ MDR00070417; SUR00059936-0001;
SUR00059937-0001
²²³² SUR00059938-0001
²²³³ MDR00221777 page 47
²²³⁴ MDR00073939; SUR00063736-0001;
SUR00063737-0001

- last month with £5.9m cash coming through the bank, fantastic start to the year*".²²³⁵ D5 forwarded this to Steve for payment.²²³⁶ (Steve remarked, "*We are mad paying him*".)
- N2.22 D6 paid £29,719 to Media GPS.²²³⁷ Media GPS paid a total of £20,000 to D1 on 07.02.17²²³⁸ with a further £10,000 on 09.02.17.²²³⁹
- N2.23 On 06.03.17, D1 provided D5 with an invoice (invoice #0010) from Media GPS to D6 for "*professional services*" in the sum of £30,789.²²⁴⁰ D5 forwarded it to Steve.²²⁴¹ D6 paid £30,789 to Media GPS.²²⁴² Media GPS then paid a total of £31,000 to D1.²²⁴³
- N2.24 On 03.04.17, D1 provided D5 with an invoice (invoice #0010 in typescript, but later marked #0011 in manuscript) from Media GPS to D6 for "*professional services*" in the sum of £35,930.²²⁴⁴ The covering email again confirmed that D1 was requiring D6 to pay 0.5% of LCF's receipts from new bondholders to Media GPS: D1 explained in the email, "*March was a record month seeing £7,186,000 go through the account, a stunning performance*".²²⁴⁵ D5 sent it to Steve.²²⁴⁶ On 05.04.17, D6 paid £35,930 to Media GPS.²²⁴⁷ Media GPS paid a total of £36,000 to D1.²²⁴⁸
- N2.25 On 08.05.17, D1 provided D5 with an invoice (invoice #0010 in typescript, but later marked #0012 in manuscript) from Media GPS to D6 for "*professional services*" in the sum of £26,736.²²⁴⁹ D5 sent it to Steve.²²⁵⁰ D6 paid £26,736 to Media GPS.²²⁵¹
- N2.26 On 07.06.17, D1 provided D5 with an invoice (invoice #0013) from Media GPS to D6 for "*professional services*" in the sum of £28,349.²²⁵² D5 forwarded it to Steve.²²⁵³ D6 paid £28,349 to Media GPS.²²⁵⁴

²²³⁵ SUR00063736-0001

²²³⁶ SUR00063738-0001; SUR00063744-0001;
SUR00063747-0001; SUR00063752-0001;
SUR00063852-0001

²²³⁷ MDR00221777 page 85

²²³⁸ MDR00088777 page 33; MDR00220286 page 268

²²³⁹ MDR00088777 page 33; MDR00220286 page 268

²²⁴⁰ MDR00077672; SUR00067183-0001;
SUR00067184 -0001

²²⁴¹ SUR00067351-0001

²²⁴² MDR00221777 page 119

²²⁴³ MDR00088777 page 38; D1-0003802 page 1;
MDR00220286 page 273

²²⁴⁴ MDR00082482; SUR00070309-0001;
SUR00070310-0001; MDR00222797

²²⁴⁵ SUR00070309-0001

²²⁴⁶ SUR00070516-0001; SUR00070517-0001

²²⁴⁷ MDR00221777 page 157

²²⁴⁸ MDR00088777 page 40; MDR00220286 page 279

²²⁴⁹ MDR00086469; SUR00073142-0001;

SUR00073143-0001; SUR00123886-0001

²²⁵⁰ SUR00073153-0001; SUR00073154-0001

²²⁵¹ MDR00221778 page 14

²²⁵² MDR00089774; SUR00076640-0001;

SUR00076641-0001

²²⁵³ SUR00076642-0001; SUR00076643-0001

²²⁵⁴ MDR00221778 page 54

- N2.27 On 10.07.17, D1 provided D5 with an invoice (invoice #00113 in typescript but later marked #0014 in manuscript) from Media GPS to D6 for “*professional services*” in the sum of £25,288.²²⁵⁵ D5 sent it to Steve,²²⁵⁶ who asked, “*Pay immediately I presume?*” D5 replied in the affirmative.²²⁵⁷ D6 paid £25,288 to Media GPS.²²⁵⁸ On 11.07.17, Media GPS paid a total of £24,000 to D1.²²⁵⁹
- N2.28 On 01.08.17, D1 provided D5 with an invoice (invoice #00115) from Media GPS to D6 for “*professional services*” in the sum of £48,668.²²⁶⁰
- N2.29 His covering email again confirmed that D1 was still requiring D6 to pay 0.5% of LCF’s receipts from new bondholders to Media GPS: D1 said in the email, “*great month last month, with the June deals that completed in July the collection through the account smashed through the £9m mark!!!*”²²⁶¹ D5 forwarded this to Steve.²²⁶² D6 paid £48,668 to Media GPS.²²⁶³ Media GPS then paid a total of £48,000 to D1.²²⁶⁴
- N2.30 On 06.09.17, D1 provided D5 with an invoice (invoice #00116) from Media GPS to D6 for “*professional services*” in the sum of £41,902.²²⁶⁵
- N2.31 D5 forwarded it to Steve, adding, “*Pay and confirm when done please*”.²²⁶⁶ D6 paid £41,902 to Media GPS.²²⁶⁷ Media GPS then paid a total of £40,500 to D1.²²⁶⁸
- N2.32 On 09.10.17, D1 provided D5 with an invoice (invoice #00117) from Media GPS to D6 for “*professional services*” in the sum of £38,870.²²⁶⁹
- N2.33 This was not paid. The arrangement involving the payment of 0.5% of bondholder monies to D1 was to be replaced by a new arrangement involving the payment of 1% of bondholder monies to D4, as explained below.

²²⁵⁵ MDR00093298; SUR00079245-0001;
SUR00079246-0001; MDR00222798

²²⁵⁶ SUR00079248-0001

²²⁵⁷ SUR00079256-0001

²²⁵⁸ MDR00221778 page 130

²²⁵⁹ MDR00220286 page 296

²²⁶⁰ MDR00095856; SUR00080418-0001;
SUR00080419-0001; SUR00059868-0001

²²⁶¹ SUR00080418-0001

²²⁶² SUR00080435-0001; SUR00080436-0001

²²⁶³ MDR00221778 page 181

²²⁶⁴ MDR00220286 page 300

²²⁶⁵ MDR00100225; SUR00082797-0001;
SUR00082798-0001

²²⁶⁶ SUR00082799-0001

²²⁶⁷ MDR00221779 page 32

²²⁶⁸ MDR00220286 page 311

²²⁶⁹ MDR00106006; SUR00084335-0001;
SUR00084336-0001

- N2.34 Before addressing D6's payment of 1% to D4, however, it is necessary to mention what appears to be the origin of the arrangement for the payment of 0.5% to D1.
- N2.35 D6's other client was Blackmore, which was run by a man called Pat McCreesh. Blackmore issued bonds to raise monies for property development projects. D6 sold Blackmore's bonds to members of the public.
- N2.36 Blackmore was never very successful, compared to LCF. Sums raised by D6 selling LCF's bonds dwarfed the sums raised by D6 selling Blackmore's bonds.
- N2.37 On 12.04.16, on a visit to a strip club in London, D5 and D7 introduced D1 to Pat McCreesh. Later that evening, D5 commented, "*On my way home. Train to Gatwick. Left pat, JRM and Andy T in platinum lace. I swerved the beers and am going home*".²²⁷⁰
- N2.38 D1 and Pat McCreesh discussed the possibility of a joint venture to launch a bond for a pension company called Westbury.²²⁷¹ D5 suggested that D1 should work on the new bond in a consultancy role, paid by D6, and that D6 should sell the new bond.²²⁷² Ultimately, however, the proposed joint bond was never launched.
- N2.39 In the meantime, Pat McCreesh was hoping that LCF might be able to help to provide £1 million per month in funding for some other projects.²²⁷³
- N2.40 On 24.05.16, Pat explained to D5 that he was going to make a proposal to D1 involving 6.5% per annum to LCF and "*0.5% to him*".²²⁷⁴ D5 said that this looked good.²²⁷⁵
- N2.41 Shortly afterwards, Pat emailed D1 (bcc D5) to set out his proposal for LCF to provide £1 million per month to Blackmore at a rate of 6.5% per annum to LCF with "*0.5% comm to you*" – i.e. a commission of 0.5% for D1 on each of the loans to Blackmore.²²⁷⁶
- N2.42 D5 sent this to D7, Steve and Kerry.²²⁷⁷

²²⁷⁰ SUR00014800-0001
²²⁷¹ SUR00015077-0001; SUR00015099-0001;
 SUR00015165-0001; SUR00015167-0001;
 SUR00015862-0001; SUR00016009-0001;
 SUR00016338-0001; SUR00016345-0001
²²⁷² MDR00041828; SUR00022431-0001

²²⁷³ MDR00041832
²²⁷⁴ SUR00022461-0001
²²⁷⁵ SUR00022465-0001
²²⁷⁶ SUR00022478-0001
²²⁷⁷ SUR00022488-0001

- N2.43 Kerry thought that interest of 6.5% would make it uneconomic: “6.5% p.a. on 2 year money? We pay 6.5% interest so there is absolutely no profit in it for LC&F. He will definitely be looking for a back end deal and possibly high ‘in’ and ‘out’ fees”.²²⁷⁸
- N2.44 Kerry’s assessment was correct. Loans paying interest at a rate of 6.5% per annum would not make any financial sense for LCF, given the very high rates of interest that LCF had promised to pay to its bondholders. LCF did not make any loans to Blackmore.
- N2.45 However, the idea of a commission of 0.5% for D1 personally seems to have had some attraction. On 14.06.16, D1 sent the first Media GPS invoice to D6 in the sum of £8,909.48,²²⁷⁹ being precisely 0.5% of the sum of £1,781,895 which LCF had received from new bondholders in the previous month.²²⁸⁰

N3 Payments by D6 to D4

- N3.1 As mentioned above, on 06.09.17, D6 paid £41,902 to Media GPS, being 0.5% of LCF’s receipts during August 2017.
- N3.2 At some point after 07.09.17, there was a meeting between D4 and D5.²²⁸¹ At that meeting, D4 and D5 agreed that, with effect from 01.09.17, D6 would instead pay 1% of LCF’s receipts to D4.²²⁸²
- N3.3 D4 thought that the payments should be back-dated to 01.06.17. He sent a text message to D3 on 20.09.17, “*Invoice Surge Financial, just need a basic invoice for commissions ... 19A Portland Street; Brighton; BN1 1RN; England ... June £5,211,119. July £8,521,624; August £8,289,673*”.²²⁸³
- N3.4 D3 prepared an invoice from “*SG Golding Consulting*” to D6 for “*Fundraising Consultancy*” with the reference JRM in the sum of £52,111.19 for June 2017 “*based on*

²²⁷⁸ SUR00022496-0001
²²⁷⁹ SUR00026165-0001; SUR00056792-0001
²²⁸⁰ SUR00029112-0001

²²⁸¹ SUR00082940-0001
²²⁸² SUR00084183-0001
²²⁸³ EB0058557

a £5,211,119.00 raise"; £85,216.62 for July 2017 *"based on a £8,521,624.00 raise"*; and £82,896.73 for August 2017 *"based on a £8,289,673.00 raise"*.²²⁸⁴

- N3.5 Thus, D4 was seeking payment of a sum equal to 1% of LCF's gross receipts with effect from 01.06.17. These came to a total of £220,224.54.
- N3.6 D3 then applied VAT of 20% to give a grand total of £264,269.45. The VAT number on the invoice was that of Home Farm Equestrian Centre.²²⁸⁵
- N3.7 On 02.10.17, D3 sent this invoice to D4,²²⁸⁶ who sent it to D7.²²⁸⁷
- N3.8 D7 sent it to D5 and Steve, commenting, *"Just received this from Spencer, he has back dated the invoice to June!!! Give me a call when you're free"*.²²⁸⁸
- N3.9 Steve emailed D5, explaining, *"The invoice is from SG Golding Consulting, however it is not a limited company. He has quoted a valid vat number for Spencer Golding Home Farm Equestrian Centre. His invoice is for Jun-Aug (£264k inc. VAT)"*.²²⁸⁹
- N3.10 Steve forwarded the invoice to Kerry (cc D5), asking, *"How can we justify paying c£80k per month to an equestrian centre"*.²²⁹⁰
- N3.11 D7 tried to call D4 to say that this was not what they had agreed.²²⁹¹ The invoice should have been for 1% of LCF's receipts with effect from 01.09.17, not 01.06.17. And it should have been for 1% of LCF's receipts, not 1% of LCF's receipts plus VAT.
- N3.12 D4 did not answer D7's call.²²⁹²
- N3.13 On the next day, D7 tried to call D4 again, but again D4 did not answer.²²⁹³ D7 sent a text message to D5 saying, *"Spencer didn't answer my call again??"*²²⁹⁴

²²⁸⁴ MDR00224031; EB0058695; EB0058697;
EB0058698

²²⁸⁵ SUR00084115-0001

²²⁸⁶ EB0059563; EB0059564

²²⁸⁷ SUR00084106-0001; SUR00084107-0001

²²⁸⁸ SUR00084106-0001; SUR00084107-0001

²²⁸⁹ SUR00084115-0001

²²⁹⁰ SUR00084118-0001

²²⁹¹ SUR00084183-0001

²²⁹² SUR00084183-0001

²²⁹³ SUR00084183-0001

²²⁹⁴ SUR00084183-0001

N3.14 D5 replied to D7:²²⁹⁵

*“Text him, try something like this?:-
Hi Spencer,
Been trying to get hold of you regarding your invoice. You agreed with Paul in the meeting it would be back dated to the beginning of September only. You also agreed it would be 1% gross.
The number can be £80k. Can you re-invoice please? ...”*

N3.15 D7 said, “Ok will do”.²²⁹⁶ No such text message has been disclosed by any party, but it is clear that D7 and/or D5 did raise these issues with D4, as explained further below.

N3.16 In the meantime, on 05.10.17, D5 sent a message to Kerry saying that he was worried about her and had never seen her unwell.²²⁹⁷

N3.17 She replied to say that she was stressed because D1 had asked if they would agree to the appointment of D6 as the appointed representative of LCF: “I’m sensitive to stress but I don’t usually experience it. Andy has tipped me over the edge”.

N3.18 D5 commented, “The spencer thing is [sic] also got to be sorted properly”.²²⁹⁸

N3.19 Kerry responded, “I want us to be part of something to be proud of. I can justify a little clever marketing but I can’t justify breaking the briberies act for Spencer ...” (emphasis added).²²⁹⁹

N3.20 The negotiation regarding D4’s invoice appears to have resulted in a compromise: D4 would be permitted to back-date the invoice to 01.07.17, but the total amount (including VAT) would be equal to 1% of LCF’s receipts. The VAT-exclusive amount would therefore be 0.833% of LCF’s receipts, which would produce a sum equal to 1% of LCF’s receipts when VAT of 20% was added.

N3.21 On 06.11.17, D3 provided D4 with a revised invoice from “SG Golding Consulting” to D6 for “Fundraising Consultancy” with the reference JRM in the sum of £71,013.53 for

²²⁹⁵ SUR00084183-0001

²²⁹⁶ SUR00084183-0001

²²⁹⁷ SUR00084244-0001

²²⁹⁸ SUR00084244-0001

²²⁹⁹ SUR00084244-0001

July 2017 “based on a £8,521,624.00 raise”; £69,080.61 for August 2017 “based on a £8,289,673.00 raise”; £64,362.14 for September 2017 “based on a £7,723,457.00 raise”; and £46,375.43 for October 2017 “based on a £5,565,052 raise”.²³⁰⁰

N3.22 The VAT-exclusive total of these sums was £250,831.71. With the addition of VAT this came to £300,998.05, which was 1% of LCF’s receipts during July, August, September and October 2017 (as set out in the invoice).

N3.23 The invoice was dated 01.11.17 and was numbered SF 001.

N3.24 The issue of VAT would have been important to D6, which was not charging VAT to LCF and therefore could not have recovered any VAT charged by D4. 1% of LCF’s receipts equated to 4% of D6’s commissions from LCF, whereas 1.2% of LCF’s receipts would have amounted to 4.8% of D6’s commissions from LCF.

N3.25 On 08.11.17, D4 sent the revised invoice to D7,²³⁰¹ who replied, “Give me a call when you’re free and I will get this organised”.²³⁰² However, it was not paid immediately.

N3.26 On 23.11.17, D7 emailed Steve Jones (cc D5) stating, “Spencer has sent through his outstanding invoice, please can we discuss this with Paul this afternoon”.²³⁰³

N3.27 On the same day, D6 paid £300,998.05 to D4.²³⁰⁴ There was therefore a period of overlap: 0.5% of LCF’s receipts for July and August 2017 had already been paid to D1; 1% of LCF’s receipts for those two months was also paid to D4.

N3.28 On 12.01.18, D4 provided D7 with his second invoice to D6 (SF002) for “Fundraising Consultancy for November 2017 based on a £6,050,422.00 raise” in the sum of £50,420.18.²³⁰⁵ With VAT, this came to £60,504.22, or 1% of the amount of the “raise”.

N3.29 On 15.01.18, D7 forwarded it to Steve (cc D5) saying, “Spencer has sent through his invoice for November, please can you arrange for this to be paid”.²³⁰⁶ D5 added, “Today

²³⁰⁰ D7D9-0007017; EB0063477; EB0063478

²³⁰¹ D7D9-0007022

²³⁰² D7D9-0007022

²³⁰³ SUR00086593-0001; SUR00086594-0001

²³⁰⁴ MDR00221779 page 157; MDR00113573

²³⁰⁵ MDR00224032; SUR00090249-0001;

SUR00090250-0001

²³⁰⁶ SUR00090378-0001; SUR00090379-0001

please".²³⁰⁷ D7 emailed D4 to say, "*I have passed your invoice on to Steve for him to make a payment today for you*".²³⁰⁸

N3.30 D6 paid £60,504.22 to D4 on the same day.²³⁰⁹ Steve told D5 and D7 that this had been paid.²³¹⁰ D7 thanked him for telling him about the payment.²³¹¹

N3.31 On 15.01.18, D7 also told D4, "*The final figure for December was 7,883,068*".²³¹² On the same day, D7 told D5 and Steve, "*His December invoice will be £78,830.68*".²³¹³

N3.32 On 24.01.18, D4 provided D7 with his third invoice to D6 (SF003) for "*Fundraising Consultancy for December 2017 based on a £7,883,068.00 raise*" in the sum of £65,692.23 excluding VAT and £78,830.68 including VAT.²³¹⁴

N3.33 D7 forwarded it to Steve (cc D5), adding, "*Spencer has emailed his invoice for December, please can you arrange a payment tomorrow*".²³¹⁵

N3.34 On 25.01.18, D6 paid £78,830.68 to D4.²³¹⁶

N3.35 On 15.02.18, D7 emailed D3 saying, "*Spencer has asked me to confirm the figure for invoicing for the month of January, cleared funds in were £12,071,743*".²³¹⁷

N3.36 On 19.02.18, D4 provided D7 with his fourth invoice to D6 (SF004) for "*Fundraising Consultancy Fees for January 2018 based on a £12,071,743.00 raise*" in the sum of £100,597.86 excluding VAT and £120,717.43 including VAT.²³¹⁸ D7 forwarded it to Steve (cc D5) saying, "*Steve, I have just received Spencer's latest invoice, please can you organise a payment*".²³¹⁹ On the same day, D6 paid £120,717.43 to D4.²³²⁰ Steve told D7 that this had been paid.²³²¹ D7 emailed D4 to say, "*All paid for you*".²³²²

²³⁰⁷ SUR00090381-0001

²³⁰⁸ SUR00090383-0001

²³⁰⁹ MDR00221780 page 30

²³¹⁰ SUR00090393-0001

²³¹¹ SUR00090394-0001

²³¹² SUR00090383-0001

²³¹³ SUR00090384-0001

²³¹⁴ SUR00091155-0001; SUR00091157-0001;
MDR00224033-0001

²³¹⁵ SUR00091174-0001

²³¹⁶ MDR00221780 page 43

²³¹⁷ D7D9-0007133

²³¹⁸ D7D9-0007140; D7D9-0007141

²³¹⁹ SUR00093284-0001

²³²⁰ MDR00221780 page 72

²³²¹ SUR00093293-0001

²³²² D7D9-0007143

- N3.37 On 08.03.18, D3 asked D7, “*Can I have the final figure for Feb for his invoice?*”²³²³
- N3.38 D7 replied, “*Just got this from Jo, this was for the month of February. GCEN: Available cash ISA £4,361,757. Available cash bond £2,796.833. Cleared ISA transfer chqs £1,719,900. Total £8,878,490*”.²³²⁴
- N3.39 On the same day, D4 provided D7 with his fifth invoice to D6 (SF005) for “*Fundraising Consultancy Fees for February 2018 based on a £8,878,490.00 raise*” in the sum of £73,987.42 excluding VAT and £88,784.90 including VAT.²³²⁵ D7 forwarded it to Steve (cc D5), adding, “*Steve, please can you arrange the invoice from Spencer to be paid*”.²³²⁶
- N3.40 D5 instructed Steve, “*Pay*”.²³²⁷ D6 paid £88,784.90 to D4.²³²⁸ Steve told D5 and D7, “*Its Paid Chaps*”.²³²⁹ D7 said, “*Thanks Steve I will let him know*”.²³³⁰
- N3.41 On 06.04.18, Jo Baldock sent a text message to D3 stating, “*Hi Elten; March cleared funds figures; ISA gcen £6,357,932; ISA cleared cheques £2,075,400; Bond £ 3,158,817; Total £11,592,149*”.²³³¹
- N3.42 On 06.04.18, D4 provided D7 with his sixth invoice to D6 (SF006) for “*Fundraising Consultancy Fees for March 2018 based on a £11,592,149 raise*” in the sum of £96,601.24 excluding VAT and £115,921.49 including VAT.²³³² D7 sent it to D5’s assistant, Vicki Bennet (cc D5), asking Vicki to pay it.²³³³
- N3.43 Vicki replied, “*Just to let you know £99,999.00 has been sent to Spencer today and the balance of £16,922.49 will be sent tomorrow. Unfortunately I do not have the necessary permissions to send more than £99,999.00 in one go*”.²³³⁴ On 06.04.18, D6 paid £99,999.00 to D4.²³³⁵ Then, on 10.04.18, D6 paid the balance of £16,922.49 to D4.²³³⁶

²³²³ D7D9-0008069
²³²⁴ D7D9-0008069
²³²⁵ SUR00094427-0001; SUR00094428-0001
²³²⁶ SUR00094453-0001
²³²⁷ SUR00094461-0001
²³²⁸ MDR00221780 page 93
²³²⁹ SUR00094475-0001

²³³⁰ SUR00094477-0001
²³³¹ EB0087973
²³³² MDR00140870; MDR00140872; MDR00224036
²³³³ SUR00096560-0001; SUR00096561-0001
²³³⁴ MDR00140870
²³³⁵ MDR00220266 row 142
²³³⁶ MDR00220266 row 143

N3.44 On 04.05.18, D4 provided D7 with his seventh invoice to D6 (SF007) for “*Fundraising Consultancy Fees for April 2018 based on a £17,400,000.00 raise*” in the sum of £141,866.67 excluding VAT and £170,240 including VAT.²³³⁷ D7 asked Steve (cc D5) to pay it.²³³⁸ D6 paid £170,240 to D4.²³³⁹

N3.45 As explained above, there was discussion about D6 becoming the appointed representative of LCF within section 39 of FSMA. On 17.05.18, D7 discussed this with D1. After the meeting, D7 sent a report to D5 and Kerry in the following terms:²³⁴⁰

“We discussed the SG invoicing and Andy wants to get everything out in the open. One of the requirements of our AR status with them, will be to provide our financials to LCF. Andy and Kobus will see the payment going to SG and will ask further questions. Andy said he was willing to make a 1% interest reduction on the loans to SG if we reduced our commissions to 24%. I said we will discuss this with SG and will let Andy know” (emphasis added).

N3.46 Kerry told D7 that what he had said about “*fixing the Spencer payment*” sounded “*very positive*”.²³⁴¹

N3.47 On 20.06.18, D3 asked D7 for “*the figures for May for SG’s invoice*”.²³⁴² D7 replied on 04.07.18, “*The figure for May was 14,201,573.00*”.²³⁴³ In light of his recent discussion with D1, D7 added, “*from June onwards we are looking at paying the invoice a different way. I will let you know once a process has been finalised. In the meantime send me the May invoice and I will arrange a payment*”.²³⁴⁴

N3.48 On 06.07.18, D4 provided D7 with his eighth invoice to D6 (SF008) for “*Fundraising Consultancy Fees for May 2018 based on a £14,201,573.00 raise*” in the sum of £118,346.44 excluding VAT and £142,015.73 including VAT.²³⁴⁵ D7 replied, “*Thanks, will sort this out now*”.²³⁴⁶ D7 sent it to Steve (cc D5), adding, “*Please can you pay the attached invoice for SG*”.²³⁴⁷ D6 paid £142,015.73 to D4.²³⁴⁸

²³³⁷ SUR00098355-0001; SUR00098356-0001;
MDR00224037

²³³⁸ SUR00098653-0001

²³³⁹ MDR00220266 row 355; SUR00098675-0001

²³⁴⁰ SUR00099143-0001

²³⁴¹ SUR00099145-0001

²³⁴² D7D9-0008959

²³⁴³ D7D9-0008959

²³⁴⁴ D7D9-0008959

²³⁴⁵ D7D9-0007494; D7D9-0007495; SUR00103284-0001; SUR00103285-0001

²³⁴⁶ D7D9-0007497

²³⁴⁷ SUR00103290-0001

²³⁴⁸ MDR00220266 row 791

- N3.49 The new process for paying D4’s invoices was going to involve payments via a company which D1 was setting up.²³⁴⁹ On 21.08.18, D4 called D7 for an update. D7 told him about the plan to pay him via a company.²³⁵⁰ D4 said that he did not want to do that.²³⁵¹ He also said that he did not want D1 to know about the change of plan. D7 added, “*Don’t mention anything at the moment. I will discuss a different solution with Paul*”.²³⁵²
- N3.50 However, no “*different solution*” was implemented at this time. Instead, on 06.09.18, D7 sent a message to D3 saying, “*Hi Elten, can you email me an invoice for Spencer covering the last 3 months, figures are June 14,523,807 July 12,639,904 Aug 12,667,400. Total £398,311.11*”.²³⁵³ The new invoice was going to have to cover three months before the last one (SF008), which went up to the end of May 2018.
- N3.51 On 06.09.18, D4 provided D7 with an invoice (SF009) in the VAT-inclusive sum of £398,311.²³⁵⁴ D7 sent it to Steve and D5.²³⁵⁵ D6 paid £398,311 to D4.²³⁵⁶
- N3.52 There was still a desire to ‘fix’ the payments to D4 (as Kerry had put it). On 12.09.18, D7 told D5, Kerry, Steve and Jo, “*I will discuss payments to SG and the solution with Paul tomorrow*”.²³⁵⁷
- N3.53 However, things carried on as before. On 19.10.18, D4 provided D7 with a further invoice to D6 (SF010) for “*Fundraising Consultancy Fees for September 2018 based on a £9,222,400.00 raise*” in the sum of £76,853.33 excluding VAT and £92,224 including VAT.²³⁵⁸ D7 replied to D4, “*Passed to Steve for payment*”.²³⁵⁹ D7 asked Steve to pay it on 06.11.18.²³⁶⁰ D6 paid £92,224 to D4.²³⁶¹
- N3.54 On 06.11.18, D4 provided D7 with another invoice to D6 (SF011) for “*Fundraising Consultancy Fees for October 2018 based on a £10,378,800.00 raise*” in the sum of

²³⁴⁹ D7D9-0010862
²³⁵⁰ D7D9-0010862
²³⁵¹ D7D9-0010862
²³⁵² D7D9-0010862
²³⁵³ D7D9-0008959; D7D9-0008968
²³⁵⁴ D7D9-0007657; D7D9-0007658
²³⁵⁵ SUR00108710-0001; SUR00108711-0001

²³⁵⁶ MDR00220266 row 1157
²³⁵⁷ D7D9-0007687
²³⁵⁸ D7D9-0007829; D7D9-0007830; MDR00222795
²³⁵⁹ D7D9-0007832
²³⁶⁰ SUR00113036-0001
²³⁶¹ MDR00220266 row 1535

£86,490 excluding VAT and £103,788 including VAT.²³⁶² D7 sent it to Steve.²³⁶³ D6 paid £103,788 to D4.²³⁶⁴

N3.55 On 11.12.18, the day after the LCF raid, D4 provided D7 with another invoice to D6 (SF012) for “*Fundraising Consultancy Fees for November 2018 based on a £10,519,700.00 raise*” in the sum of £87,644.17 excluding VAT and £105,197 including VAT.²³⁶⁵ D7 sent it to D5, commenting, “*I think we should hold of [sic] from paying this for the moment*”.²³⁶⁶ D5 replied, “*We have lost 90% of revenues. We should cut our cloth accordingly*”.²³⁶⁷ This final invoice from D4 was never paid.

²³⁶² D7D9-0007911; D7D9-0007912; MDR00222796

²³⁶³ MDR00184558; MDR00184559; SUR00113168-0001; SUR00113169-0001

²³⁶⁴ MDR00220266 row 1551

²³⁶⁵ D7D9-0008189; D7D9-0008190

²³⁶⁶ D7D9-0008189

²³⁶⁷ SUR00115356-0001

O. THE CLAIMS AGAINST EACH DEFENDANT

O1.1 The Claimants have pleaded the following causes of action against the Defendants.

O2 D1

O2.1 (i) Fraudulent trading: D1 was knowingly party to the fraudulent carrying on of business of LCF within section 246ZA of the Insolvency Act 1986.²³⁶⁸ Further or alternatively, D1 was knowingly party to the fraudulent carrying on of business of LOG within section 246ZA of the Insolvency Act 1986.²³⁶⁹ (ii) Breach of duty to LCF: D1 breached the duties, including fiduciary duties, he owed to LCF under sections 171 to 177 of the Companies Act 2006.²³⁷⁰ (iii) Proprietary tracing claims: D1 holds on trust for LCF all monies paid from LCF in breach of fiduciary duty and their traceable proceeds which are held by him.²³⁷¹ (iv) Knowing receipt: D1 is liable as a knowing recipient in respect of all monies paid from LCF in breach of fiduciary duty and their traceable proceeds which were received by him.²³⁷² (v) Dishonest assistance: D1 dishonestly assisted D4 to breach the fiduciary duties he owed to LCF.²³⁷³

O3 D2

O3.1 (i) Fraudulent trading: D2 was knowingly party to the fraudulent carrying on of business of LCF within section 246ZA of the Insolvency Act 1986.²³⁷⁴ Further or alternatively, D2 was knowingly party to the fraudulent carrying on of business of LOG within section 246ZA of the Insolvency Act 1986.²³⁷⁵ (ii) Breach of duty to LOG: D2 breached the duties, including fiduciary duties, he owed to LOG under sections 171 to 177 of the Companies Act 2006.²³⁷⁶ (iii) Proprietary tracing claims: D2 holds on trust for LCF all monies paid from LCF in breach of fiduciary duty and their traceable proceeds which

²³⁶⁸ RRAPoC at [10]-[24], [34]-[35], [49], [51]-[54].

²³⁶⁹ RRAPoC at [10]-[24], [34]-[35], [50]-[54].

²³⁷⁰ RRAPoC at [55]-[57].

²³⁷¹ RRAPoC at [64]-[66].

²³⁷² RRAPoC at [64]-[67].

²³⁷³ RRAPoC at [91]-[93].

²³⁷⁴ RRAPoC at [10]-[23], [25], [36]-[37], [49], [51]-[54].

²³⁷⁵ RRAPoC at [10]-[23], [25], [36]-[37], [50]-[54].

²³⁷⁶ RRAPoC at [58]-[59D], [59F]-[60A].

are held by him (alternatively and where applicable, holds on trust for LOG all monies paid from LOG and their traceable proceeds which are held by him).²³⁷⁷ **(iv) Knowing receipt**: D2 is liable as a knowing recipient in respect of all monies paid from LCF in breach of fiduciary duty and their traceable proceeds which were received by him.²³⁷⁸ **(v) Dishonest assistance**: D2 dishonestly assisted D1 and D4 to breach the fiduciary duties they owed to LCF.²³⁷⁹

O4 D4

O4.1 **(i) Fraudulent trading**: D4 was knowingly party to the fraudulent carrying on of business of LCF within section 246ZA of the Insolvency Act 1986.²³⁸⁰ Further or alternatively, D4 was knowingly party to the fraudulent carrying on of business of LOG within section 246ZA of the Insolvency Act 1986.²³⁸¹ **(ii) Breach of duty to LCF**: D4 breached the duties, including fiduciary duties, he owed to LCF under sections 171 to 177 of the Companies Act 2006 as a shadow and/or *de facto* director.²³⁸² **(iii) Proprietary tracing claims**: D4 holds on trust for LCF all monies paid from LCF in breach of fiduciary duty and their traceable proceeds which are held by him.²³⁸³ **(iv) Knowing receipt**: D4 is liable as a knowing recipient in respect of all monies paid from LCF in breach of fiduciary duty and their traceable proceeds which were received by him.²³⁸⁴ **(v) Dishonest assistance**: D4 dishonestly assisted D1 to breach the fiduciary duties he owed to LCF.²³⁸⁵

O5 D5

O5.1 **(i) Fraudulent trading**: D5 was knowingly party to the fraudulent carrying on of business of LCF within section 246ZA of the Insolvency Act 1986.²³⁸⁶ Further or alternatively, D5 was knowingly party to the fraudulent carrying on of business of LOG within section 246ZA of the Insolvency Act 1986.²³⁸⁷ **(ii) Proprietary tracing claims**: D5 holds on trust for LCF all monies paid from LCF in breach of fiduciary duty and their traceable

²³⁷⁷ RRAPoC at [64]-[65], [68]-[71], Prayer

²³⁷⁸ RRAPoC at [64]-[65], [68]-[72].

²³⁷⁹ RRAPoC at [90]-[93].

²³⁸⁰ RRAPoC at [10]-[23], [27], [40]-[41], [49], [51]-[54].

²³⁸¹ RRAPoC at [10]-[23], [27], [40]-[41], [50]-[54].

²³⁸² RRAPoC at [55]-[57].

²³⁸³ RRAPoC at [64]-[65], [78].

²³⁸⁴ RRAPoC at [64]-[65], [78]-[79].

²³⁸⁵ RRAPoC at [90], [92]-[93].

²³⁸⁶ RRAPoC at [10]-[23], [29], [42]-[43], [49], [51]-[54].

²³⁸⁷ RRAPoC at [10]-[23], [29], [42]-[43], [50]-[54].

proceeds which are held by him.²³⁸⁸**(iii) Knowing receipt:** D5 is liable as a knowing recipient in respect of all monies paid from LCF in breach of fiduciary duty and their traceable proceeds which were received by him.²³⁸⁹ **(iv) Dishonest assistance:** D5 dishonestly assisted D1 and D4 to breach the fiduciary duties they owed to LCF.²³⁹⁰

O6 **D6**

O6.1 **(i) Fraudulent trading:** D6 was knowingly party to the fraudulent carrying on of business of LCF within section 246ZA of the Insolvency Act 1986.²³⁹¹ Further or alternatively, D6 was knowingly party to the fraudulent carrying on of business of LOG within section 246ZA of the Insolvency Act 1986.²³⁹² **(ii) Proprietary tracing claims:** D6 holds on trust for LCF all monies paid from LCF in breach of fiduciary duty and their traceable proceeds which are held by it.²³⁹³ **(iii) Knowing receipt:** D6 is liable as a knowing recipient in respect of all monies paid from LCF in breach of fiduciary duty and their traceable proceeds which were received by it.²³⁹⁴ **(iv) Dishonest assistance:** D6 dishonestly assisted D1 and D4 to breach the fiduciary duties they owed to LCF.²³⁹⁵

O7 **D7**

O7.1 **(i) Fraudulent trading:** D7 was knowingly party to the fraudulent carrying on of business of LCF within section 246ZA of the Insolvency Act 1986.²³⁹⁶ Further or alternatively, D7 was knowingly party to the fraudulent carrying on of business of LCF and LOG within section 246ZA of the Insolvency Act 1986.²³⁹⁷ **(ii) Proprietary tracing claims:** D7 holds on trust for LCF all monies paid from LCF in breach of fiduciary duty and their traceable proceeds which are held by him.²³⁹⁸ **(iii) Knowing receipt:** D7 is liable as a knowing recipient in respect of all monies paid from LCF in breach of fiduciary duty and their traceable proceeds which were received by him.²³⁹⁹ **(iv) Dishonest assistance:** D7 dishonestly assisted D1 and D4 to breach the fiduciary duties they owed to LCF.²⁴⁰⁰

²³⁸⁸ RRAPoC at [64]-[65], [82].

²³⁸⁹ RRAPoC at [64]-[65], [82]-[83].

²³⁹⁰ RRAPoC at [90]-[93].

²³⁹¹ RRAPoC at [10]-[23], [29], [42]-[44], [49], [51]-[54].

²³⁹² RRAPoC at [10]-[23], [29], [42]-[44], [50]-[54].

²³⁹³ RRAPoC at [64]-[65], [80].

²³⁹⁴ RRAPoC at [64]-[65], [80]-[81].

²³⁹⁵ RRAPoC at [90]-[93].

²³⁹⁶ RRAPoC at [10]-[23], [30], [45]-[46], [49]-[51]-[54].

²³⁹⁷ RRAPoC at [10]-[23], [30], [45]-[46], [50]-[54].

²³⁹⁸ RRAPoC at [64]-[65], [84].

²³⁹⁹ RRAPoC at [64]-[65], [84]-[85].

²⁴⁰⁰ RRAPoC at [90]-[93].

O8 **D8**

O8.1 **(i) Fraudulent trading**: D8 was knowingly party to the fraudulent carrying on of business of LCF within section 246ZA of the Insolvency Act 1986.²⁴⁰¹ Further or alternatively, D8 was knowingly party to the fraudulent carrying on of business of LOG within section 246ZA of the Insolvency Act 1986.²⁴⁰² **(ii) Proprietary tracing claims**: D8 holds on trust for LCF all monies paid from LCF in breach of fiduciary duty and their traceable proceeds which are held by him.²⁴⁰³ **(iii) Knowing receipt**: D8 is liable as a knowing recipient in respect of all monies paid from LCF in breach of fiduciary duty and their traceable proceeds which were received by him.²⁴⁰⁴ **(iv) Dishonest assistance**: D8 dishonestly assisted D1 and D4 to breach the fiduciary duties they owed to LCF.²⁴⁰⁵

O9 **D9**

O9.1 **(i) Proprietary tracing claims**: D9 holds on trust for LCF all monies paid from LCF in breach of fiduciary duty and their traceable proceeds which are held by it.²⁴⁰⁶ **(ii) Knowing receipt**: D9 is liable as a knowing recipient in respect of all monies paid from LCF in breach of fiduciary duty and their traceable proceeds received by it.²⁴⁰⁷

O10 **D10**

O10.1 **(i) Proprietary tracing claims**: D10 holds on trust for LCF all monies paid from LCF in breach of fiduciary duty and their traceable proceeds which are held by her.²⁴⁰⁸ **(ii) Receipt as nominee for D2**: D10 received as nominee for D2 all monies belonging to LCF that were paid to her and their traceable proceeds.²⁴⁰⁹

O11 **Interest**

O11.1 All of the Defendants are further liable to pay interest to the Claimants pursuant to section 35A of the Senior Courts Act 1981 or in equity.²⁴¹⁰

²⁴⁰¹ RRAPoC at [10]-[23], [31], [47]-[49], [51]-[54].

²⁴⁰² RRAPoC at [10]-[23], [31], [47]-[48], [50]-[54].

²⁴⁰³ RRAPoC at [64]-[65], [88].

²⁴⁰⁴ RRAPoC at [64]-[65], [88]-[89].

²⁴⁰⁵ RRAPoC at [90]-[93].

²⁴⁰⁶ RRAPoC at [64]-[65], [86].

²⁴⁰⁷ RRAPoC at [64]-[65], [86]-[87].

²⁴⁰⁸ RRAPoC at [64]-[65], [70], [73].

²⁴⁰⁹ RRAPoC at [64]-[65], [71], [74].

²⁴¹⁰ RRAPoC at [94].

P. QUANTUM

P1 Introduction

- P1.1 With the FCA's raid on 10.12.18, LCF's demise was assured. There was no way back. On 24.01.19, Finbarr O'Connell of Smith & Williamson LLP was brought in to advise. He wanted to start by identifying the "*full legal names of all the company's borrowers*".²⁴¹¹ Steps were being taken to prepare for LCF's administration.²⁴¹²
- P1.2 By 28.01.19, Finbarr was still trying to get the names of LCF's borrowers; he also wanted to understand what security had been given by those borrowers.²⁴¹³ Katie Maddock provided him with a list of LCF's borrowers and the sums owing.²⁴¹⁴
- P1.3 On the next day, LCF resolved to appoint administrators.²⁴¹⁵ The administrators of LCF were appointed with effect from 30.01.19.²⁴¹⁶
- P1.4 The administrators of LCF discovered that LCF's borrowers owed substantial sums without having any assets (or any sufficient assets) with which to meet those debts. Most have since entered formal insolvency processes and/or been dissolved, as set out below.
- P1.5 LOG entered into administration following a resolution of its directors on 19.03.19 (and from 17.12.19, following an order of ICC Judge Jones). As at 30 January 2019, LOG owed the sum of £124,083,128 to LCF.
- P1.6 LPE Support Limited (formerly Atlantic Support) was placed into administration on 5 November 2019. It was subsequently placed into compulsory liquidation from 28.10.21. As at 30 January 2019, it owed the sum of £18,460,382 to LCF.

²⁴¹¹ MDR00206890

²⁴¹² MDR00207708; MDR00207709

²⁴¹³ MDR00207941; MDR00208362

²⁴¹⁴ MDR00208191; MDR00208362; MDR00208349

²⁴¹⁵ MDR00006323

²⁴¹⁶ LB1/158-159

- P1.7 Waterside Villages went into administration on 17.03.20. As at 30 January 2019, it owed the sum of £15,733,152 to LCF.
- P1.8 CV Resorts is subject to an active proposal to strike off, which is presently suspended. It owed £4,796,834 to LCF as at 30 January 2019.
- P1.9 The rest of LCF's borrowers have been dissolved, whether directly following compulsory strike off or following the conclusion of an insolvency process: London Financial Group Limited was placed into compulsory liquidation on 24.05.19 and was dissolved on 24.04.22; FS Equestrian Services Limited (formerly River Lodge UK) was placed into compulsory liquidation on 27.01.21 and was dissolved on 14.02.23; CV Support was dissolved directly by way of compulsory strike off on 19.01.21; and Costa Property, Costa Support, Colina Property, Colina Support and Waterside Support were dissolved directly by way of compulsory strike off on 25.07.23.
- P1.10 After LOG had been placed into administration, its administrators found themselves in a similar position to the administrators of LCF, in that numerous companies owed substantial sums to LOG but had no means of repaying the indebtedness. **(i)** LPC was placed into administration on 04.04.19. It was placed into compulsory liquidation on 31.03.23. It owed a sum of more than £8.3 million to LOG. **(ii)** ITI was placed into compulsory liquidation on 12.06.19. It owed approximately £3.8 million. **(iii)** London Group LLP was placed into compulsory liquidation on 01.06.22, on the petition of LCF. It owed the sum of £32.6 million to LOG.

P2 LCF's net deficiency

- P2.1 LCF's liabilities to its creditors will substantially exceed the assets which might be used to repay them. Accordingly, there is a net deficiency in the estate of LCF. The quantum of the net deficiency is explained below by reference to the figures contained in the most recent progress report in LCF's administration, which states the position as at 29.07.23.
- P2.2 These figures will need to be updated in due course, as further costs and expenses are incurred and paid in the estate and as any further realisations are made. LCF's administrators will do this principally by relying on updated progress reports in order to

provide figures which are as accurate as possible. It is clear that there will be a substantial net deficit in LCF's estate in any event whatever the quantum may be.

- P2.3 Beginning with LCF's assets, the gross realisations in LCF's administration amount to £61,969,278.36, as at 29.07.23. The total costs of realisations as at that date are £57,471,082.49.²⁴¹⁷ This results in net realisations of £4,498,195.87, as at 29.07.23.
- P2.4 These figures include: (i) LCF's cash at bank in the sum of £3,189,912, (ii) dividend payments of £2.65 million which LCF has received pursuant to its interests as a secured creditor in the estates of Waterside Villages and Waterside Cornwall Group Limited (following the sale of the Lakeview resort),²⁴¹⁸ (iii) distributions of £10 million which LCF received pursuant to its floating charge security over LOG,²⁴¹⁹ (iv) receipts from the settlement of a claim against former auditors, the terms of which are confidential,²⁴²⁰ and (v) the receipt of a loan of £20 million for the purpose of pursuing claims for the benefit of LCF's creditors, the majority of which has been repaid as a cost of realisation.
- P2.5 Since 29.07.23, LCF has also received sums in settlement of the claims against D11, D12, D13, D14 and D15 in these proceedings, the terms of which are confidential.
- P2.6 Otherwise, at the time of writing, there have been no other realisations from legal claims, and as set out below, there are no other readily realisable assets or property (aside from legal claims) which are expected to lead to recovery in the future.
- P2.7 LCF is owed approximately £70.1 million by the Prime group of companies, i.e. companies indirectly owned by Prime RDL (Waterside Villages, Waterside Support, Costa Support, Costa Property, Colina Support and Colina Property).
- P2.8 Prime RDL was placed into administration on 03.02.20 by LCF. The LCF joint administrators agreed to indemnify the administrators of Prime RDL to facilitate recovery of the debt owed to LCF. However, the prospect of recovery is uncertain.

²⁴¹⁷ H1/9/27-28

²⁴¹⁸ H1/9/14

²⁴¹⁹ H1/9/14

²⁴²⁰ H1/9/15

- P2.9 Similarly, LCF's administrators are continuing to investigate the ownership of the investments made in Dominican Republic, which is complex; it is unclear whether this will result in a recovery to LCF. LCF's administrators do not consider that any recoveries will be made in respect of the Cape Verde companies.²⁴²¹
- P2.10 LCF's administrators continue to review the prospect of legal claims against other parties, which might result in realisations for the estate in the future. This process is ongoing and the prospect of recovery is uncertain.
- P2.11 Turning to LCF's liabilities, as at LCF's entry into administration, the total capital sum invested by bondholders stood at £237,207,497. The total interest liability (as at 30.11.23) is calculated to be a further £126,033,926. The total indebtedness in respect of bondholders (as at 30.11.23) is therefore estimated to be £363,241,423.
- P2.12 The assumptions used by the LCF administrators in calculating interest liabilities are explained below. LCF's administrators estimate that LCF's liability to bondholders in respect of contractual interest as at the date of administration is the sum of £8,104,085. The reference date used is 30.11.18, the month end prior to the FCA raid on 10.12.23, as there is no record of non-payment of interest before then. As for post-administration interest, the interest liability (to 30.11.23) is a further £117,929,841. The LCF bondholders are secured creditors pursuant to the security granted for their benefit over all of LCF's assets. Consequently, they are entitled to be paid contractual interest after the date of administration. (Where interest was payable on maturity, interest has been calculated by assuming investment over the relevant period and adopting the mid-date. LCF's obligation to withhold tax has been ignored for the purpose of these calculations.)
- P2.13 The sum of approximately £58 million was paid by the Financial Services Compensation Scheme ("FSCS") to LCF's bondholders.²⁴²² A further £114 million was paid by the FSCS to LCF's bondholders as part of a scheme funded by HM Treasury. As a result, the FSCS has become subrogated to the relevant claims in LCF's estate. Such subrogation does not diminish the amount of LCF's liabilities.

²⁴²¹ H1/9/14

²⁴²² H1/9/14

- P2.14 A distribution of £5,902,219 has been made to bondholders in LCF's administration, representing approximately 2.5% of the capital sums invested.
- P2.15 The LCF estate continues to incur costs and expenses. Due to the complex nature of the fraud and the unhelpful and hostile actions of those implicated in it, the administrators and their lawyers have had to spend a large amount of time on this matter. As a result, their time costs and expenses have inevitably been substantial. From the start of LCF's administration to 29.07.23, the joint administrators incurred time costs of £8,476,149²⁴²³ and the conflict administrator has incurred time costs of £2,111,908 since his appointment on 30.10.19.²⁴²⁴ A total sum of £4,997,270 has been paid by way of remuneration.²⁴²⁵ These figures are based on a receipts and payments schedule which does not include future liabilities or liabilities which have not yet been paid. Since 29.07.23, the joint administrators of LCF continue to incur time costs in the administration, and LCF continues to incur legal costs in pursuing these proceedings as expenses of the estate. In addition, LCF owes the balance of the loan obtained for the purpose of funding recoveries in these proceedings, of approximately £3 million.²⁴²⁶
- P2.16 As matters stand, the net asset realisations (excluding any realisations from these proceedings against the remaining Defendants) are anticipated to be less than the costs and expenses of the administration. LCF's administrators calculate the current net deficiency of LCF's assets as the outstanding liabilities in the sum of £357,339,204.
- P2.17 In addition to the primary relief sought by the Claimants in relation to LCF, the Claimants seek further and alternative orders that the Defendants contribute to the assets of LOG. LOG was LCF's largest borrower and was an instrument of the fraud.
- P2.18 The financial positions of LCF and LOG are connected: LCF's inability to repay its liabilities to bondholders results in part from LOG's asset deficiency and inability to repay its debt to LCF. By the same token, realisations of LOG's assets (or contributions to LOG's assets) may lead to a reduction of LCF's net deficiency where this results in distributions to LCF.

²⁴²³ H1/9/16

²⁴²⁴ H1/9/18

²⁴²⁵ H1/9/16-17

²⁴²⁶ H1/9/15

- P2.19 Nevertheless, for the purpose of the Claimants' alternative claims in relation to LOG it is the net deficiency in LOG's estate which is relevant. The present position in relation to LOG's net deficiency is set out below. As with LCF, these figures will need to be updated in due course.
- P2.20 As for LOG's assets, the gross realisations, as at 16.06.23, are £26,864,179.11. The total cost of realisations as at that date is £15,691,758.97.²⁴²⁷ This results in net realisations in the sum of £11,172,370.14 as at 16.06.23. (LOG has made a distribution of £36,987.94 to prescribed part creditors and distributions of £10 million to LCF as noted above.)
- P2.21 The realisations include the sum of £17.1 million which has been recovered by LOG in respect of LOG's loans to IOG.²⁴²⁸ As at 24.11.23, LOG has received the sum of £248,850.15 in respect of its loan to Atlantic Petroleum P/F.²⁴²⁹ LOG has also realised part of its shareholding in IOG, in the sum of £4.6 million.²⁴³⁰
- P2.22 LOG is now unlikely to be able to make any further realisations in respect of IOG. As at 16.06.23, LOG's shareholding in IOG was valued at £4.06 million on basis of 3p/share and LOG's convertible debt investment was valued at £11.6 million. Since then, however, on 11.10.23, IOG went into administration. According to the proposals of IOG's administrators dated 04.12.23, there will be no return to shareholders (and there is unlikely to be any return to IOG's creditors).
- P2.23 As above, a number of LOG's borrowers have since entered into administration. Substantially all of LOG's assets are rights against LOG's borrowers. However, it is uncertain whether their administrations will result in any distribution to LOG.
- P2.24 In the administration of ITI, it is considered unlikely that there will be any recovery or significant recovery from the liquidation of Asset Mapping. It is unlikely that there will be any recovery to ITI from the shares it holds in Reserec.²⁴³¹

²⁴²⁷ H2/9/23

²⁴²⁸ H2/9/11

²⁴²⁹ H2/9/11-12

²⁴³⁰ H2/9/11

²⁴³¹ H2/9/12-13

- P2.25 In the administration of LG LLP, the quantum of any recoveries is uncertain and is dependent on the outcome of pending legal actions.²⁴³² No recovery is anticipated from the administration of LPC.²⁴³³
- P2.26 Turning to LOG's creditors, the largest creditor is LCF, to which LOG owed £124,083,128 as at 30.01.19, as stated above. This debt is secured by a debenture dated 20.06.16 containing fixed and floating charges over LOG's assets. The contractual interest liability (to 14.12.23) is the sum of £21,865,795.40, adopting the contractual rates (1.75%, and the 4% for default interest) as applicable. This calculation accounts for three distributions from LOG to LCF totalling £10 million. The balance (as at 14.12.23) is £149,439,569.69.
- P2.27 In addition, LOG has received 10 unsecured creditor claims in its administration in the total sum of £31,735,080,²⁴³⁴ which have not yet been adjudicated upon.
- P2.28 From the start of LOG's second administration, i.e. from the administration order of ICC Judge Jones dated 17.12.19, the time costs of LOG's administrators amount to £5,024,499.31. The sum of £2,642,990.19 has been drawn. These figures are also based on a receipts and payments schedule which does not include future liabilities or liabilities which have not yet been paid.
- P2.29 The net deficiency of LOG's estate is estimated to be approximately £10 million less than its total liabilities to its creditors. This results in the sum of at least £139,439,569.69 (or £171,174,649.69 including the claims of unsecured creditors). As with LCF, the joint administrators of LOG continue to incur time costs in the administration, and LOG continues to incur legal costs in pursuing these proceedings as expenses of the estate.

P3 Receipts by the Defendants

- P3.1 Turning to the other side of the equation, which is particularly relevant in the context of the proprietary claims against the Defendants, the gains to the Defendants arising from

²⁴³² H2/9/13

²⁴³³ H2/9/13

²⁴³⁴ H2/9/18

the conduct described above derive from the sums paid to them, full details of which have been set out in Schedule 2 to the neutral statement of uncontested facts.

P3.2 The assets acquired by D1, D2, D3, D4 and D10 with those monies have been disclosed by them pursuant to freezing orders. D1, D2, D3, D4 and D10 were required to disclose all of their assets with a value in excess of £1,000 pursuant to worldwide freezing orders obtained against them on 24.08.20 (continued on 07.09.20). The Claimants also obtained proprietary freezing orders against these Defendants, which required the Defendants to explain what became of certain payments made to them funded by LCF's monies. The Defendants identified the assets and expenditures acquired with those monies or monies mixed with them. Absent evidence that any assets were acquired using monies which did not originate from LCF, the Claimants will trace into all of the Defendants' assets.

P3.3 D1 received £5,278,727.95 from LCF.²⁴³⁵ He spent £2,525,000 on the freehold of [REDACTED]²⁴³⁶ a country house of 8,103 square feet, with a heated outdoor swimming pool, pool house, two barns, gardens, and grounds. He spent £174,000 on two performance horses called Lucky Comeback and Constance O'Cool.²⁴³⁷ He bought a Rolex gold watch worth around £27,000, a Patek Philippe watch worth around £50,000, alongside two Perazzi shotguns and a pair of Churchill shotguns (which together cost £196,245.65).²⁴³⁸ D1 has accepted in these proceedings that all of his remaining assets were acquired with funds originating from LCF.

P3.4 D2 and D10 received a total of at least £23,898,642.90 from LCF (£11,071,610.91 to D2,²⁴³⁹ £5,930,488.95 to D10²⁴⁴⁰ and £6,896,543 to their joint accounts²⁴⁴¹).

P3.5 They spent large sums on luxury travel, including air fares costing £20,322.50,²⁴⁴² £15,621,²⁴⁴³ and £11,882.86.²⁴⁴⁴ They dined at exclusive restaurants. For example, they spent £7,787.46 at La Guerite, on Île Sainte-Marguerite, off the coast of Cannes.²⁴⁴⁵

²⁴³⁵ A1/6/10
²⁴³⁶ O1/7/8
²⁴³⁷ O1/7/8
²⁴³⁸ O1/7/4
²⁴³⁹ A1/6/11
²⁴⁴⁰ A1/6/23

²⁴⁴¹ A1/6/24
²⁴⁴² O2/15/9
²⁴⁴³ O2/17/16
²⁴⁴⁴ O2/15/10
²⁴⁴⁵ O2/15/34

They sailed on the yacht *Chantella*, on which over £1 million of LCF's monies was spent.²⁴⁴⁶ D2 paid EUR 160,000 for a berth in Port Vauban, Antibes.²⁴⁴⁷

P3.6 D2 and D10 enjoyed regular visits to Annabel's, the private member's club in Mayfair, and its sister clubs. D2 regularly spent large sums at Annabel's.²⁴⁴⁸ He acquired lifetime membership of Annabel's for him and his family at a cost of £250,000.²⁴⁴⁹ D2 and D10 also regularly attended the Sloane Club in Chelsea.²⁴⁵⁰ Using LCF's monies, D2 and D10 could afford private educations for their children, as well as substantial political donations; D2 funded donations to the Conservative Party using monies originating from LCF in at least the sums of £10,000,²⁴⁵¹ £5,000,²⁴⁵² and £10,000.²⁴⁵³

P3.7 Much of this money has been dissipated. But the Claimants will trace into all property, jewellery, art, and investments which remain. For instance, the sum of £2,261,252.45 from LCF was used to fund the acquisition of a London apartment at [REDACTED], [REDACTED]²⁴⁵⁴ There is also the property at Hook House,²⁴⁵⁵ and the property at [REDACTED] [REDACTED] which D2 bought for £335,000²⁴⁵⁶ and transferred to one of their children.²⁴⁵⁷

P3.8 There are also their watches and jewellery. D2 bought diamond earrings costing £23,622,²⁴⁵⁸ a Patek Philippe watch costing £12,123.82,²⁴⁵⁹ and a Rolex watch costing £16,000.²⁴⁶⁰ D10 bought a Rolex watch costing £16,250,²⁴⁶¹ and various items of jewellery, including a diamond ring said to be worth £29,417.²⁴⁶² As well as this, D2 and D10 acquired a large quantity of gold bullion (and in February 2017 alone, D2 spent £135,200 on gold bullion²⁴⁶³), various pieces of art²⁴⁶⁴ and land in Jamaica.²⁴⁶⁵

P3.9 Among other things, substantial sums were also paid into investment accounts. For example, D10 paid over £1.6 million to St James's Place,²⁴⁶⁶ which is believed to have funded D10's pension and life assurance policies.²⁴⁶⁷

2446 O2/15/3
2447 N2/4/4
2448 O2/15/43 and 54
2449 N2/4/7
2450 O2/17/93
2451 O2/15/10
2452 O2/15/18
2453 O2/15/25
2454 O2/15/26
2455 O2/17/7
2456 O2/15/24

2457 N2/4/13
2458 O2/15/10
2459 O2/15/11
2460 N2/4/8
2461 O2/17/14
2462 N2/6/12
2463 O2/15/9
2464 O2/15/10 and 39
2465 O2/15/15
2466 O2/17/30-31
2467 N2/6/11

- P3.10 D2 has accepted in these proceedings that all his remaining assets were acquired with funds originating from LCF. D10 has made the same concession, save in respect of [REDACTED]. The Claimants' investigations reveal that at least £1,530,861.43 deriving from LCF is traceable into [REDACTED]: see Mishcon de Reya's letter of 09.06.23.
- P3.11 D3 received £5,004,288.28 from LCF.²⁴⁶⁸ He bought cars: a Range Rover, a Porsche 911 and a Porsche Cayenne,²⁴⁶⁹ along with personalised number plates.²⁴⁷⁰ He also bought property in Sussex and Kent.²⁴⁷¹ He acquired various luxury items, including a Patek Philippe watch worth £190,980, a Rolex Day Date 40 watch valued at £33,000,²⁴⁷² and two Perazzi shotguns.²⁴⁷³ He also acquired £125,000 worth of gold bullion.²⁴⁷⁴
- P3.12 D4 received the largest share from LCF: at least £41,637,563.29.²⁴⁷⁵ D4 used monies from LCF to acquire a number of properties, including [REDACTED] (for £1.2 million), [REDACTED] (for £2.67 million), as well as its land and buildings (for a further £1 million), among various other property and pieces of land.²⁴⁷⁶
- P3.13 D4 also used monies from LCF to acquire a collection of cars and vehicles, including a Rolls Royce Dawn, a Ford Mustang, two Range Rovers, two Land Rovers, a Volkswagen Beach Buggy, two quad bikes, a number of diggers and trucks, a Harley Davidson motorbike,²⁴⁷⁷ as well as BMW M2²⁴⁷⁸ and a Porsche Macan.²⁴⁷⁹ He also acquired five mobile homes, a hot tub and a series of bronze statues.²⁴⁸⁰ In addition, D4 also bought a large yacht (Fairline Squadron 58)²⁴⁸¹ and 34 horses.²⁴⁸²
- P3.14 D4 also acquired many items of jewellery, including a serpentine bracelet worth £150,000,²⁴⁸³ a diamond set necklace worth £145,000,²⁴⁸⁴ diamond rings worth £65,000,²⁴⁸⁵ and £70,000²⁴⁸⁶ and a diamond bracelet worth £59,750.²⁴⁸⁷

²⁴⁶⁸ A1/6/13
²⁴⁶⁹ N3/1/page 1
²⁴⁷⁰ N3/2/3-4
²⁴⁷¹ N3/2/2
²⁴⁷² N3/2/2
²⁴⁷³ N3/1/2
²⁴⁷⁴ N3/2/4
²⁴⁷⁵ A1/6/15
²⁴⁷⁶ N4/2/2-3
²⁴⁷⁷ N4/2/8-10

²⁴⁷⁸ N4/2/14
²⁴⁷⁹ N4/2/15
²⁴⁸⁰ N4/2/13-14
²⁴⁸¹ N4/2/14
²⁴⁸² N4/2/10-11
²⁴⁸³ N4/2/28
²⁴⁸⁴ N4/2/29
²⁴⁸⁵ N4/2/27
²⁴⁸⁶ N4/2/28
²⁴⁸⁷ N4/2/28

P3.15 There was an extraordinary degree of expenditure on watches. D4 seems to have purchased nine Patek Philippe watches, worth £47,750, £59,900, £125,870, £95,490, £81,080, £39,070, £147,570, £2,640 and £30,900,²⁴⁸⁸ eight Rolex watches,²⁴⁸⁹ and more besides. He appears to have purchased a total of 32 luxury watches.²⁴⁹⁰

P3.16 D6 received £61,025,702.18. The Claimants know that D5 received the benefit of at least £8,586,364.69 of these monies from D6. But this is unlikely to represent the full extent of his receipts, because (i) it is clear that D5 received monies deriving from LCF from other companies including RP Digital and Aston Beckworth but (ii) D5 has failed to provide further disclosure of bank statements which would enable the monies to be traced. D7 received £224,270 from D6,²⁴⁹¹ though most of his money came indirectly via D9, which received £2,324,781.81.²⁴⁹² D8 received at least £554,481.23.²⁴⁹³

²⁴⁸⁸ N4/2/32-34

²⁴⁸⁹ N4/2/51-57

²⁴⁹⁰ N4/2/51-52

²⁴⁹¹ A1/6/19

²⁴⁹² A1/6/22

²⁴⁹³ A1/6/20-21

Q. CONDUCT OF THE TRIAL

Q1 The Claimants

Q1.1 The Claimants, acting by their respective administrators, obviously do not have direct knowledge of the events preceding the administrations. They will therefore establish their case by reference to the underlying documents.

Q1.2 The Claimants will rely upon the following witnesses of fact in relation to the post-administration period. Their evidence addresses: (i) realisations in the administrations; (ii) work carried out to analyse the movement of monies between LCF and its borrowers:

- (1) Finbarr O'Connell, a joint administrator of both LCF and LOG;
- (2) Henry Shinnars, a joint administrator of LCF, with responsibility for overseeing the management and realisation of LOG's interest in IOG;
- (3) David Hudson, a partner in FRP Advisory, who has been assisting the joint administrators;
- (4) Clare Lloyd, a director of Evelyn Partners, who has been assisting the joint administrators with aspects of the LCF administration, including the sale of Lakeview; and
- (5) Joe Pitt, a chartered surveyor and senior director at Fraser Real Estate, who has been advising the joint administrators on property realisations.

Q1.3 The Claimants will also rely upon the evidence of the following expert witnesses:

- (1) Chris Osborne, the founder and managing director of Osborne Partners, who will give evidence on the value of LOG's interest of IOG;

- (2) Dr Chudozie Okongwu, a managing director in the Investigations, Disputes and Risk Practice of Alix Partners, who will give evidence in relation to the rates of commission charged by D6; and
- (3) Simon Watson, the founder of Charterland Ltd, who will give evidence on the value of the Hill and the Beach in the Dominican Republic.

Q2 The Defendants

- Q2.1 D1 will give evidence. He also has permission to serve witness summaries on five additional witnesses and intends to serve witness summonses.
- Q2.2 D2 will give evidence. D10 will not give evidence.
- Q2.3 D4 has been debarred from participating in the trial. The Claimants must (and will) nonetheless establish their claims against him.
- Q2.4 D8 will give evidence.
- Q2.5 D5/D6 will rely upon the evidence of D5 and Kerry Venn (née Graham).
- Q2.6 D7/D9 are not expected to participate in the trial. The Claimants must (and will) nonetheless establish their claims against these Defendants.
- Q2.7 The following expert witnesses will give evidence on behalf of the Defendants:
- (1) Jonathan Wright, a partner of Auctus Advisers LLP, who will give evidence on the value of LOG's interest of IOG; and
 - (2) Paul Grainger, a financial services and compliance consultant and non-executive director and chairman of Complyport Limited, who will give evidence in relation to the rates of commission charged by D6.

R. EPILOGUE

R1.1 At a time of very low interest rates, D6's sales people had sold LCF's bonds to numerous unsuspecting members of the public, including some of the most vulnerable people in society. Many of them entrusted almost everything they owned to LCF. They needed the interest income in order to pay their bills and to survive. Reassured by the practised patten of D6's professional sales people, they entrusted their monies to LCF.

R1.2 When the reality became apparent, LCF's bondholders were distressed. Retired people who had invested their life's savings had to confront the reality that they had lost everything. Disabled people, and incapacitated people, who had no prospect of earning ever again, were saddened and angered by the fact that they had been deceived.

R1.3 On 05.01.19, [REDACTED], a bondholder, emailed LCF to say:²⁴⁹⁴

"Please tell me that I am not going to lose £90K! My life savings! Does this mean bond holders will lose all? What about my bond maturing in April? Will I get this back? I am worried sick!"

R1.4 On 08.01.19, she added:²⁴⁹⁵

"Just to let you know that that shock of this has led to me being hospitalised as I collapsed today after trying to talk to you yesterday. I was so distraught, I couldn't breathe and collapsed".

R1.5 On 08.01.19, another bondholder [REDACTED] emailed LCF to say:²⁴⁹⁶

"[It's] only 7 months since I put my life savings into your firm's ISA after assurances of 100% repayments of interest and capital ... I have worked all my life since the age of 16 and still working part-time as my state pension will not commence until September and I cannot bear losing £30,000 which would help our retirement and support my son and grandson".

²⁴⁹⁴ MDR00200655

²⁴⁹⁵ MDR00200655

²⁴⁹⁶ MDR00200656

R1.6 On 11.01.19, [REDACTED] wrote to say:²⁴⁹⁷

“I am worried about my money as I have invested the last 40 years’ money into you. I would like to retire next year with my money”.

R1.7 On 16.01.19, [REDACTED] emailed LCF to say, *“Please update us as my wife is really ill due to this”*.²⁴⁹⁸ On 25.01.18, [REDACTED] explained further:²⁴⁹⁹

“Our situation is [beyond] bad as my wife has had a stroke age 49 and this has made her worse! We have lost all our money apart from what we have invested with you as the other companies went into liquidation. Our bond with you matures in March and if we do not get it then we will be losing our home as we are behind with mortgage but explained to Santander that we can pay in March. Also desperate for our quarterly payment. To not know what the hell is going on is terrible”.

R1.8 On 28.01.19, [REDACTED] added:²⁵⁰⁰

“Our situation has got even worse if that could be possible. My wife’s health has deteriorated over the weekend and I am in a mess! Don’t need all this shit that is going on, what can I say to her?”

R1.9 On 20.01.19, [REDACTED] emailed LCF to say:²⁵⁰¹

“I am [REDACTED], am 73 years old and live at the same address as my sister [REDACTED] aged 78. We both have ISAs with you. I am the one that complained to you but due to my sister’s poor health I tried to keep quiet about your company’s situation for the time being. However, last Wednesday, when I was out, she apparently telephoned your company and found out what was going on. As I was the one who told her to put her savings with you, I now feel absolutely dreadful. Should she need to go into a care home that money was her safety net”.

R1.10 Another bondholder, [REDACTED], emailed LCF on 01.02.19 to say:²⁵⁰²

“I am disappointed and disgusted at the way that we have been treated. I have only just taken out twenty thousand worth of bonds and you must have known that

²⁴⁹⁷ MDR00201773

²⁴⁹⁸ MDR00203422

²⁴⁹⁹ MDR00207568

²⁵⁰⁰ MDR00207867

²⁵⁰¹ MDR00204937

²⁵⁰² MDR00209475

trouble was brewing. This is my pension money, hard earned with long hours on the road and a lot of hard graft. I didn't just take money from others – I earned it. I am in my seventies now and with a heart condition. My wife is also ill and she has over £48,000 invested with you. I was there when you were persuading her to invest her £18,800 into your ISA. Appalled that you can take advantage of us and so many others like us with your lies of our money being safe with all your securities. I am lost for words. I don't know how you sleep at night but then again I don't suppose you care”.

R1.11 On 02.02.19, [REDACTED] emailed to say:²⁵⁰³

“My dad tried to commit suicide last night, we got there in time, he has £31,000 invested with you, his life savings. I can tell you the directors aren't walking away from this, mark my words, shame on them doing this to innocent people who trusted them”.

²⁵⁰³ MDR00209594