

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

BL-2020-001343

BETWEEN:

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

Claimants

- and -

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

Defendants

Transcript of proceedings made to the court on

Day 7 - Wednesday, 28 February 2024

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

Michael Andrew Thompson (D1) appears in person

Simon Hume-Kendall (D2) & Helen Hume-Kendall (D10) are represented by Mr Warwick KC & Mr Russell

Elten Barker (D3) settled and is not appearing

Spencer Golding (D4) is debarred from defending the claim

Paul Careless (D5) and Surge Financial Limited (D6) are represented by Mr Ledgister & Mr Curry
Russell-Murphy (D7) and Grosvenor Park Intelligence Investments Limited (D9) appear in person

Robert Sedgwick (D8) appears in person

Opening submissions by **MR ROBINS** (continued)

MR ROBINS: My Lord, there were some points during the day yesterday, when your Lordship had some questions for me, and I either didn't know the answer or didn't feel confident to answer and said we would look into it. I propose to deal with those at the outset today, just to tick that off the list.

First, in relation to the assignment, purported assignment, of LOG's investment in Atlantic Petroleum P/F to Atlantic Petroleum Support, we were looking at the emails relating to the execution of that assignment in August 2017. Your Lordship mentioned that your Lordship spotted something indicating it might have been drafted by Mr Sedgwick and provided to Alex Lee on 28 April 2017.

We have looked into that. We hadn't spotted it, but we found it and added it to the trial bundle. Your Lordship is absolutely right. That's <D2D10-00027960>. An email from Mr Sedgwick to Mr Lee, on the 28th, attaching the draft assignment of the Atlantic loan and security to Atlantic Petroleum Support.

As we saw, it wasn't executed until August, when it was backdated. It still bore the date of 28 April 2017. And then it was promptly ignored.

We also, yesterday, had a discussion about the transfer of the Lakeview site from Lakeview Country Club Limited. Your Lordship asked when Lakeview Country Club Limited ceased to be the beneficial owner of the freehold interest in the Lakeview site. In the transcript of the hearing yesterday, it's at the bottom of page 68 and the top of page 69. I said: "It was something that was agreed as part of the restructuring, as it was described, that included the Lakeview SPA, which, as we know, was executed on 27 July 2015. But I'm hesitating because I recall seeing something to suggest that the transfer to Waterside Villages Plc wasn't implemented immediately and only took place later on during that year." We have looked into it. It took place in two stages. First, Lakeview Country Club Limited transferred the Lakeview site, with the exception of the development land, to LV Resorts, and then LV Resorts transferred it to Waterside Villages at a later date. It is mentioned in an email that we saw yesterday, <MDR00016700>. We looked at paragraph 1. Paragraph 2 goes on to say:

"[Lakeview Country Club Limited] sold the Lakeview site (excluding the development section) to its subsidiary LV Resorts Limited (LVR) for £6.75 million to be satisfied by the issue of £6.75 million shares in LVR and the assumption of the liability for the Telos investors."

But I said yesterday I thought the transfer might have been implemented a little after 27 July. In fact, that turns out to be correct as well, because the TR1, which we find at <D2D10-00013422> is dated, in the middle of the page, 4 September 2015. That's for the transfer by Lakeview Country Club Limited to LV Resorts, boxes 5 and 6 in the bottom half of the page. The signatures are on page 4. It is signed by Mr Thomson for Lakeview Country Club Limited and Mr Hume-Kendall for LV Resorts.

So, we can say that Lakeview Country Club Limited had ceased to own the Lakeview site, with the exception of the development land, by 4 September 2015 at the latest. There are other documents that cast some light on this. For example, <MDR00025338>. This is an email chain. We need to look at the second page. Mr Sedgwick emails Mr Peacock on 30 November 2015 to say: "This is a certificate of title which I prepared in January 2014 for a lender, Ultimate Opportunities." In the next paragraph:

"Since that date there has been an agreement to transfer the land from Lakeview Country Club Limited to LV Resorts Limited (which is part of the same group) and a transfer of part has been executed and is in the process of registration."

So, as at the end of November, it still hadn't been registered yet.

Then <MDR00025711>, which is a note drafted by Mr Sedgwick on 15 December 2015. In paragraph 2, at the bottom of the page, he says:

"Lakeview Country Club was owned by Lakeview Country Club Limited but that company has contracted to sell the site to LV Resorts Limited and it has completed a transfer of the majority of the site to LV Resorts Limited. The balance of the land is subject to a charge in favour of Lakeview UK Investments Plc (LUKI) in the sum of approximately £4 million and this land will be transferred to LV Resorts Limited as soon as it is able to repay the loan from LUKI."

He mentions also that LV Resorts has transferred the manor house and three lodges to Ashdown Country House Limited, which is owned by LV Resorts, but the shares are charged to Ashdown Acquisitions Limited to secure a loan of £1 million. That's the subject matter of the Golding-SHK agreement which we have looked at a number of times.

So, the Lakeview site is transferred to LV Resorts. Then LV Resorts transfers it to Waterside Villages Plc. We see that at <MDR00032280>. On page 1, there is a letter signed by Mr Hume-Kendall on the notepaper of Waterside Villages Plc. It is addressed to Mr Sedgwick's company, Global Security Trustees Limited, and it is in connection with a proposed bond issue by Waterside Villages Plc.

On page 2, there is an addendum to the certificate of title, signed by Mr Sedgwick, and it gives a history of the transfers. In the middle of the page, it says: "All charges over the land were discharged on 27 July 2015. On 27 July 2015, Lakeview Country Club Limited transferred all the land within the above titles to LV Resorts ..."

Well, we have seen the TR1 is actually dated 4 September, there or thereabouts. Then, in the paragraph towards the bottom of the page, he says: "LV Resorts Limited transferred to

Waterside Villages Plc all its interest in the property together with its right to buy the development land subject to paying the balance of the loan due to LUKI. "Accordingly, subject to the charge in favour of LUKI of the development land, Waterside Villages Plc is the owner of the property as defined in the original certificate of title."

That's 11 January 2016.

My Lord also asked me about the debentures granted by the four Support companies which were subsidiaries of --

MR JUSTICE MILES: What was the position at the time -- so, in the Elysian SPA -- so that was the sale of -- so that's the sale of GRP --

MR ROBINS: Yes.

MR JUSTICE MILES: -- which is in April 2017.

MR ROBINS: Yes.

MR JUSTICE MILES: You showed me that document with the -- which calculated the figure of 82 million.

MR ROBINS: Yes.

MR JUSTICE MILES: 18.7 million was the Lakeview.

MR ROBINS: Yes.

MR JUSTICE MILES: Now, at that stage, what did GRP own? It owned --

MR ROBINS: Four subsidiaries.

MR JUSTICE MILES: Including Waterside?

MR ROBINS: Including Waterside Villages Plc, the others being CV Resorts, Costa Property and Colina Property.

MR JUSTICE MILES: Right. So, by that stage, Waterside, subject to the business about the development land, owns the site; is that right?

MR ROBINS: Yes.

MR JUSTICE MILES: What's the position with regard to the obligations to pay off the loan by LUKI? Where is that, as it were, located?

MR ROBINS: That is still located with Lakeview Country Club Limited, which bears that obligation and owns the development land.

MR JUSTICE MILES: There seemed to be some -- you just took me through these documents quite quickly, but there seemed to be something in the intermediate stage which talked about the assumption of the -- what was that? The assumption obligation by LV --

MR ROBINS: To the Telos investors.

MR JUSTICE MILES: Is that what that was referring to? I didn't pick it up fully. In one of those emails -

MR ROBINS: I think it was <MDR00025338>. Let's see if it was that one or page 2. Was it this one or another one?

MR JUSTICE MILES: No, it was -- it might have been --

MR ROBINS: We looked at --

MR JUSTICE MILES: -- 12 August.

MR ROBINS: It is probably <MDR00016700>. We looked at this again. It was paragraph 2.

MR JUSTICE MILES: Yes. Oh, I see, that's for the assumption of the liability for the Telos investors.

MR ROBINS: And that seems to be referring to something that is said to have happened, again, on 27 July, when this so-called restructuring was implemented, although, as we have seen, the TR1 wasn't signed until later.

MR JUSTICE MILES: Okay.

MR ROBINS: Then Support company debentures. I had shown your Lordship that L&TD's liability to LCF was reallocated to the various Support companies and we saw the facility agreements between LCF and the Support companies. I mentioned that there were debentures by the various Support companies in favour of LCF and we looked at the debenture granted by Atlantic Petroleum Support Limited.

Your Lordship then asked me about the others. It is at page 111 of yesterday's transcript. Your Lordship said:

"What about the security given by the other four companies or the security position, because they each entered into a debenture, you told me." And I said "Yes".

Your Lordship said:

"There was an earlier email saying, at the moment, they don't have any assets."

I said, "Yes."

Your Lordship said:

"Is there any further evidence about that?" I said we would look into it. We have now located the debentures executed by the four Support companies which were subsidiaries of London Group LLP, and the first to look at is the debenture executed by Costa Support in favour of LCF. That's at <MDR00005245>. It is dated 29 April 2017. I think it might have been executed a few days later, but nothing really turns on that.

At page 27, we see the schedule, schedule 3, headed "Specific Contracts". It refers to:

"A deed of debenture granted by Costa Property Holdings Limited in favour of the chargor dated 29 April 2017 (and any further or alternative security granted by Costa Property Holdings Limited to the chargor)."

Now, the "chargor" in this document is Costa Support, so it is envisaging a debenture granted by Costa Property, the subsidiary of GRP, in favour of Costa Support, the subsidiary of London Group LLP. The definition of the term "specific contracts" appears on page 5. As we will see, it is a defined term. It is defined to mean the contracts listed in schedule 3. So, those are the specific contracts. There is only one listed here.

The defined term "Specific Contract", with a capital S, capital C, is something that appears on page 8, at the bottom of the page, in clause 5.1, dealing with representations and warranties. It says: "The chargor makes the following representations and warranties to and for the benefit of the lender on the date of this deed and acknowledges that the lender has entered into the finance documents in reliance on such representations and warranties."

On page 10, clause 5.1.4, there are some warranties or representations about specific contracts. It says: "(a) all the contracts which are material to the chargor's business are identified in schedule 3. (b) subject to the legal reservation, its obligations under each of the specific contracts are legal, valid, binding and enforceable", et cetera. The term "Specific Contracts", with a capital S, capital C, is not something which appears in the charging clause, which is clause 3.2 on pages 6 to 7. There are charges over real property, plant and machinery, shares and investments, insurance policies, goodwill, intellectual property and debts, but no mention of specific contracts. That's why I said yesterday it is rather confusing and we are not sure how it was ever meant to work.

But my Lord has seen the reference to the debenture granted by Costa Property in favour of Costa Support. That's at <D8-0014729>. We can see it is dated 29 April 2017. Again, I think there may have been a few days' delay before actually executing it, but I don't think anything really turns on that.

The signatures are on pages 23 to 24. We can see it is signed by Mr Hume-Kendall for both parties and witnessed by Mr Sedgwick.

On page 6, in clause 2.1, there is a covenant to pay. It is obviously relevant to see what this debenture secures because security is nothing without some underlying obligations to which the security can attach. In clause 2.1:

"The chargor [which is Costa Property] covenants with the lender [Costa Support] that it shall, on demand by the lender, pay and discharge all the Secured Obligations [capital S, capital O] ..." That is a term that is defined on page 4 at the bottom:

"Secured Obligations means all present and future obligations and liabilities ... under or in connection with the Finance Documents [capital F, capital D] ..."

MR JUSTICE MILES: Who is the lender? Is that --

MR ROBINS: The lender is defined as Costa Support. We can see that if we go back to the parties on page 3. Yes. So, it envisages that there is a lender/borrower relationship between Costa Support and Costa Property, and we have seen the definition of secured obligations, which refers to "Finance Documents". That term is defined on this page. It means:

"The Facility Agreement [capital F, capital A] and all security documents entered into in connection therewith."

And the "Facility Agreement", with a capital F, capital A:

"... means the Facility Agreement entered into on the date of this deed between the subsidiaries (individually) as borrowers and the lender [Costa Support Limited] as lender."

My Lord, we have not been able to find any such facility agreement, whether in draft or signed. There is no record of Costa Support making any payments to Costa Property. So, this debenture by Costa Property to Costa Support doesn't seem to secure anything. There doesn't seem to be any secured liability. Costa Support has represented and warranted that this is one of its key contracts in its business and that it is binding, and so on, but there doesn't seem to be any facility agreement to go with the debenture. So it gets even more puzzling.

The position is replicated between the other subsidiaries. We saw yesterday the facility agreement between Colina Support and LCF with a commitment of £5.5 million. The debenture between Colina Support and LCF is <MDR00005227>. It is in the same form. On page 27, there's a reference in schedule 3 to a debenture granted by Colina Property in favour of Colina Support. Again, this is a schedule that relates to warranties, not anything to do with the charging clause. There is then a debenture between Colina Property and Colina Support, which is <D8-0014277>. This is in the same form, with the same definitions of secured obligations, finance documents and facility agreement, and, again, there is no record of any such facility agreement having existed, whether in draft or as an executed document. So, it seems to be another debenture that doesn't actually secure anything. We also saw yesterday the facility agreement between Cape Verde Support and LCF in the sum of £7 million. The debenture between Cape Verde Support and LCF is <MDR00005205>. At page 27, there is a reference to the debenture in favour of Cape Verde Support granted by CV Resorts. That is at <D8-0014285>

This is in the same form. Again, there is no record of it being under any facility agreement as defined in it to which this debenture could attach. Finally, yesterday, we saw a facility agreement between Waterside Support and LCF. The debenture between Waterside Support and LCF is <MDR00005270>. On page 27 in schedule 3, there is a reference to the second item, a corresponding debenture granted by Waterside Villages Plc in favour of Waterside Support. There is also a first entry, another

company, Waterside Village Properties Limited. The second one of those has been located at <D8-0014247>. It is in the same form, and there is no facility agreement to go with the debenture.

So, it is difficult to understand how it is meant to operate. The Leisure & Tourism Developments liability was reallocated to the four Support company subsidiaries of London Group LLP. They entered into facility agreements with LCF. They also entered into debentures with LCF, which referred in schedule 3 to debentures between each Support company and the corresponding subsidiary of Global Resort Property.

Those debentures were executed between each Support company and the corresponding subsidiary of GRP to secure a repayment of facility agreements which didn't exist.

There are two things that perhaps shed some light on this, although, ultimately, I don't think we are any the wiser. The first is <MDR00085096>. Mr Sedgwick says in an email to Mr Lee, copied to Mr Thomson and Mr Hume-Kendall and Mr Ingham on 27 April 2017: "As I understand the existing debt to LCF is to be taken over by the LG LLP subsidiaries and they in turn will take debentures over the GRP subsidiaries and will subordinate those debentures to any debentures granted to LCF for new borrowing."

As I said, I don't think we are much the wiser, because it doesn't identify what those debentures would secure. There doesn't seem to be any obligation to go with them. They are security for nothing. Then, secondly, in the Elysian SPA, which we looked at yesterday, it is <MDR00005460>, we need to look at a few definitions first. On page 4, in the "Parties" section, my Lord can see, at 4, London Group LLP is the "Seller's Receiver", with a capital S, capital R, and also on that page, the term "Asset Subsidiaries" is defined to mean the subsidiaries of GRP and Waterside Village Properties, which I think is a subsidiary of Waterside Villages. So, those are the asset subsidiaries.

On the next page, page 5, "Debts", with a capital D, is defined to mean:

"Any debt or liability owing by the company or any of its subsidiaries as at the date hereof in respect of the Loan Agreements [capital L, capital A] ..." And then "Loan Agreements" is defined towards the top of the next page:

"Each of the loan agreements between the lenders and the company or any of the subsidiaries ..."
Also on that page, "Novating Subsidiaries": "Subsidiaries of the Sellers' Receiver namely Colina Support Limited, Cape Verde Support Limited, Costa Support Limited and Waterside Support Limited." We also need to look at "Lenders", which is back on the previous page, page 5. It is defined to include London Capital & Finance Plc as well as Mr Barker and Mrs Hume-Kendall.

But then, on page 10, where all these definitions come together, is clause 5.7, which says: "The Sellers and the Sellers' Receiver shall use their best endeavours to novate and take over the full responsibility for the payment of the Debts [capital D]. To facilitate this, the Buyer and the Company will allow Novating Subsidiaries [the Support company subsidiaries] to take security over the Asset Subsidiaries to cover the Novating Subsidiaries' liabilities of £24 million to London Capital & Finance Plc for novating the loan from London Capital & Finance Plc to Leisure & Tourism Developments Plc."

But I'm afraid I'm still none the wiser. It doesn't seem to work conceptually because one is still asking, well, security for what?

The debentures, as we have seen, refer to facility agreements between the novating subsidiaries and the asset subsidiaries, to use the definitions of this agreement, but those facility agreements didn't ever seem to come into existence, and the debentures didn't seem to attach to anything so we don't

really know how it was meant to work. But that, I hope, answers your Lordship's questions about what are these debentures and what assets were they meant to charge. The closest we come is schedule 3 which relates to warranties and representations, which takes us to debentures, but no facility agreements. Your Lordship also had a question for me yesterday about the suggestion that the proceeds of redemption of the redeemable preference shares in GRP would be used to repay the debts owed by the Support companies to LCF. In answer to one of your Lordship's questions, I said that Alex Lee of Buss Murton was told that the sellers would use the proceeds of the redeemable preference shares to repay the liabilities of the Support companies to LCF. That's page 112 of the transcript.

My Lord asked:

"Was there any document that was put in place which required the proceeds of sale to be applied in that way?"

I said:

"I don't think so, off the top of my head. But, again, we can check."

The things that had been told to Alex Lee are set out in emails. The first is at <MDR00084857>, which is an email from Mr Sedgwick to Mr Lee, copied to Mr Thomson and Mr Hume-Kendall on 26 April 2017. He says:

"I quite understand your need to see the SPA for the sale of Global Resort Property Plc. Because the deal has changed somewhat from its original terms I am substantially redrafting the document and as soon as it is available I will let you have a copy. "I am anticipating that the preference shares issued as part of the consideration for the sale of the GRP will be held by London Group LLP.

"In simple terms, the shareholders of GRP are selling their shares for approximately ..." Well, he says £105 million:

"... but the sellers will be responsible for settling the existing debts of GRP out of that money. Initially the sellers will receive preference shares in that sum and the intention is that these will be redeemed over a two-year period so I would imagine that you will want security over those preference shares." Then he mentions the Atlantic company in the final paragraph. There is another email at <MDR00085249>, which is another email from Mr Sedgwick to Mr Lee, and he says -- this is 28 April:

"This is the latest version of the SPA. It is in the process of some revision. The intention is that, on completion, London Group LLP will receive preference shares initially in the sum of ..."

Well, he says £90.125 million:

"... plus not voting B shares which will entitle them to 20 per cent of all distributions. London Group is responsible for repaying the existing debt out of the redemption proceeds of the preference shares." What Mr Sedgwick said to Mr Lee seems to have resulted in two things, presumably because Mr Lee felt that he needed to do his job as a solicitor acting for LCF to get security in accordance with what Mr Sedgwick described to him.

First, London Group LLP guaranteed the liabilities of the Support companies to LCF. There is an example at <MDR00005228>. There was one guarantee for each Support company subsidiary. This is dated 29 April 2017, between "the parties named herein and LCF". On page 3, we can see the parties include, first, the companies listed in the schedule at Part I as guarantors and indemnifiers. The borrower in this agreement is defined to mean Colina Support Limited, so there is one for each

Support company. The schedule mentioned is at page 15. My Lord can see that London Group and the other London Group Support company subsidiaries are the guarantors, and it is signed by Mr Hume-Kendall, Mr Barker and Mr Sedgwick. So, that's the first thing.

MR JUSTICE MILES: Sorry, what, then, would London Group LLP own after this transaction?

MR ROBINS: Mr Sedgwick had said it would own the preference shares in GRP which would be redeemed for a very large sum of money -- Mr Sedgwick mentioned £105 million, he mentioned £90.125 million. We saw in the agreement yesterday it was actually 82.125 million of preference shares.

MR JUSTICE MILES: Did it own the shares or did the individuals own the shares?

MR ROBINS: They were never issued. There were never any such shares.

MR JUSTICE MILES: Right.

MR ROBINS: But I will come to that in a moment.

MR JUSTICE MILES: Sorry, let me just remind myself. Okay, the simple point, you say, is that there were no shares.

MR ROBINS: So that's the first thing, the guarantee. The second thing is that London Group LLP executed a debenture in favour of LCF. That's <MDR00007514>. My Lord can see it is dated 29 April 2017. London Group LLP is the chargor. At page 25, we see what it charged. First:

"All of the redeemable preference shares referred to in clause 3 [of] the Sale and Purchase Agreement dated 29 April 2017 for the sale of all the issued share capital of Global Resort Properties Plc between [Mr] Hume-Kendall, [Mr] Barker and [Mr] Thomson (as Sellers) and Global Resort Development Limited ... as Buyer ..."

The buyer, as we have already seen, was Elysian, but I will come to deal with GRD in a moment. So LCF was given a charge over the redeemable preference shares.

MR JUSTICE MILES: Sorry, that was the point I was groping towards. As I recalled the Elysian SPA, it was the individuals as sellers rather than London Group LLP; is that right?

MR ROBINS: That's right. If we look at the Elysian SPA, <MDR00005460>, at page 22, it envisages that the preference shares will be issued to the individuals, not to London Group LLP. So, that's the first problem with the idea of London Group LLP giving a charge to LCF over the preference shares. London Group LLP wasn't going to own the preference shares. That's the first problem. The second problem is that the preference shares were never issued -- that's common ground. The sums that were paid out were not paid in redemption of the preference shares because the preference shares didn't exist.

The third problem with this suggestion is that the sums paid under the Elysian SPA to Mr Thomson, Mr Hume-Kendall, Mr Barker, Mr Golding and Mr Ingham were not used to repay the liabilities of the Support companies to LCF. As I mentioned yesterday, the liabilities of the Support companies were parked there and stayed there and, if we look at <MDR00195308>, my Lord will see an email sent by Katie Maddock to her colleague Eloise Wade, two administrative employees of LCF. It is dated 10 December 2018. So, this is the day of the FCA raid. The FCA come in and say, "Who are the borrowers and how much do you owe them and what's the security?", and Katie and Eloise are getting that information together for the FCA.

The attachment to this email -- or a document prepared on the same day as this email by Katie Maddock is <MDR00195610>. It is an internal LCF document headed "Borrowers loan book summary 10 December 2018". It shows the various borrowers and the loan balances. My Lord can see Atlantic Petroleum Support is third, its loan balance is over £19.2 million. Cape Verde Support is there, it owes over £7.6 million. Costa Support owes over £6.9 million. Colina Support owes over £5.8 million. Waterside Support owes almost £5.2 million.

So none of the money that was paid out under the Elysian SPA was actually used to reduce those liabilities. They have gone up. There seems to have been an accrual of interest.

So, it seems to us that what was done was put in place to placate or pacify Mr Lee to give him the understanding that there was some security in place, but, in reality, it was illusory because the preference shares which were meant to underpin all of this were never issued. There was no security over them in favour of LCF. And the sums that were paid out were not paid out in redemption of any preference shares and were not used to repay the liabilities of the Support companies.

MR JUSTICE MILES: I'm sorry to ask another question, since you have just answered some questions. What I would be helped with at some point -- not now -- is just a point of company law, which is that, if the company had issued the 82 million preference shares, I think they were stated in that document in the Elysian SPA to be 82 million shares of £1 each. What would have been, as it were, the balance sheet position of the company? And by that I mean, would those shares have had to have been issued at par? So, in other words, would £82 million have come into the company?

MR ROBINS: Yes.

MR JUSTICE MILES: Or could they have been issued at a discount?

MR ROBINS: Someone to my left can look into that for your Lordship.

Your Lordship asked another question yesterday. It was only I think in passing, but what was PKF doing? It was auditing LUKI Plc.

I think that deals with everything arising from yesterday except for the differences between Mr Barker's two spreadsheets of sums paid out under the Lakeview SPA. There is still some work going on to see if we can identify his reasons for recording certain payments as having been made under that SPA and then taking them out. I think the Spencer Golding loan repayment is part of the explanation, but we are still looking into that, so we will come back to your Lordship on that in due course.

We finished yesterday at the point where I was about to turn to the payments under the Elysian SPA. We have set these out in our written opening submissions, starting at <A2/1/102>. At the top of the page in F5.3, we say:

"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." My Lord can see from the footnote that's something that we have taken from the schedule to the neutral statement of uncontested facts that we looked at yesterday.

Then we say in the next paragraph:

"Notwithstanding the nonexistence of the redeemable preference shares in GRP, payments under the Elysian SPA soon commenced. On 15 May 2017, Alex Lee emailed Mr Thomson and Katie Maddock to say, 'I gather that Mark is looking for a drawdown today'."

In F5.5, we mention that Mr Lee attached a letter from Mark Ingham and Tom McCarthy dated 12 May 2017 authorising the payment of drawdowns on any of the new facilities to GRP. We might as well have a look at that. It's <MDR00087278>. It is a letter signed by Mr Ingham and Mr McCarthy dated 12 May 2017. At the top right, we see it's been sent on behalf of Costa Property, Colina Property, Waterside Villages and CV Resorts. They are the entities which entered into the new facilities with LCF in the sum of £20 million each.

It is addressed to the operations manager. They say:

"Dear Katie ..."

They refer to the loan facilities and say: "Please take this letter as authority to pay any authorised draw down facility for the above named companies to the bank account of Global Resort Property Plc ... (the subsidiary parent company) on an interim basis and until notified to pay directly into the subsidiary bank accounts."

Something has gone a bit wrong with the language, but I think the meaning is sufficiently clear. They are authorising any drawdowns on the subsidiary's loans to be paid into GRP's bank account. They then give the sort number and account number for that bank account. If we go back to <A2/1/102>, we see that the next thing to happen in F5.6 is that, on 19 May 2017, Mr Ingham asked Mr Thomson and Katie Maddock for a drawdown of £300,000 to be paid to GRP, and Mr Thomson told Katie that this was "okay to pay". The footnote, footnote 882, refers to <MDR00087910>, so we should just have a quick look at that. At the bottom half of the page is Mr Ingham's drawdown request. He says:

"We are requesting the draw down of funds against our existing LC&F facility of "£300,000 payable as per the 'minuted' request (provided to Alex Lee) to pay to the Global Resort Property bank account ..."

At the top of the page, Mr Thomson says: "Hi Katie.

"This is okay to pay."

If we go back to <A2/1/102>, we can see how it worked administratively. We don't need to look at the underlying document, but F5.7:

"Katie asked Mark which subsidiary it should be allocated to. Mark told her to allocate it to Costa Property; and Katie asked her colleague Eloise to make the payment."

At F5.8:

"LCF paid £301,300 to GRP on 19 May 2017. This increased GRP's bank balance from [a little over £161,000] to [a little under £463,000]. GRP then paid £400,000 to Sands Equity [which I will mention again in a moment] with the reference 'share purchases [sic]'. Sands Equity used this to pay £170,000 to Mr Golding, £20,000 to Mr Thomson, £20,000 to Mr Barker and £20,000 to Mark Ingham."

So, it's the new ratios but for some reason, I'm not sure off the top of my head why, Mr Hume-Kendall doesn't get his £170,000 on this occasion. The reference for each payment was "Share Payment". Then we explain in F5.9 that Sands Equity is the company formerly known as CV Hotels Limited. My Lord saw it on a structure chart yesterday, Mr Peacock's chart, and I said we didn't need to worry about it at that stage, but that is the company in question. It changed its name to Sands Equity. It's got nothing to do with Mr Ian Sands, who crops up later. It seems to be a coincidence of naming. Mr Sedgwick told Mr Hume-Kendall and Mr Barker, on 27 February 2017, that he was

changing its name to Sands Equity. The shares in Sands Equity were owned by London Group LLP and Mr Hume-Kendall was the sole director of Sands Equity.

Then over the page, on <A2/1/103>, we explain at the top, in F5.10, that on 24 July 2017, Mr Sedgwick provided Mr Hume-Kendall and Mr Barker with a backdated payment agency agreement, dated in typescript 19 May 2017, to explain why Sands Equity was handling payments for other companies. It seems to have been the sort of thing that banks require in order to be satisfied of their money laundering compliance procedures. Mr Sedgwick told Mr Hume-Kendall and Mr Barker that he was going to backdate it, saying, "I am dating it 19 May as that is the date of the first payment made by Sands".

Mr Barker, we mention in F5.11, explained, on 9 October 2017, 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 (£2 million +) to pass through the bank account". We might as well look at that document. It is <D2D10-00035447>. Mr Barker is explaining the position to Danny Wright of Monex, which is a currency payment agency used by Mr Golding and others and he says:

"Please find the chart attached for you to give to your compliance team showing the structure of our companies. You will see that Sands sits just below the top company (London Group LLP) and that all the other companies sit below and are owned wholly or in majority by LG. Sands' sole purpose is as a payment intermediary with a good relationship with Metro Bank and has the facility for large sums (£2 million +) to pass through the bank account with their approval. Sands has no assets and shows no profit or loss. Its turnover is purely monies in and out on behalf of the other companies ..."

So this is the sort of thing I had in mind when your Lordship was asking me about the payment intermediaries and I was saying, well, it really depended, or seems to have depended, on which companies had a bank account and which companies could be used at any one moment in time. There doesn't seem to have been any commercial rationale for it.

Then if we go back to <A2/1/103>, at F5.12, we mention that, on 24 May 2017, Mr Ingham asked Katie Maddock for a drawdown of £500,000. LCF paid a little over that, £500,250 to GRP. On 26 May, he asked her for another £200,000 and LCF paid £203,000 to GRP. Then, on the same day, GRP paid £475,000 to Sands Equity, which paid £24,625 to Mr Hume-Kendall. On 30 May 2017, Sands Equity paid £129,625 to Mr Golding, £15,250 to Mr Barker, £15,250 to Mr Thomson and £15,250 to Mr Ingham. It is probably too obvious to point it out, but Mr Ingham is asking for the drawdowns, Mr Thomson is approving them. We saw the previous page where he says "Okay to pay". And then they get 5 per cent each of the amounts that are distributed, as set out in the spreadsheets.

At F5.13, on 6 June 2017, LCF paid £400,200 to GRP. GRP transferred £300,000 of that to Sands Equity with the reference "Share Purchase" and Sands paid it out in the ratios of 42.5:42.5:5:5:5, Mr Thomson and Mr Ingham getting £15,000 each on that occasion. Ten days later, in F5.14, there is a similar story of monies being paid out by LCF to GRP. It is worth noting, in the second sentence of that paragraph, it is not a drawdown request from Mr Ingham, it is Mr Thomson asking Katie Maddock to send £500,000 to GRP, and that is then implemented.

Then F5.15, at the bottom of the page, Mr Ingham told Mr Barker that GRP would pay £800,000 under the Elysian SPA. The next day, GRP paid £800,000 to Sands Equity. And Sands Equity used that money to make special payments in the ratios that I mentioned earlier, almost £300,000 each to Mr Golding and Mrs and Mrs Hume-Kendall, I think it was paid into a joint account, and £35,000 each to Mr Barker, Mr Thomson and Mr Ingham.

We mentioned -- I don't think we need to go to it -- a spreadsheet. As I said, the spreadsheets are contemporaneous documents which are completed and evolve over time. It is mentioned in footnote 910. On 28 June 2017, as we mentioned in F5.16, Mr Ingham asked for a drawdown of £700,000. Mr Thomson told him that he had only £395,000 available, so Mark sent a revised drawdown request. LCF paid almost £400,000 to GRP. On the next day, GRP paid £350,000 to Sands Equity. Then Mr Ingham asked for another drawdown of £275,000. That was paid across by LCF to GRP plus an additional £500. Then GRP paid £700,000 to Sands Equity over two days and Sands Equity used that to make payments to Mr Golding, Mr Hume-Kendall, Mr Barker, Mr Thomson and Mr Ingham in the relevant ratios. Then, in the next paragraph, F5.17, again, it is not Mr Ingham asking for a drawdown, it is Mr Thomson asking Katie Maddock to send money over, £1 million to Elysian. Then Mark Ingham sends a drawdown request for £1.1 million and LCF pays just over £1 million to GRP. It is probably worth looking at the document, the first document mentioned in footnote 918, which is <MDR00094175>. It is the document mentioned. Mr Thomson emails Katie saying:

"Hi Katie.

"Please can you send Elysian £1 million, I believe it is going to Costa."

Well, it didn't go to Costa. We have seen where it went.

<A2/1/104> is where we left off. That was the document mentioned at the beginning of F5.17. At F5.18, further payments from LCF to GRP and from GRP to Sands. Sands used that to pay £265,000 to Mr Golding, £265,000 to Mr and Mrs Hume-Kendall, £35,000 to Mr Barker and £35,000 to Mr Thomson. We mentioned there was nothing this time for Mark Ingham, who instead received a top-up payment on the next occasion. That's over the page on page 105 of the electronic numbering.

F5.19, and this is a perhaps telling episode. On 11 August 2017, Mr Ingham asked Katie Maddock of LCF for a drawdown of a little over £1 million. It is £1,087,000. She emailed Mr Thomson to ask if this was okay, 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". Mr Thomson replied with, "Yes and yes", with two emojis. We can see that exchange at <MDR00096930>. Mr Ingham's drawdown request at the bottom of the page, about a quarter of the way down, Katie's email: "Hi Andy.

"Please can you confirm if this is okay to go? "The available for Bond 1 [which is LCF's main account for the collection of bondholder monies] is £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." And Mr Thomson's reply at the top is "Yes and yes" with his emojis. It seems Mr Thomson, at this point, is encouraging Mr Ingham to draw the maximum amount that LCF has available from new bondholders for distribution to the various five recipients under the Elysian SPA. If we go back to <A2/1/105>, we can pick up where we left off. After the two emojis, Katie emailed Mark to say the available balances in LCF's account had fallen slightly to £1,047,000. LCF then paid a little under that, just over £1,018,000 to GRP, which immediately transferred this sum to Sands Equity. Sands then used it to pay the top-up payment to Mr Ingham and then £38,250 to each of Mr Barker and Mr Thomson. We can see from the number paid to Mr Ingham that he got his £38,250 as well, in addition to the top-up to make up for the non-payment on the last occasion. Then, on 14 August 2017, Sands paid £325,125 each to Mr Golding and the joint account of Mr and Mrs Hume-Kendall. So, never mind making loans to SMEs, the account is being drained of everything that's available to make payments to these individuals.

Then at F5.20, on 18 August 2017, Mr Ingham asked Mr Thomson and Katie Maddock for a drawdown of £300,000. LCF paid £300,875 to GRP, which increased the credit balance in GRP's account to the amount set out. GRP immediately paid £250,000 to Sands Equity and then a further £100,000 to Sands Equity almost a week later. The day after that, on 29 August 2017, LCF paid a further £425,575 to GRP which immediately transferred £110,000 of that money to Sands Equity. On the 30th of the month, LCF paid a little over £800,000 to GRP, which paid £900,000 to Sands Equity, and then Sands paid £367,625 to Mr Golding, £367,625 to Mr and Mrs Hume-Kendall's joint account, and £43,250 each to Mr Barker, Mr Thomson and Mr Ingham.

Then, on the next page, please, <A2/1/106>, we see more of the same. There are more payments in F5.21. As we observe in F5.22, by this point, GRP had received a total of more than £11.6 million from LCF and 53 per cent of this amount had been paid out by Sands Equity to Mr Thomson, Mr Hume-Kendall, Mr Barker, Mr Golding and Mr Ingham.

As we mention in the next paragraph, the payments continued. Mr Ingham, on 13 September 2017, asked for a drawdown of £850,000. LCF paid £841,925 to GRP, which paid £850,000 to Sands Equity. Then we have a text message from Mr Barker to a phone which seems to have been used by Lucy Sparks, who was his assistant, and which had previously been used by Mr Hume-Kendall, stating £340,000 to SG and SHK, £40,000 to EB, AT and MI, and Sands Equity then made those payments. Then in F5.24, on 22 September 2017, Mr Ingham asked for a drawdown of £1.3 million. LCF pays a little over that to GRP, which pays £800,000 to Sands Equity on the 22nd of the month, and another £500,000 on the 25th. Sands Equity then uses that to pay £425,000 to each of Mr Golding and the joint account of Mr and Mrs Hume-Kendall and £50,000 each to Mr Barker, Mr Thomson and Mr Ingham.

F5.25, now into October, 6 October, Mr Ingham asks for a drawdown of £800,000. Then, 25 minutes later, he modified it to request for £1.55 million. As we point out, footnote 960 will take you direct to the bank statement, but I don't think we need to go to it at this point. It is page 7 if anyone wants to look at it, if your Lordship wants to turn it up.

MR JUSTICE MILES: No, it is all right.

MR ROBINS: LCF's account had a credit balance of just over £1.55 million, so we infer, and invite your Lordship to infer, that it is a repeat or rerun of the scenario that we saw a moment ago, with the emojis in response to the first drawdown request. Someone with knowledge of LCF's bank account, presumably Mr Thomson, got in touch with Mr Ingham to say, "Why are you asking for only 800,000? We can pay over 1.55 million", resulting in the second drawdown request in that amount and then LCF paid the sum your Lordship sees set out, marginally in excess of £1.55 million, to GRP. The use to which GRP puts that money is on the next page, GRP paid £1.5 million to Sands Equity, Sands Equity then paid £425,000 to each of Mr Golding and the joint account of the Hume-Kendalls and £50,000 to each of Mr Barker and Mr Thomson. Again, it is an occasion when Mr Ingham didn't, for whatever reason, get his 5 per cent like he usually did, as your Lordship has seen.

F5.26. There is the same pattern, with the sum of £850,000, and, as we point out in line 3, at the end, by this point in time, LCF had paid a total of around £15.8 million to GRP, approximately 60 per cent of this money had been paid to the various recipients via Sands Equity.

Then there is another rerun of the by-now-familiar scenario in F5.27. Mr McCarthy, on 27 October, asked for a drawdown of £900,000 before lodging a revised drawdown request in the sum of £950,000. LCF's account had just over £974,000 in it. So, again, we infer, and invite your Lordship to infer, that someone with knowledge of the bank balance -- presumably Mr Thomson -- has got in

touch to ask Mr McCarthy to reodge the drawdown request in a larger amount. That's then implemented. LCF pays a little over £950,000 to GRP, which pays £850,000 to Sands Equity, which then makes the substantial payments to the recipients. Mark Ingham, on this occasion, gets his 5 per cent. As we point out, by this point in time, the parties have put in place a new mechanism, the Prime FCA, which is the next topic, but I see the time. Given that I'm about to turn to a new topic, unless your Lordship has any questions for me at this point, I wonder if it might be a convenient moment for the shorthand writer's break?

MR JUSTICE MILES: Yes. As far as the position of the drawdowns -- well, by the subsidiaries, strictly speaking, that's under facility agreements.

MR ROBINS: Yes.

MR JUSTICE MILES: Does the same process of, as it were, grossing up have to take place --

MR ROBINS: Yes.

MR JUSTICE MILES: -- to work out how much they are actually bound to pay?

MR ROBINS: Absolutely, yes. That applies for all of the LCF borrowers. They pay -- they are liable to pay the grossed-up amount, although they receive only the net amount.

The figure that we give at the end of F5.26 is a reference to the net amount. LCF have paid a total of around £15.8 million to GRP. That's the cash actually transferred to the bank account.

The gross amount would be larger. Let me have a very quick look to see if I can find a document that will help.

MR JUSTICE MILES: It is the same principle as we saw earlier on, and you say that carries on for all facility agreements.

MR ROBINS: Yes.

MR JUSTICE MILES: That's recorded in a spreadsheet somewhere?

MR ROBINS: Yes.

MR JUSTICE MILES: Why don't you come back to that after the break in five minutes, thank you.

(11.42 am)

(A short break)

(11.50 am)

MR ROBINS: My Lord, I had a quick look at the footnote 967, which is the footnote earlier in the sentence that we can see just above, "By this point in time LCF had paid a total of around £15.8 million to GRP". If we could look at the second document in the footnote first, please, <MDR00111623>, this will show your Lordship the provenance of the spreadsheet attached to it. Chloe Ongley, an administrative staff member at LCF, emails this to ***** on 15 November 2017. It is headed "Loan profiles". The attachment is <MDR00111621>. We need to open it in native format.. <MDR00111621>. It is the document mentioned in the footnote <MDR00111621>. Can we open it in native format? This is the spreadsheet. There is a tab for each of the four GRP subsidiaries. If we could choose Costa, please, and then look at the top row. We can see the column headings are "Date", "Gross borrowed", "Net loan requested", "Funds sent to CS [Costa]

less all funding costs", that's the amount actually paid over. I don't know if we need to enable content or widen the columns or what, but it would be helpful to see what's in the bottom where it says "Ref" on this. On my machine, it doesn't. It actually shows a number. Perhaps we need to enable content at the top. What happens if you click on "Ref" and press return? Maybe on the one on the right. Very strange. No, the next cell on the right.

I don't know what's gone wrong, my Lord, but on my version it shows the totals. I hope that is sufficient to answer your Lordship's point that there is a gross liability, which is significantly in excess of the cash amounts sent because of the grossing up for Surge fees. It is the same one at tabs 2, 3 and 4.

Unless your Lordship has any further questions on the Elysian SPA, I was going to move to the Prime SPA. That's a transaction by which money was borrowed from LCF and paid to Mr Thomson, Mr Hume-Kendall, Mr Barker, Mr Golding, Mark Ingham, Tom McCarthy and Terry Mitchell's company Zectrade.

My Lord has heard a bit about Mark Ingham and Tom McCarthy, but Terry Mitchell is a new character at this point. He was a director or associated with a company called Anglo Wealth and a company called Asset Life. They were both investment companies that sought to raise monies from members of the public. We can see a bit about Mr Mitchell at <MDR00226935>. It is a summary from 2 Hare Court's website with the heading "Two City Businessmen Sentenced for Operating a 'Clever and Sophisticated Fraud on Investors': Angus Bunyan [counsel at 2 Hare Court] prosecutes": "Terrence Mitchell and Andrew Meikle were sentenced today at Southwark Crown Court for their part in running an investment scheme which the judge described 'as an elegantly packaged scam'. Their company, Anglo Wealth Ltd, accepted very substantial deposits from individuals but failed to make proper investments. Instead, the bulk of the funds were dissipated on supporting the defendants' lifestyles.

"Unusually for a prosecution of this type, the investors were repaid in full (albeit only after the pair knew they faced criminal investigation), but the Crown's case was that the prosecution was nevertheless appropriate because of what the judge described as the 'very substantial risk of loss'. Mitchell was convicted of Fraud by False Representation and both he and Meikle were also convicted of Carrying on a Regulated Activity contrary to section 23 of FSMA 2000.

"Mitchell received a two-year custodial sentence, suspended for two years, and £175k fine; Meikle a 6-month custodial sentence, suspended for two years, and a £75k fine. Both men were disqualified from acting as a director of a company for 6 years." It mentioned that Mr Bunyan was instructed by the CPS Serious Fraud Division.

My Lord may ask, why are you relying on something that you found on a chamber's website? The answer to that is that we are not presently able to deploy the other materials that we have because proceedings in the Crown Court under the Proceeds of Crime Act take place in private. There are restrictions on collateral use. We can't deploy materials from those proceedings in this court without permission or consent. We are trying to address that and hope to be able to provide your Lordship, in due course, with some documents from the Crown Court proceedings, but until we have crossed that bridge, we have got to do the best we can with the materials that we are able to deploy.

This is one of two things that we can currently rely on. The other is a letter to Mr Mitchell --

MR JUSTICE MILES: What was the date of the -- 20 December 2018.

MR ROBINS: This is 20 December 2018. The other document we can show to your Lordship at this point is <MDR00227329>. It is a letter to Mr Mitchell from the London Collection and Compliance Centre. It is headed "Notice of transfer of fine" and it refers to the fact that the financial penalties have been transferred from the Southwark Crown Court for enforcement. The date of sentence is provided as 14 December 2018 and towards the bottom of the page, under "Offences and penalties", my Lord can see the reference to "Fraud by false representation" and "Carry on a regulated activity when not an authorised/exempt person". So, that confirms what we have seen in the information from the 2 Hare Court website.

Until we can deploy the other documents, I am simply going to have to ask your Lordship to infer, as a matter of general knowledge, that things like this don't suddenly happen to someone overnight. They are ordinarily preceded by a process of investigation. There may be orders that are made, such as restraint orders under the Proceeds of Crime Act, and so on, but I'm afraid that's something I can only ask your Lordship to infer as a matter of general knowledge at this point because we aren't in a position to give your Lordship anything other --

MR JUSTICE MILES: Have steps been taken to obtain the evidence?

MR ROBINS: We are doing what we can. We need to obtain either -- it is the same as the CPR regime. We need to obtain the consent of the witness who made the statement on which we wish to rely, in this case a serving police officer, and, in the absence of that, we need the permission of the Crown Court. My instructing solicitors are writing to the Crown Court. If we don't hear anything back, something that crossed my mind on my morning commute this morning, although we haven't looked into it yet, is I think your Lordship is able to constitute yourself as a Crown Court judge and make an order. But that seems to me to be a fairly exceptional step and we would need to look into it. It is not something I am going to invite your Lordship to do until we have actually researched it and can provide your Lordship with some clarity as to whether it would be appropriate. But that is, at the moment, what we can tell you about Terry Mitchell's troubles with the law. Terry Mitchell and his associate, Mr Meikle, were involved with Mr Hume-Kendall in 2015. We can see at <MDR00026296>, if we look at page 5 at the bottom, we can see that Mr Sedgwick is providing some heads of terms to Mr Hume-Kendall and Mr Barker, and then, on the previous page, Mr Hume-Kendall is forwarding those, at the bottom, to Mr Meikle, copied to Mr Ingham, Mr Golding, Mr Barker and Mr Sedgwick, and he says "Andrew", and at the top of the next page -- sorry, the final page, page 5:

"Further to our quick call -- hope the voice comes back soon!

"Herewith very early stage draft heads of terms from which hopefully we can build a complete document." On page 4, we can see that that has been forwarded to Mr Mitchell, whose name appears. If we go to the previous page as well, page 3, we can see Mr Mitchell is at the bottom of the page. On the right-hand side, we can see a reference to Asset Life Plc, which was one of Mr Mitchell's companies.

So, Mr Mitchell and Mr Meikle are both associated with the company Asset Life Plc. They are also associated with a company called Anglo Wealth Plc. At <MDR00086245>, there is a draft letter to be sent by Anglo Wealth to investors. It is dated 3 March 2017. It says:

"We write to you in relation to your loan made to Anglo Wealth which is shortly due for maturity.
"The existing investments are ringfenced with the current value of these assets standing well in excess of the total loan book of which your loan to the company is included.

"The major asset which Anglo Wealth is holding is a significant shareholding in a company that is listing on a recognised London Exchange in the next 4 weeks. As part of this listing the corporate finance advisor has stated that as part of the regulatory conditions for this listing all pre IPO investors are required to be locked in for a period of 12 months from the listing date. We do however have an agreement with the market regulators that on a first come first served basis and depending on market demand shares can be sold. "The board is fully committed to realising its investment within this timeframe. In order to allow the company to facilitate this, Anglo Wealth would like to extend your current loan arrangements for a further 12 months. During this time you will of course receive your interest payments in accordance with the terms of your loan contract."

So, Mr Mitchell is concerned that his investors might seek repayment and is seeking to extend the terms of their loans. It is obviously quite an interesting draft in light of his subsequent conviction for fraud in connection with Anglo Wealth.

But the man called Terry Mitchell who we see in the disclosed documents in connection with the Prime SPA is the same person as the Terry Mitchell who is associated with Andrew Meikle and who is ultimately convicted alongside Andrew Meikle for his involvement in the Anglo Wealth bond fraud.

It is Terry Mitchell who incorporates the company Prime Resort Development Limited. We see that at <MDR00104059>. I think we need to -- actually, it is the top of that page on the left:

"Hello Angel."

That's not a term of endearment. That's the gentleman's first name:

"Thank you for your detailed email. I am anticipating subject to your availability that we make the site visits within the two weeks from 3 to 17 October."

It seems they are talking about going out to the Dominican Republic:

"We have now incorporated as an SPV Prime Resort Development Limited (directors being appointed as below) and we have acquired the relevant companies with ownership of the sites.

"It would be helpful to have a short letter from you personally reflecting as we discussed that you would be pleased to be involved with the projects on a mutual agreement as a consultant or a director of the company. "If you become involved, Robert Woodward would play a lesser role in the projects."

So, my Lord can see that Mr Mitchell has incorporated Prime Resort Development Limited. If we look down the page, he sets out the proposed directors are to be Pippa Isbell, Robert Woodward and Ian Sands, and he provides some background in respect of those individuals.

The use of those three individuals as directors is something that Terry Mitchell had agreed with Mr Hume-Kendall at a prior point in time, and we can see that at <MDR00067315>, where, in the middle of the page, on 2 December 2016, Mr Mitchell says:

"Good afternoon Simon.

"David has updated the updated SPA for GRD to acquire LTDH (attached).

"He has noted the outstanding items that need confirmation and are highlighted in yellow. These are ..."

And they include, for example, expenses of the proposed corporate bond. So Mr Hume-Kendall is discussing a proposed bond issue with Mr Mitchell. He then says:

"The directors at the moment ready to join Robert W on GRD are below. As we discussed, to avoid any link with AL [Asset Life] I have not included myself but could be referred to as a consultant."

The directors that he's proposing, we can see on this page and the next, are Pippa Isbell, Robert Woodward and Ian Sands. On the top of the left-hand, Mr Mitchell chases up Mr Hume-Kendall to say:

"Please let me know if the attached is okay subject to the points and if you would like to meet this week." So, the use of those individuals as directors is something that Mr Mitchell has discussed with Mr Hume-Kendall. They do appear to be titular directors or nominee directors. We see from the email traffic that, for example, Pippa Isbell doesn't really seem to have any idea about what's going on. At <MDR00105949>, this is after her appointment as a director, about a third of the way down the page, Mr Mitchell says: "Morning Pippa.

"I have attached a valuation for the hillside site together with a report from last week. Did you have a chance to return the Company House docs to Adler Shine?"

She says at the top of the page:

"Hi Terry, thanks for this. It all looks very interesting. I haven't returned the CH docs yet -- I thought I should wait for your letter about the appointment first, for the sake of good order!" So, as at 9 October 2017, she is only really beginning to read in and doesn't have any idea beyond to comment that it all looks very interesting. This email is almost a month after the signature of the first Prime SPA, which was signed on 13 September 2017, so I think my Lord can safely conclude that she had no role in the formulation of that transaction.

As regards Mr Woodward, he is another name we saw mentioned a moment ago. He had agreed with Mr Hume-Kendall that he would work for a fee, and we see that at <MDR00104683>. This is now 27 September 2017, two weeks after the first Prime SPA. Mr Woodward emails Mr Mitchell, saying:

"I had a discussion with Simon yesterday ..." We can see the subject is "Monthly fees", so that's what he's discussed with Simon:

"... regarding my involvement with Prime and the Dominican Republic projects. Simon advised that he pays consultants £1,000 per day, a reasonable rate in construction is £750 per day for consultancy, involvement level for me will rise and fall, and as suggested by Tom and Mark maybe a retainer is the best way to go. Simon also advised of the risk profile of being a named director and also the benefits, his words were I hope Terry is allocating you some shares!! "Taking all this in and understanding that I will fully commit to this and do whatever is necessary, I suggest that I'm held on a 3,000-monthly retainer." That seems to have been something that he's discussed with Mr Hume-Kendall. He's also advised him of the risk profile in being named a director. So, they are simply nominee directors who are paid a monthly retainer. The real owner and driving force behind Prime is Terry Mitchell. He is the beneficial owner. We see that at <MDR00107524>. It is a draft letter from Ian Sands to Terry Mitchell with the heading "Re: Prime Resort Development Limited."

He says:

"This letter is to confirm that I am holding the 1 share of £1 in Prime Resort Development Limited being the whole of the issued share capital of the company as your nominee and to your order as beneficial owner. I also confirm the irrevocable undertaking of the directors not to issue further shares or allow any shares to be under option without your prior approval in writing."

We don't have a signed version, but it's pretty clear that Mr Mitchell is the sole beneficial owner of Prime Resort Development Limited.

In light of that, it's perhaps unsurprising that, in the period before the signature of the Prime SPA, we don't see Robert Woodward or Pippa Isbell in the email traffic. We only see them very sporadically during 2018, and we only really see Ian Sands in the period after signature of the Prime SPA because he's the person who, at that time, is signing drawdown requests which are sent to LCF.

In the period before the Prime SPA, the people we see in the email traffic are Terry Mitchell and another individual by the name of Paul Seakens. For example, at <MDR00098533>, if we start on page 3, at the bottom of the chain, we can see that Mr Mitchell has sent a document and Mr Seakens replies just above that: "Terry, [not] one of mine I'm afraid. Would you still like me to have a go?"

And Terry Mitchell says, "Please Unc". Then, on the left, Paul Seakens says "By ...?", and "Ideally by 2 pm Wednesday". Above that, Terry Mitchell says: "Hi Paul, I am seeing Spenser by himself at 3.30 to agree/conclude the deal and would be helpful if you can amend the spreadsheet. I have tried to but the cells are all linked and beyond my pay grade." At the top, Paul Seakens says:

"Will drop everything and work on it now ... and who is Don Rep? Are we dealing with the Mafia?" I think it is a joke. Paul Seakens is someone who was disqualified as a director in 2018. He is someone who, the court concluded, was unfit to be concerned in the management of the company. We can see that at <MDR00227312>. There is a record of his disqualification from Companies House, and it identifies the companies that gave rise to this. It was conduct while acting for Carbon Neutral Investments Limited, Enviro Associates Limited, Gemmax Solutions Limited, Tocan Limited and Vaeron Finance Limited. But, of course, disqualification, in the ordinary way, is general, it is not limited to those companies, those are simply the companies that he was involved with in circumstances giving rise to the disqualification. The circumstances of his disqualification have some relevance, ultimately, in the story of LCF because the Prime bank accounts with Lloyds were frozen due to his disqualification. We can see that at <MDR00172399> If we look on the next page, I think it must be, or the page after this page, we see the full email from Mr Sands on 17 September. He says:

"I thought I needed to share the status on the bank account problem with you.

"I have had a letter from Lloyds Bank which isn't very helpful and I have sent a copy to you under separate cover.

"I have been mystified as to why Lloyds have now chosen to block the account because of PS [Paul Seakens] involvement having approved him initially however things are a little clearer now.

"I met with Simon Hume-Kendall on Friday to discuss the El Cupey issue and Westminster [Westminster is what we will see in due course is LCF 2]. Simon had googled Paul and discovered issues relating to some fairly serious errors in judgement in ... his past but also that there appears to be some new issues and Companies House have issued a new notice ... disqualifying him from being a director of any companies ... until ... 2031 and it is likely this has prompted investigation by Lloyds which have triggered their action."

MR JUSTICE MILES: This is in --

MR ROBINS: September 2018.

MR JUSTICE MILES: The document you showed me before I think suggested he was disqualified in 2021. I don't know if it's an earlier -- on the next page or something --

MR ROBINS: Let's have a look at the next document to see if it casts any light. <MDR00227314>. I think this might be -- is this earlier or later? What's the date on this? This is later. 28 May 2021. Mr Seakens and --

MR JUSTICE MILES: That's the same date as on the former document you showed me.

MR ROBINS: My Lord can see that they were part of a criminal enterprise that used high-pressure sales tactics to convince victims to purchase worthless carbon credits at inflated markups. It says that the worthless investments were sold through Enviro Associates Limited, of which both Seakens and Ryan were company directors, sales of approximately £2 million had gone through the company's accounts. It gives details of the sentences: 13 years for Mr Seakens. He also received a 12-year directors' disqualification. I think that's what we have just seen. Luke Ryan was sentenced to six years and disqualified --

MR JUSTICE MILES: That one seems to be later than the email you just showed me, which is September 2018.

MR ROBINS: Yes. So, that seems to be a disqualification on conviction. It may have been -- we will look into it -- there was a prior disqualification. There is also -- I think this is a later document as well, but let's have a look, <MDR00227313>. Can we see the date at the top? This is from the CPS website. This is much more recent. 18 December 2023. Mr Seakens has been subject to a confiscation order following the sentence for fraud, and there's further details about his confiscation order and the investment fraud he carried out. There is one final document -- if it doesn't shed any light on it, we will have to go away and do some research later today -- <MDR00227315>. This is the final notice of the FCA banning Mr Seakens from performing any function in relation to any regulated activity. 2.1 refers to criminal offences of converting criminal property, ie money laundering, and fraudulent trading. Mr Shaw tells me -- I don't have any references -- there are two disqualification orders, one in 2018 and one in 2021. We will check that and come back to your Lordship on it. But that's Mr Seakens, the associate of Mr Mitchell.

As my Lord has seen, Prime Resort Development is Mr Mitchell's company. That's the company which acts as the buyer under the Prime SPA. But, rather curiously, the Prime SPA is not the first time we see Terry Mitchell. In fact, it seems that he was involved in the formulation of the Elysian SPA, when Mark and Tom were the buyers. It seems that Terry helped to set it up. At <MDR00083379>, there's an email from Mr Sedgwick to someone called David Massey, copied to Terry Mitchell, Mr Hume-Kendall, Mr Ingham and others, dated 11 April 2017.

He's forwarding company incorporation details and he says -- copied to Mr Mitchell, as I said: "We have now incorporated Costa Property Holdings Limited which is intended to own the shares in Tenedora which in turn owns The Beach properties in the Dominican Republic. I have asked Mark to organise the transfer of shares in Tenedora from IRG to Costa Property Holdings Limited."

So, Terry is involved at that stage. Similarly, at <MDR00083390>, we see another email copied to Mr Mitchell from Mr Sedgwick:

"Here is the other company to hold the shares of Inversiones."

He's also told about the incorporation of Waterside Villages, <MDR00084603>. Bad reference. I will have to check that one. I said <MDR00084603>, or I should have said. In which case, my Lord, I have got that one wrong and we will come back to that. Let's try <MDR00085090>. This is 27 April 2017, very shortly before execution of the Elysian SPA. Mr Sedgwick emails Mr Hume-Kendall, Mr Barker, copies it to Mr Golding, Mr Ingham, Mr McCarthy and, at the end of the cc section, Terence Mitchell. He says:

"Please find the revised SPA which I have prepared. I am sending it to you all without having checked that it is correct or complete ..."

So he is involved at that stage, two days before the execution of the Elysian SPA, and we can see that document attached, <MDR00085091>. This is the SPA which ultimately became the Elysian SPA. The purchaser at this stage is to be a company called Global Resort Development Limited, and we can see that at, I think, page 4 of the document. It sets out the parties. The buyer is going to be the second party, Global Resort Development Limited.

But later on the same day, Mr Ingham sends an email at <EB0044955>. He emails Mr Barker to say: "Elten.

"FYI -- I am setting a new company up for when the purchase of GRP goes through and closing [Global] Resorts Development so I will put the payments through ITI limited."

There is another email on the very day of the signature of the Elysian SPA, <MDR00085581>. The top email, Mr Hume-Kendall says to Mr Massey, copied to Mr Mitchell, Tom McCarthy, Robert Sedgwick, Mr Barker, Mr Ingham, Mr Woodward:

"David.

"I tried to reach TM by phone last night. "We will aim to complete the transaction as planned this am and will send you a copy of the final executed docs next week which will include a wide-ranging rectification clause.

"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."

I mentioned yesterday that Elysian Resorts Group Limited was incorporated on 28 April.

So, GRD is replaced as the buyer at the last minute by Elysian because Terry has deployed GRD for some other purposes. The Elysian SPA is signed on the same day as this email, 29 April 2017, and then the very day after the signature of the Elysian SPA, 30 April, at <MDR00085610>, Mr Mitchell emails Mr Hume-Kendall to say:

"Hi Simon, as you know David and I were on standby yesterday awaiting the final SPA and loan doc and now understand that Mark used a company he had available to sign. Presumably we acquire from that entity?" So, it seems to be envisaged by Terry that the day after the Elysian SPA, he is envisaging there will be a further transaction in the future by which the assets will be resold to another entity.

But I think the inference we invite my Lord to draw from all of this is that there was a longstanding intention to enter into a transaction with Terry Mitchell in respect of the so-called Dominican Republic assets. Terry's intended purchaser, GRD, was used for something else at the last minute. There was perceived to be some urgency in going ahead with a new transaction. In reality, they wanted a new transaction in place to maintain the flow of funds from LCF. So Mark incorporated a

new company to act as the purchaser in the interim pending a subsequent sale to Terry. In other words, the Elysian SPA was intended to ensure that they could keep the taps open. That is supported by the fact that they first started discussing the idea of drawing a line under the Lakeview SPA on 18 April 2017. We looked at it before, <EB0043657>. This was the first email discussing the activation of clause 3.4 that we looked at yesterday. There seems to have been a sense that they were approaching maximum capacity for payments under the Lakeview SPA and needed to move on to another transaction. It was going to be a purchase by GRD. That was used for some other purpose. There was then a sale to Mark's new company, Elysian. That keeps the taps open as an interim measure pending a sale to Terry.

MR WARWICK: My Lord, I'm sorry to do this again, but this is no part of my learned friend's pleaded case at all. In fact, Mr Mitchell and his company Zectrade are mentioned nowhere in the re-amended particulars of claim at all. The first we see them creeping in is in the written opening in section G and now we learn on Day 7 of trial, orally, a new case, a new inference that the court is asked to draw, which is unpleaded and is not supported by any particulars. So Mr Mitchell's involvement is not given as a particular of dishonesty or a particular for why the court should infer this transaction is a dishonest transaction, as my learned friend does, in fact, plead. Again, I repeat, I really don't like to intrude on an opening, but I think it is right the court knows that, that this is an unpleaded case, my Lord.

MR ROBINS: Well, my learned friend has put down his marker. I suggest to your Lordship that he makes any pleading points that he wants to make in his opening. That will obviously give us an opportunity to formulate our response to them. In a case like this, where there are over 1,000 pages of pleadings, it is not something that I'm able or prepared to do on the hoof. To the extent we need to reply to them, to the extent your Lordship is asked to make any rulings, I would suggest that that's something we can deal with after the conclusion of the defendants' opening submissions.

I don't think anybody is going to suggest that my learned friend has waived the point by not standing up to make it.

MR JUSTICE MILES: Mr Warwick, that's the proposal, that you are not to be taken to have waived any points you have about the pleadings by not saying anything at this stage, and that you will have your opportunity to make those points.

If the court is required to rule on them, then obviously I will have to be taken in some detail through what is and is not pleaded.

MR WARWICK: Yes, my Lord.

MR JUSTICE MILES: I take your point that there is no -- you make the very simple point that there is no mention of Mr Mitchell, but the question then will be whether what is pleaded is sufficient to bring this in. Are you content to continue on that basis?

MR WARWICK: Absolutely, my Lord.

MR JUSTICE MILES: So, I will take it as a standing point that you are not to be taken to have waived any objections you have to the pleadings by not intervening at this stage.

MR WARWICK: Yes, I'm grateful for that clarification, my Lord. Indeed, there are several other areas which are similar to this, not least the Sanctuary and SAFE loan area, but I will deal with all of that in my opening. I'm grateful for the clarification. Thank you.

MR ROBINS: What supports the idea that the Elysian SPA was an interim measure to keep the taps open is that, as my Lord saw, the full amount of £82.15 million isn't paid under it. It is used to take money out of LCF until such time as a transaction with Terry can be implemented to replace it.

The subsequent sale to Terry Mitchell was ultimately implemented in the form of the Prime SPA. The transaction was going to involve the sale of shares owned by GRP, which was owned by Elysian Resorts Group Limited, which was owned by Mark Ingham. But it was arranged by Mr Hume-Kendall, Mr Barker, Mr Golding and Mr Sedgwick, and we see from the documents that Mark Ingham, and indeed Tom McCarthy, played very passive roles in dealing with the onsale to Terry. We see from the documents that it was

Mr Hume-Kendall, Mr Barker, Mr Golding and Mr Sedgwick who were involved in designing the Prime SPA, so at <EB0055866>, for example, on the 29 August 2017, Mr Sedgwick emails Mr Hume-Kendall and Mr Barker with the subject "Sale of IRG" and says:

"I am busy preparing the commercial terms for Terry proposed purchase. I would suggest that you consider the transaction as being a variation of the original transaction with Elysian so that as part of the variation they agree to sell IRG to Terry's company and that the consideration for that is paid by Terry's company to you in part reduction of the consideration due under the original deal. This is clearly part of the original sale consideration so covered by the entrepreneur's relief."

Then at <D8-0020436>, on the same day, Mr Sedgwick emails Mr Hume-Kendall and Mr Barker, he copies the email to Mr Golding, and the subject is "Heads of terms for the sale of IRG". He says:

"Please find attached draft heads of terms for you to consider. I have not as yet circulated these to anyone else.

"You will note that the main terms are: "1. The price is £11,255,000.

"2. GRP will transfer the share to them but the purchase price will be paid to London Group LLP (presumably as receiving agent for the former shareholders of GRP).

"3. The price will be satisfied by the issue of non-qualifying loan notes. CGT is not payable until the loan notes are redeemed.

"4. The loan notes will be secured by a debenture over the buyer company.

"5. The group is sold subject to its liabilities to LCF and the two Support companies and its obligations to El Cupey.

"6. There will be a consultancy agreement for 12 months with Elysian.

"7. There will be a consultancy agreement with Belkis.

"8. They will be under an obligation to raise corporate finance to repay the loan notes and the money raised will flow through your paying agency in accordance with the cash waterfall set out. "9. The seller give warranties but the amount of any liability is subject to some de minimis levels and at all times cannot exceed the amount outstanding at any time on the loan notes."

The attachment is at <D8-0020437>. It is the draft heads of terms to be sent to the members of El Cupey LLP as the first sellers and the directors of Global Resort Property Plc as the second sellers. It says: "Dear Sirs.

"Potential acquisition of the entire issued share capital of International Resorts Group Plc ... "Further to our recent discussions, these heads of terms set out the main terms and conditions on and subject to which ..."

MR JUSTICE MILES: Sorry, what's IRG?

MR ROBINS: IRG is a subsidiary of GRP.

MR JUSTICE MILES: So GRP and -- wait a minute.

MR ROBINS: GRP owns IRG. GRP is owned by Elysian and Elysian is owned by Mark. But Mark doesn't feature in the discussion about the heads of terms at this point.

MR JUSTICE MILES: IRG owns the various -- the four subsidiaries.

MR ROBINS: There is a restructuring so that it will own the subsidiaries Costa and Colina.

MR JUSTICE MILES: Oh, yes.

MR ROBINS: Not, at this point, Waterside and never CV Resorts.

MR JUSTICE MILES: So, this is just the Dominican.

MR ROBINS: This is just Dominican. It is as set out on the next page, if we can look at that, please, the price is £11.255 million, and there's a reference to the loan notes. Then in 2.3:

"The buyer shall undertake to [use] its best endeavours to raise corporate finance ... to enable it to pay its establishments costs interest on its loans the capital required to develop the properties and to repay the Loan Notes and shall in the share Purchase Agreement undertake to the 1st Sellers that Corporate Finance shall be paid to a payment agent appointed by the 1st Seller who shall divide the funds raised in the following order and proportions ..."

It is £100,000 per month running costs; interest; and then the balance to be divided equally between the repayment of the loan notes and any capital investment immediately required by the target group. That's something we see ultimately reflected in the Prime SPA.

Then, at <MDR00099176>, at the top of the page, Mr Hume-Kendall forwards this to Mr Mitchell, saying: "Sorry I missed your call. Please take a quick squint at this draft and give me a call to see if we could reconvene tomorrow."

Mr Mitchell replies at <MDR00099289>. He says: "Thanks Simon.

"The heads of terms do reflect as we discussed and obviously would like detail of the liabilities to LC&F, Costa, Colina and El Cupey.

"Perhaps should also include reference to the LC&F facility that will be in place on completion. "I have attached a tracked version with very minor amends.

"We are due to see Mark on Tuesday at 1 pm ..." Mark is now being brought into the discussion. Mr Sedgwick then, the following day, 1 September, emails Mr Mitchell at <MDR00099491>. It is copied to Mr Hume-Kendall alone, and he says:

"Thank you for this email. I will discuss the revisions to the heads of terms with Simon and in the meantime I have started preparing the share purchase agreement.

"In the meantime, please note that I have retired from Buss Murton so I no longer use the Buss Murton email address, please delete it from your records." Then he says:

"With regard to International Resorts Group Plc, this can be sold to but there are some issues that need to be resolved with that company, including that it needs accounts filed and we were planning to convert it to a private company. Is it important that you have International Resorts Group Plc or would you be happy with the two asset-owning companies Costa Property Holdings Limited and Colina Property Holdings Limited which actually own the Dominican companies that own the land or the contracts to buy the land. It would be helpful if you could let me know one way or the other sooner rather than later."

So, there is a suggestion that maybe he shouldn't buy IRG and we will see what happens about that in a moment. But before that, it is worth noting that, on the same day as this email, we see <D2D10-00032531>, where Tom McCarthy, at the top of the page, emails Nicola at London Group Plc and Mark Ingham and says: "Nicky, can you please print out and pay the Terry Mitchell invoice?"

That's an invoice attached at <D2D10-00032533>, where Mr Mitchell is invoicing Elysian Resorts Group Limited in the sum of £12,000, as per consultancy agreement for services for the month of June, which is rather puzzling because Terry Mitchell is the person who is going to be, or it was contemplated to be, buying shares from Elysian Resorts Group Limited through his company Prime Resorts Group, and yet Elysian is paying him consultancy fees of £12,000 a month. It is perhaps something that can be explored further in due course, but it is, to put it at its lowest, a rather surprising arrangement to find in this sort of context. To go back to the discussion about which company to sell, three days later, we see <MDR00099754>, where, on the next page, if we look at page 2, please, we see at the bottom is Mr Sedgwick's email referring to the issues that need to be resolved, and Terry Mitchell says:

"What do you think?"

We see that's an email he sent to Paul Seakens. He replies at the top:

"If it causes them too many issues -- could we use GRD?"

On the previous page, at the bottom, Terry Mitchell says:

"Not yet as there is still the hope that it will work. I have Croozer [that's Croozer Limited, one of his companies] (with bank account) and This Trade (no bank account)?"

Then he says above that:

"Which one do you think.

"LV Resorts.

"Croozer.

"This Trade."

And then above that he says:

"LV Resorts looks okay.

"Or.

"Croozer???"

And Paul Seakens replies:

"LV".

That seems to be where the decision is taken to sell LV Resorts instead of IRG.

At <D2D10-00032914>, there is an email that seems to confirm that. Mr Sedgwick emails Mr Hume-Kendall on 5 September 2017 with the subject "Sale of the Dominican Republic assets to Terry's company" and he says:

"In the heads of terms we simply agreed to sell IRG together with the subsidiaries Costa and Colina which also own the Dominican companies.

"I have since persuaded Terry not to buy IRG as there are complications with its accounts, et cetera. Instead he has agreed that we should just change the name of IRG to something else so that he can set up a new company with that name.

"I think that in addition to the Costa Property Holdings and Colina Property Holdings we should also sell Costa Support Limited and Colina Support Limited. Those companies borrowed the existing debt from LCAF and then lent it to the two property companies." There is that reference to lending it to the two property companies, but, as I said this morning, there is no record of any loan or facility agreement. He then says:

"This would make Terry's group fully responsible to LCAF for the existing loans and would remove any responsibility from London Group LLP. Do you agree and if so I will also need to clear this with Andy." So there is a decision taken not to sell IRG but instead to sell another company. It seems that it will be LV Resorts.

I would ask my Lord to note that it is Mr Hume-Kendall, Mr Sedgwick and Mr Mitchell who are agreeing all of this, even though it is ostensibly a sale of a company beneficially owned by Mark Ingham to a company beneficially owned by Terry.

The first Prime SPA is at <D2D10-00033606>. We can see, at page 45, that it is the signed version. Then at page 7, my Lord can see that the "Company", with a capital C, is LV Resorts, about a quarter of the way down the page, and then, on page 9, at the top, the "Sale Shares", with a capital S, capital S, are the shares in the company, so it's LV Resorts that's being sold. On page 11, clause 4.1, the shares are sold in return for loan notes, which were to be issued by Prime Resort Development Limited to London Group LLP. It says in typescript £11.255 million, but that's been changed in manuscript to £10.3 million. On page 12, in clause 6.3, Prime covenants with London Group:

"So long as the loan notes remain outstanding and its subsidiaries will fully utilise the financial facilities available to them from London Capital & Finance Plc up to the facility level agreed and disclosed in the disclosure letter to enable it to pay its establishment costs interest on its loans the capital required to develop the properties and to repay the loan notes and undertakes to London Group that corporate finance shall be paid directly to the security trustee who shall divide and pay the funds raised in the following order and proportions."

Then there is a waterfall, it is £100,000 a month for the running costs and then interest on the loans and then the balance equally between repayment of the loan notes and capital costs.

That "security trustee" is defined on page 9 to mean a company to be appointed by London Group to receive all corporate finance.

My Lord can see that new borrowings from LCF under the existing facility agreements between LCF and Costa and Colina won't be paid to Prime, they will be paid to a company appointed by London Group LLP. In other words, a company appointed by the LLP constituted by Mr Hume-Kendall and Mr Barker.

We know that Mr Hume-Kendall had been insistent on this wording. He emailed Mr Sedgwick at <EB0056571> on 9 September 2017. It is on the next page [page 2], where he says at the top:

"It is essential that sellers agreed net cash receivable is separated from anything going into buyers account via a trustee arrangement.

"Please confirm this is your understanding as we have discussed it so many times and I cannot understand why you have not included it."

We see on the previous page [page 1] that he sends that email not just to Mr Sedgwick but also to Mr Barker, Mr McCarthy, Mr Ingham and Mr Golding, who were all copied. Mr Sedgwick replies:

"In the agreement there is provision that all corporate finance arranged is paid to an agent appointed by the seller who then distributes it in accordance with the cash waterfall, see clause 5.3."

It is actually 6.3, as we have seen, but it's clear what he's referring to.

So, that's the --

MR JUSTICE MILES: Can I just look at 6.3 again?

MR ROBINS: Yes, it is back at <D2D10-00033606> at page 12.

MR JUSTICE MILES: Yes.

MR ROBINS: The money from LCF goes directly to the security trustee, which is a company appointed essentially by Mr Hume-Kendall and Mr Barker.

My Lord saw in the spreadsheet the percentages on the very right-hand side that were payable to Mark Ingham and Tom McCarthy in addition to the 5 per cent for Mark. There is some discussion of that at <EB0056241>. It ties in with the point we were just looking at as well. On 5 September 2017, Mr Sedgwick emails Mr Barker and Mr Hume-Kendall, copying Mr Golding, with the subject "Sale to Terry" and he says:

"Tom has told me that he has agreed with Spencer that part of the price paid for the sale of the Dominican companies will be paid to Elysian so he wanted to do the sale from Elysian to Terry's company and then pay the net amount to London Group LLP after deduction of their commission. I suggested that there is no reason why we cannot retain the existing structure but with some consideration to go to Elysian so that they can make a capital gain on the receipt rather than pay income tax on the commission. Is this agreed and please advise the appropriate amounts." So, it is envisaged at this point that there will be a commission for Mark and Tom. We see a bit more about that at <D2D10-00033287>. At the bottom of the page, we can see there is an email from Tom McCarthy, 12 September, sent to Mr Sedgwick, Mr Ingham gets a copy. On the next page, we see that he says: "Prior to the signing tomorrow we would like in place.

"Firstly, we need to ensure we have documentary evidence of the £2 million fee for the onward sale of the business and the allocation of shares equivalent to the value. We have been promised shares to the value of £2 million in LV Resorts Limited and will be paid pro rata as LG is repaid. Can this be

documented and signed by a director. Will we get loan notes?" So we can see it is a fee of £2 million. Then at the previous page, page 1, we see Mr Sedgwick's response. He says:

"With regard to the £2 million fee you were going to take advice as to the appropriate way to achieve that in the transaction. I would suggest that you consider an arrangement whereby LG executes 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."

So, he seems to be envisaging something along the lines of the declaration of trust that we saw yesterday for Mr Ingham.

The next day, at <D2D10-00033421>, halfway down the page, Mr Ingham says:

"Further to recent agreement, Mark Ingham and myself would like the allocation of 8.886 per cent of shares in LV Resorts Limited ...

"We are happy to have a trust deed to this effect ...

"This will be consideration for the sale of: "Colina Property Holdings.

"Costa Property Holdings.

"CV Resorts."

Then Simon Hume-Kendall replies:

"Have no idea what that is about and do not agree it."

Mr Sedgwick reminds him at <D2D10-00033425>. He says:

"Simon, 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, ie 8.66 per cent and then LG pay them that percentage of the amounts received on the loan notes. I have not checked the mathematics."

Tom's reply to Mr Sedgwick is at -- to

Mr Hume-Kendall is at <D2D10-00033426>. He says, about a quarter of the way down the page:

"Dear Simon, this was agreed with SG [Spencer Golding] and Robert was aware of the arrangement."

So that seems to be the genesis of the commission or fee. For them, it is going to be £2 million. At <EB0057846>, Mr Sedgwick reminds everybody that there will need to be a trust mechanism, that's paragraph 2, "for their interest in the shares in LV relevant and their share of the proceeds of sale as previously agreed".

Then at <D2D10-00035362>, at the bottom of the page, Mr Sedgwick says to Mr Ingham on 6 October, copied to Mr Hume-Kendall:

"I understand from Simon that you did not have a copy of the trust deed with regard to the shares in LV. Here are the documents I prepared at the time and I had thought I sent them to you. I am not sure that the percentage of shares held is correct but perhaps we can discuss that."

The attachment that he has sent, there are two trust deeds. The first is <D2D10-00035365>. That's the declaration of trust in favour of Mr Ingham in respect of shares in LV Resorts. My Lord can see, at

clause 1.2(a), the percentage is 9.71 per cent of the entire issued share capital of the company and the company, we can see, if we go back to the full page, is LV Resorts.

There is another declaration of trust, this one for Tom McCarthy, at <D2D10-00035366>. This is for Mr McCarthy. My Lord will see that the percentage that is mentioned has gone up from 8.886 per cent, which was mentioned in the emails, to 9.71 per cent, and that's because the loan notes have gone down from the typescript 11.255 million to the manuscript 10.3 million. It is still 2 million, but it is 2 million out of 10.3, which is 19.42 per cent. Divide that between Mark and Tom, they get 9.71 per cent each. What that confirms is that it's not a set percentage share per se, it is £2 million.

If the monetary amount of the loan notes goes down, the percentage has to go up because it is 2 million of a smaller number. So that's why they end up getting a percentage, as we saw in the spreadsheets on Monday this week.

If that is a convenient moment?

MR JUSTICE MILES: Yes. 2 o'clock.

(1.00 pm)

(The short adjournment)

(2.05 pm)

MR ROBINS: My Lord, before the short adjournment, we were looking at the £2 million, as it was at that point, for Mark Ingham and Tom McCarthy. That was towards the right of the spreadsheet that we looked at on Monday morning.

The final column on the right in that spreadsheet, as my Lord may recall, was 4.484 per cent to Zctrade, which is a company of Terry Mitchell.

Initially, it seems that Terry thought that he would be getting the same commission as Mark and Tom. In other words, £2 million out of the -- what was initially £11.255 million payable under the first Prime SPA. At <MDR00104906>, we see in the bottom half of the page Mr Ingham emails Ian Sands to say:

"... I am writing to confirm that ... £800,000 was drawn down from LC&F against the Costa and Colina securities as preference share payments." Mr Mitchell says:

"Hi Mark, thank you for this. Could you give me a call."

So he speaks to Mark, one assumes, and then a few days later, <MDR00101142>, Mr Mitchell sends an email to Mr Hume-Kendall, this is 2 October:

"Good morning, Simon. I trust you had a good weekend. Re the £800,000 drawn down last week, I have attached the invoice due based on the agreement. I.e £2 million divided by £11.255 million being 17.77 per cent of each drawn down amount. Commitments have been made on the basis that funds are being transferred today/tomorrow. Would appreciate the transfer as early as possible please."

The attachment is the invoice at <MDR00105143>. My Lord can see it is an invoice of Zctrade of Fujairah Tower in the United Arab Emirates addressed to London Group LLP. It is described "As per agreement dated 13th September" in the sum of £142,160. So, that's what Terry is asking for. He thinks he is going to get £2 million like Mark and Tom.

But Mr Hume-Kendall replies at <MDR00105158>. The second email down:

"Sorry Terry, as said at the weekend ... I need to speak internally about this just to document the agreement."

So it is not -- the invoice isn't met with an enthusiastic response. Mr Hume-Kendall wants to speak internally to document the agreement. But at some point, Mr Hume-Kendall does sign an agreement in the terms envisaged by Terry Mitchell. It is at <MDR00227258>. At the top, it is dated

12 September 2017, but the true date must be later if, as Mr Hume-Kendall had said on 2 October, it hadn't been documented yet. It is an agreement between London Group LLP and Zectrade, defined as the "Introducer" with a capital I:

"It is agreed that.

"1. London Group LLP shall pay the Introducer a commission at the rate of 17.77 per cent on the gross value of the loan notes issued to London Group LLP as detailed in the share purchase agreement attached (equates to £2 million of the £11.255 million loan notes).

"2. Such commission shall be payable within 48 hours of receipt by London Group LLP of the repayment of the loan notes pro rata without offset or deduction except where agreed in advance in writing. Payable to Noor Bank ... Dubai, UAE."

He gives the details. For some reason, we have gone to clause 5 now, but it's the third clause: "5. The Introducer shall bear his/its own costs and expenses except where agreed in writing in advance. "6. No partnership is created by this agreement. "8 ..."

I don't know what happened to 7 either: "8. This agreement shall be governed by English law."

It has been signed by Mr Hume-Kendall.

So, at that point, it does seem to be envisaged that Mr Mitchell is going to get £2 million in total for his involvement, but there seems to have been a renegotiation, and it seems also that Mr Hume-Kendall and Mr Mitchell agree that Mr Mitchell will instead get a commission of £1 million. We can see that a little later in the year, in October, at <EB0061279>. This is 10 October, and Mr Holt of Monex says to Mr Barker: "Hi Elten.

"I have been asked by my compliance team to inform you that you need to be more specific with the reason of payment for new recipients. 'Invoice payment' is not enough for them to approve the relationship. Please specify what goods, amount, services, et cetera, are involved so not to delay the release of funds." At <EB0061314>, we can see that in the middle of the page Mr Barker forwards that email to Terry Mitchell and says:

"Please advise on how you would like me to answer this."

Mr Mitchell replies at the top of the page: "Morning Elten.

"To settle the invoice for the acquisition of shares."

Mr Barker doesn't seem to be particularly impressed with that suggested wording because he responds in different terms to Monex at <EB0061350> where he says at the top of the page:

"Morning Alex.

"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 £1 million and are to be paid over an 18-month period."

There are then various documents relating to payments made to Zectrade. For example, on the same day as this email exchange at <MDR00106236>. Mr Barker is emailing Mr Mitchell and he says:

"Paid!"

He's forwarding a Monex payment notification in relation to the payment of funds. The debited client is Sands Equity Capital Limited, the credited company is Zectrade. The amount is 111,550 euros and the reference is "SHARE".

There are a lot of Zectrade invoices that we see as well. To take just one example, <MDR00227261>. There is another Zectrade invoice, this time for £30,000. Terry, my Lord, is the 100 per cent beneficial owner of the buyer, but he's getting £1 million of the purchase monies, which are going to be borrowed from LCF. We will come back, in due course, to the significance of the sum of £1 million in the context of what we call the combined Prime SPA, but it is necessary first to mention what we have described as the second Prime SPA. We see the genesis of that at <MDR00107786>. At the bottom of page 1, Mr Mitchell is emailing Mr Seakens. He says, on 21 October 2017: "Hi Paul.

"I had a great meeting with the board and although verbalised would like to show them the structure. Mark and Tom will fall away and PRD will acquire Elysium." He gets the name wrong, but we know what he means: "Can you prepare or have prepared a flowchart showing top CO PRD then LV one side and Elysium the other with each CO flowing down.

"Then notes at the bottom re where the debt is." On the left-hand side, Mr Seakens replies: "Terry, that's right. But personally no idea what Elysium is or what sits underneath it." It seems that Mr Mitchell doesn't know either because he replies to Paul to say, "Michael will know" -- presumably, Mr Peacock. He says: "Also can you go through the drawdown procedure with him so we are ready this week to instruct. "If we get Waterside will you be able to also take it on ... not sure what it will entail but assume we will still have the girls in TW [presumably Tunbridge Wells]."

Then, at <D2D10-00036422>, in the middle of the page, Mr Sedgwick sends an email saying: "Sorry to trouble you on holiday but I thought that you would be interested to know that it has now been agreed to sell Elysian Resorts Group to Prime Resorts." So that's something that has been agreed by the date of that email.

MR JUSTICE MILES: Just a minute. Who is that to?

MR ROBINS: That's to a solicitor who is employed by London Group LLP.

MR JUSTICE MILES: What's the position at this stage? If one takes the first Prime SPA, they were buying the shares in LV Resorts, which in turn, what, held the shares in the Dominican Republic --

MR ROBINS: In Costa and Colina.

MR JUSTICE MILES: How did that happen? Was there a restructuring before that?

MR ROBINS: Yes, the shares in Costa and Colina were put into LV Resorts so that GRD could then sell LV Resorts to Prime.

MR JUSTICE MILES: Leaving aside the exact corporate structure, if that's treated as having happened, then Elysian has an interest in the two other companies; is that right?

MR ROBINS: It's got Waterside and CV Resorts.

MR JUSTICE MILES: Yes.

MR ROBINS: My Lord says "if that is treated as having happened". I think the contract is signed, but I think I'm right in saying, and we can check, that the share transfers are not yet implemented.

MR JUSTICE MILES: So it might, in fact, still be the owner of all of the subsidiaries.

MR ROBINS: Yes, but has contracted to sell LV Resorts. Now what's being envisaged is that Mark Ingham sells Elysian, which, if the first Prime SPA is implemented, will be left at that point owning Waterside.

MR JUSTICE MILES: Say that again? If the first agreement is implemented, it will have Waterside and CV; is that right?

MR ROBINS: Yes, but the contract with Paradise Beach SA has been terminated by this point. So that's a dead-letter --

MR JUSTICE MILES: But it will still, as a matter of corporate ownership, own that company?

MR ROBINS: Yes, absolutely, they'd still be the subsidiary of CV Resorts. But, as part of the second Prime SPA and the combined Prime SPA, it is agreed that CV Resorts will be left behind, as it were, that Prime will never take on CV Resorts because the contract has been cancelled, there's nothing there.

The second Prime SPA is the document at <MDR00007440>, dated 7 November 2017. We can see exactly which party is which on page 5 where the parties are set out. Mr Ingham and Mr McCarthy are described as the first seller, London Group LLP is described as the second seller, and the first seller and the second seller together are the sellers, Prime Resort Development Limited is the buyer and

Elysian Resorts Group Limited is the company. The recitals say:

"(A) By an agreement dated the 28th April 2017 made between [Mr] Hume-Kendall, [Mr] Barker and [Mr] Thomson ... [Elysian Resorts Group] ... Global Resort Property Plc ... and [London Group LLP] ..."

Which is defined as the original agreement, that's the Elysian SPA:

"... Simon Hume-Kendall, Elten Barker and Michael Andrew Thomson agreed to sell to the Company all the shares in the Global Resort Property Plc and appointed the 2nd seller [London Group LLP] as their agent to receive the proceeds of sale of the transaction including the issue of the preference shares as defined in the original agreement.

"(B) By an agreement dated 13 September 2017 and made between GRP [Elysian Resorts] ...

[London Group LLP] and [Prime Resort Development Limited], GRP agreed to sell and the Buyer agreed to buy all the shares of LV Resorts ... and to vary the terms of the original agreement."

So that's the first Prime SPA being mentioned. Then, on page 9, we see clause 3 which is the main clause of the agreement:

"... the Sellers shall sell and the Buyer shall buy the Sale Shares [capital S, capital S] ..." That's a term defined on page 7. It is 1,000 ordinary shares at £1 each and 12 million preference shares at £1 each in the company, in

Elysian Resorts Group Limited.

Then, on page 9, clause 4.1:

"The total consideration for the sale of the Sale Shares is the issue at Completion by the Buyer to the Sellers of the Preference Shares [capital P, capital S] ... and agree to pay the profit share ..." The "Preference Shares", capital P, capital S, are explained on page 7. They are redeemable, convertible preference shares in the buyer, Prime, full details of which are set out in schedule 5.

Schedule 5 is on page 43, and it says in clause 1.3: "The Buyer [Prime] shall issue 10 million fully paid preference shares to the 2nd Seller [London Group] and 2 million fully paid preference shares to the 1st Seller ..."

That's Mr McCarthy and Mr Ingham:

"... on Completion."

So, what they are getting is a total of 12 million preference shares -- 10 million for London Group, 2 million for Tom and Mark.

Then, on page 10, clause 6.2:

"The Buyer covenants with the Sellers to redeem not less than 1 million of the preference shares in each month after completion until they are fully redeemed ..."

Then 6.3:

"The Buyer covenants with the Sellers that so long as any of the Preference Shares remain outstanding to procure that the Company and the Subsidiaries shall fully utilise the financial facilities available to them from London Capital & Finance Plc ... to enable it to pay its establishments costs interest on its loans the capital required to develop the properties and to repay the Preference Shares and undertakes to Sellers that Corporate Finance shall be paid directly to the Security Trustee who shall divide and pay the funds raised in the following order and proportions."

And it's similar to the first Prime SPA, it's another £100,000 a month for running costs, then over the page, after that, there are the interest costs and the balance thereafter in (c) is to be divided equally between the repayment of the preference shares and capital costs.

In clause 6.4 [page 11]:

"Upon receipt of Corporate Finance by the Security Trustee, the Trustee will invite the Buyer to submit within 5 working days details of its Finance Costs and Capital Costs together with such supporting evidence [as] the Security Trustee may reasonably require. The Security Trustee shall disburse the Corporate Finance in accordance with the provisions of clause 6.3 to the accounts notified to it by the Buyer and Sellers." Again, any new borrowings from LCF will not be paid to Prime or to its subsidiaries, but to the security trustee. That's a term defined on page 7. My Lord can see, at the bottom of the page, it is "A company to be appointed by the sellers to receive all corporate finance". On page 46, we see the signatures -- Mr Ingham, Mr McCarthy, Mr Hume-Kendall. I think that's Mr Mitchell. And then I'm not sure, presumably Mr McCarthy. So that's the second Prime SPA. There is then the idea of combining the two, and we see that at <MDR00112712>.

MR JUSTICE MILES: That agreement seems to treat London Group as a seller.

MR ROBINS: Yes.

MR JUSTICE MILES: Just in terms of corporate structure and so on, if the company being sold is Elysian, was there interest -- is it interested in Elysian?

MR ROBINS: I thought not. Mr Shaw disagrees. We can have a look at what is said in the schedule to the neutral statement of uncontested facts. That's going to be bundle <A1/5> -- I'm struggling to find it now. I'm sure it will be in there. It may be that it is not in there. I'm sure it is.

It changes its name. Page 104. Let's see. Yes, that's the company that was called Elysian Resorts Group Limited. We can see that's its name from 28 April 2017, when it is incorporated, to 8 August 2018. And shareholders are -- as I thought, it is Mark Ingham alone, until the shares are sold to Prime Resort Development Limited. So, he's the 100 per cent shareholder.

So then <MDR00112712>. This is a couple of weeks later, 20 November 2017. Mr Sedgwick emails Mr Hume-Kendall, Mr Barker, Mr Mitchell, Ian Sands, Paul Seakens -- he's finance at primeresortdevelopment.com -- he copies Mr Ingham, Mr McCarthy and others. The subject is "Elysian Resorts Group Limited".

He says: "With apologies for short notice we would like to amend the agreements between us not as to their commercial terms but by consolidating the two agreements and providing effectively for the sale to you of all the companies within Elysian excluding of course Global Resort Property Plc, CV Resorts Limited and Cape Verde Finance Limited. The reason for this late change is that there is a possibility of the consideration coming to London Group LLP under the Dominican Republic sale being treated as income rather than a capital receipt which was of course everyone's intention. "Accordingly, I have merged the two agreements and made it clear that everyone is selling their shares and interests in Elysian to Prime for capital sums. I have used the latest SPA as the basis of the consolidated agreement which I trust that we can all sign tomorrow. I would mention that this document has not been seen by Simon, Elten, Mark or Tom so is sent subject to their comments."

The agreement itself is then signed on the very next day, 21 November, <EB0066393>. It is a share purchase agreement between the parties specified. We see them in more detail on page 5. Again, Mr Ingham and Mr McCarthy are the first seller, London Group is the second seller, Prime is the buyer and Elysian Resorts Group is the company.

The recitals go through the background, referring to the Elysian SPA in (A), the first Prime SPA in (B), which is described as the LV agreement, and the second Prime SPA in (C), which is described as the Elysian agreement, and then it says:

"The parties have not fully completed the LV agreement or the Elysian agreement, but have agreed to cancel the LV agreement and the Elysian agreement and replace them with this agreement whereby the sellers shall sell and the buyers shall buy the sale shares on the terms set out in this agreement."

Then, over the page, on the next page, we see various agreed terms. I think we might need to come back to some of those in due course.

If we could start on page 10 with clause 3.1, my Lord will see, towards the top of the page: "The parties agree that upon the execution of this agreement the LVR agreement and the Elysian agreement shall be cancelled and of no effect."

So everything goes back to how it was before the first Prime SPA.

Then, at 3.2, "the sellers shall sell and the buyer shall buy the sale shares".

On page 7, at the bottom, we see -- no, page 7 of the electronic page numbering. We see the sale shares are the 1,000 ordinary shares and 12 million preference shares in the company, and the "Company" on the previous page is Elysian Resorts Group Limited, towards the middle of the page.

On page 10, we see clause 4.1:

"The total consideration for the sale of the sale shares is the issue at completion by the buyer to the sellers of the Loan Notes [capital L, capital N] and the Preference Shares [capital P, capital S] in the amounts set out in schedule 5 ..."

And there's a reference to the profit share: "The loan notes shall be issued to the second seller. The preference shares shall be issued as to £2.5 million to the first seller [Mr Ingham and Mr McCarthy] and the balance to the second seller." Page 7 defines the terms "Loan Notes" and "Preference Shares". We can see in the middle of the page:

"Loan notes: the £10.3 million secured loan notes ... to be issued by [Prime] to the second seller [London Group] ..."

And the preference shares are redeemable convertible preference shares in the buyer, Prime, the full details of which are set out in schedule 5.

Schedule 5 is on page 49. It confirms there are to be a total of 12 million preference shares in Prime. At 1.3:

"The buyer shall issue 9.5 million fully paid preference shares to the second seller and 2.5 million fully paid preference shares to the first seller on completion."

So Mac and Tom's 2 million has been upgraded to 2.5. Then, at page 11, we need to make a note of clauses 6.4 and 6.5. 6.4:

"The buyer covenants with the sellers to redeem not less than 1 million of the preference shares and £1 million of the loan notes in each month after completion ..."

Then 6.5:

"The buyer covenants with the sellers that so long as any of the loan notes and preference shares remain outstanding to procure that the company and the subsidiaries shall fully utilise the financial facilities available to them from London Capital & Finance Plc up to the facility level agreed and disclosed in the disclosure letter ... to enable it to pay the establishment costs, the finance costs and the amounts referred to in subclause (c) shall be paid directly to the security trustee who shall divide and pay the funds raised in the following order and proportions."

So, it's now £200,000 a month for admin costs in (a) because it was 100 a month on the first Prime, 100 a month on the second Prime. Still interest in (b). And (c):

"The balance to be divided into two halves one half to be divided equally between the repayment of the loan notes and the preference shares and the other half to be applied towards the capital costs."

We have seen there a reference to the security trustee. Before looking at that further, we need to just look at the next page to see clause 6.6, which provides:

"Upon receipt of the corporate finance by the security trustee, the trustee will invite the buyer to submit within 5 working days details of its finance costs and capital costs together with such

supporting evidence and the security trustee ... shall disburse the corporate finance in accordance with the provisions of clause 6.5 ..."

The "Security Trustee" is defined at the top of page 8, and it is a company called Global Advance Distributions Plc, which is the company formerly known as International Resorts Group Plc. It changed its name to Global Advance Distributions on 9 November 2017. As we will see in due course, it or its bank account was controlled by Mr Sedgwick.

The companies transferred to Prime were identified on pages 17 to 22, if we could look at page 17 first. My Lord will see Elysian Resorts Group Limited, that's the company. Then the first subsidiary mentioned at the bottom of the page is Waterside Villages Plc. On the next page, we see Waterside Villages Bonds Plc. That was the company that did have a bond issue in respect of the Lakeview site. Over on the next page, we have got Waterside Cornwall Operations Limited, which is another of the companies. Then Waterside Villages Properties Limited at the bottom. On the next page, I'm looking for Waterside Support. Yes, that's there on page 16. Then, on the next page, Lakeview Lodges Limited, LV Resorts Limited at the bottom of the same page. Then, on the next page, we have got Colina Property Holdings Limited and, at the bottom, Costa Property Holdings Limited. Then, over on the next page, we have got Colina Support Limited in the bottom half of the page, and over on the next page, Costa Support Limited. There is also Inversiones at the bottom of the page and, over the page, Tenedora. There is possibly one more, or is this the end at the Tenedora box? Yes, that's it.

As I mentioned, CV Resorts and Cape Verde were not transferred because, by that point, the Paradise Beach contract has been terminated and those companies have no further utility. They are just a problem because they have got debts to LCF but they have got no assets. So, boiling it down, simplifying it, Prime is acquiring, essentially, Waterside, Colina and Costa for a total of £22.3 million, which it is going to borrow from LCF.

The existing liabilities are the debts owed to LCF by Waterside Support, Colina Support, Costa Support, those are part of the liabilities of L&TD that were parked in those Support companies; the new borrowing, the fresh borrowing, by Waterside Villages, Colina Property and Costa Property; and some account might also have to be taken of the fact that Inversiones still has liabilities to the Sanctuary investors.

MR JUSTICE MILES: So, how do the Support companies come into the structure? Because I thought that the whole idea when they did the Elysian SPA was that they were removed so that it was described as a debt-free transfer.

MR ROBINS: Yes. We saw an email about that -- Mr Shaw is telling me that's why London Group LLP is the seller, and I suppose that does make sense, because it was the owner of the Support companies. But we saw --

MR JUSTICE MILES: We saw that email earlier on.

MR ROBINS: Earlier on, where Mr Sedgwick says, "Why don't we get shot of the Support companies at the same time?" So Terry takes on the lot. He's got the entire indebtedness of the companies that mentioned to LCF, leaving aside, as I said, CV Resorts and Cape Verde Support, because those don't get transferred. But it is quite useful to try to quantify those liabilities, and we can do that by looking at <MDR00109883>. We need to see it in native form. Ah, it works on my computer. What's going on here? Can we look at tab 1 to see if that's any better. Well, tab 1 works. We can see that as at 3 November 2017, there's a gross sum of almost £13.9 million owed by Waterside. The corresponding figure for Colina -- sorry, did I say Waterside? I mean Costa.

The corresponding figure for Colina --

MR JUSTICE MILES: Sorry, this is Costa?

MR ROBINS: Yes, Costa Property. This is all the monies that have been borrowed -- paid to GRP and distributed -- we saw the payments this morning under the Elysian SPA.

MR JUSTICE MILES: Yes.

MR ROBINS: So, this is the fresh borrowing. There is £13.9 million gross for Costa. For Colina, for some reason, the numbers aren't visible, but it should say approximately £3.3 million for the gross figure. I wonder if Waterside is visible on tab 3? Yes, just under £4 million.

So the fresh, post-Elysian SPA borrowing, if I can put it that way, is a running total of £21.2 million. But then we know that, of the £24 million that was parked in the four London Group Support company subsidiaries, Waterside Support, Costa Support and Colina Support received £17 million of indebtedness, but the rest went to Cape Verde Support, which we are leaving out for reasons I have explained. So the total of the old debt and the new debt that's transferred over to Terry's side under this transaction is £38.2 million of liability to LCF. I said some account has to be taken of the liability of Inversiones to the Sanctuary investors. My Lord has seen before, at <MDR00116025>, the Paul Sayers report, and under "Background information", the second paragraph under that heading:

"Inversiones ... is owned by International Resorts Group Plc ..."

This is as at 20 June 2017, so it's historic, but it's not the structure we are looking for, it's the number, in the very next paragraph:

"The contractual liability of Inversiones ... to these El Cupey 'investors' is currently [almost £27.3 million] ..."

My Lord and I had a discussion last week as to whether you would say that the liability is the £16 million deposits or the higher figure, which includes the uplift that they're entitled to, whether it's 120 per cent or 150 per cent. My Lord saw last week that the deal was, essentially, that if the development didn't go ahead, then The Hill would be sold and the Sanctuary investors would get back the uplifted amounts, they'd get their 120 per cent or 150 per cent. So, I think, on that view, the relevant liability to add is the £27 million-odd rather than the £16 million-odd. But, ultimately, it doesn't make any difference to where you end up.

If you take the £27 million figure for the Sanctuary investors and you add that to the total of £38.2 million owed to LCF by the various subsidiaries that went over to Terry, then you've got a total liability figure of £65.2 million.

The consideration obviously has to be added on top to see what the implied value of the assets is in that transaction, because they come with liabilities but there's also money being paid for them. You have got to add the £22.3 million price to see that the implied valuation of the sold assets is £87.5 million. In other words, the combined Prime SPA proceeds on the basis that the underlying assets of Waterside Villages, Costa Property and Colina Property are worth at least £87.5 million. I say "at least" because I'm excluding from the calculation at this stage the liabilities owing on the Waterside bonds and various trade creditors, and so on, that there might be. But the implication of the combined Prime SPA is that the underlying assets are worth in excess of £87.5 million.

My Lord heard last week, the so-called assets are the Lakeview resort -- that does exist and lodges are being bought back, but the value, we know, is somewhere in the range of the sort of £4 million to

£4.5 million we saw in the GVA and Savills valuations before the lodge acquisition programme was implemented, and, at the upper end, the figure of £10 million or so that the administrators received and the valuations that they had obtained prior to that sale, in the same sort of range. So, that's the only real asset that underlies all of this.

The shares in Inversiones were also ultimately sold under this transaction, but -- and Inversiones owned The Hill, but those shares are still held on trust for El Cupey for the ultimate benefit of the Sanctuary investors.

There are the shares in Tenedora, which has the contractual right to buy The Beach under the rather stale contract, it has to pay \$3.5 million, but it hasn't acquired the parcels yet. My Lord saw last week it starts to do that towards the tail end of 2017 and into 2018, and the registration of the parcels is implemented at around that time. Ultimately, it ends up with an incomplete patchwork of parcels which isn't really fit for any development because there are still various parcels in the patchwork owned by third parties. But the reality is that the so-called assets are worth substantially less than the sum of £38.2 million owing to LCF, let alone the rather larger figure that you get to when you add other liabilities. It is basically just the Lakeview resort with the value, as I said, of less than £10 million. No value can really be attributed to Inversiones or Tenedora. The equity in Elysian Resorts Group Limited has no value as a result of all that. So, the combined Prime SPA is a transaction which is commercially nonsensical. The only purpose that it can have had was to serve as a vehicle for the extraction of yet further monies from LCF.

My Lord saw a moment ago that the commission for Mark and Tom in the combined Prime SPA had gone up from £2 million to £2.5 million. They get £2.5 million out of the £12 million payable for the preference shares. The commission for Terry remained unchanged. The agreement was still that he would get £1 million in total of the sums drawn from LCF.

In the combined Prime SPA, as we saw, there are loan notes of £10.3 million and preference shares of £12 million. The total payable in respect of the loan notes and preference shares is, therefore, £22.3 million.

Expressed as a percentage, £1 million is 4.484 per cent of £22.3 million. So, for Terry to get his £1 million in total, he will need to get 4.484 per cent of the monies from LCF that are used for the purpose of making payments.

If we go back to the spreadsheet, <EB0066393>, and look at it in native form. Let me check just the reference in case I have that wrong. No, I have given you the wrong one. It should be <EB0123428>. If we select cell Y35, as an example, and look in the formula bar, my Lord can see the spreadsheet to divvy up the monies from LCF operates on the basis that Terry is entitled to 4.484 per cent of every instalment via Zctrade, and that's because it's been agreed that he should get £1 million. It is £1 million of the total of £22.3 million.

The typical Zctrade invoice -- we saw an example earlier, let's look at another, <EB0132184>, refers to an agreement dated 13 September. That is the date of the first Prime SPA, but there's no provision in that for payment of £1 million to Zctrade. As my Lord has seen from some of the other documents, there seems to have been some side agreement between Mr Mitchell and Mr Hume-Kendall, and putting everything together, the terms of that side agreement seem to have been that, if Terry's company bought these assets and borrowed the money from LCF to make the payments to Mr Golding, Mr Hume-Kendall, Mr Barker, Mr Thomson, Mr Ingham and Mr McCarthy, then Terry would be entitled to £1 million of the money borrowed from LCF in return for his troubles.

Bearing in mind what my Lord saw earlier about Mr Mitchell's legal difficulties, my Lord might well speculate as to why Mr Mitchell would like to have £1 million payable to Noor Bank of Dubai. The payments to Zectrade are set out in our written submissions. If we could look at --

MR JUSTICE MILES: In the second Prime SPA, are the Support companies included in the companies which are transferred?

MR ROBINS: I think the quickest way to do it is to actually try to answer it now. If we can go back to <MDR00007440>, I think there will be some schedules towards the end. If we could look at the contents page on page 2, please, there is a schedule with particulars of the company and the subsidiaries. It says it is page 12. Let's have a look at that. It must be the next page, or the page after. Something has gone wrong with the page numbering. Let's keep going until we find it. There we are [page 16], "Particulars of the Company and the Subsidiaries". Elysian Resorts Group, Waterside Villages -- let's go to the next page [page 17] -- Waterside Villages Bond. What's the next one? Waterside Cornwall Operations, Waterside Villages Properties. What's next? Waterside Support. So that one is in. What's on the next page [page 20]? Lakeview Lodges. So, yes, in that transaction, which is relating to Waterside, Waterside Support is in there. Is my Lord going to ask the same question with regard to the first Prime --

MR JUSTICE MILES: Well, I'm assuming it is not, actually, but I might be wrong about that.

MR ROBINS: I'm not sure. So, let's look at <D2D10-00033606>. Is there a contents page on page 2? Page 3, maybe? There is a reference, yes, to schedule 1 of the particulars of the company and subsidiaries. It says it is page 12. Let's have a look. No, let's keep going. So the company at this point, LV Resorts, subsidiaries, Colina Property Holdings Limited. What's on the next page? Costa Property Holdings Limited. What's next? Colina Support and Costa Support.

MR JUSTICE MILES: Can we go back to see -- to the earlier part, the sort of operative bit -- well, the first page. I don't mean the cover sheet, but the first operative page.

MR ROBINS: After this, after that, after that.

MR JUSTICE MILES: London Group is again being treated as a seller.

MR ROBINS: Yes, and probably for the reason given by Mr Shaw, that it is the owner of the Support companies.

MR JUSTICE MILES: I just want to make a note of it. But the subject matter of the sale is the shares in LV, isn't it?

MR ROBINS: Yes. So how does this work, is your Lordship's question.

MR JUSTICE MILES: Well, I suppose it is, yes.

MR ROBINS: Let's go to the next page, or the page after, the page after. It is after the definitions. It is going to be clause 3-point-something. Clause 3, the; sale shares, that's the shares in LV Resorts. We will have to have a look to see if there is anything else in this relating to the transfer of the Support companies or whether, as an alternative, the Support companies were put into the ownership of LV Resorts prior to the signature of this agreement. Those are the two different ways you could do it. Either London Group sells the Support companies to Prime or London Group transfers the Support companies to LV Resorts and the shares in LV Resorts are sold to Prime. I'm afraid, off the top of my head, I don't know.

MR JUSTICE MILES: That clause doesn't seem to be saying that the shares in the Support companies are being sold --

MR ROBINS: But the schedule --

MR JUSTICE MILES: -- and the schedule seems to treat the Support companies as already being subsidiaries of the company.

MR ROBINS: Of LV Resorts.

MR JUSTICE MILES: It doesn't seem, on the face of it, to be saying there are two lots of things being sold here, the shares in LV and, separately, the shares in the Support companies; it seems to be saying that the Support companies are already the subsidiaries of LV, and this contract is concerned with a sale of the shares in LV.

MR ROBINS: Your Lordship is right. This is premised on the Support companies having previously become subsidiaries of LV Resorts, not on London Group selling them pursuant to this agreement to Prime. They go across but only because LV Resorts is going across.

MR JUSTICE MILES: The other question which would arise, which might be one which needs to be explored later in the trial, is, if you do treat the sale as a sale of the Support companies, what is the value of the Support companies in the circumstances?

MR ROBINS: Yes.

MR JUSTICE MILES: What would be the value of the Support companies at this stage?

MR ROBINS: Well, they have the liabilities to LCF and nothing else.

MR JUSTICE MILES: As I say, it may be that's something that needs to be thought about.

MR ROBINS: Yes, absolutely. We can look into that. The payments to Zectrade we were looking at. They are in our written submissions at <A2/1/120>. We have seen the payment in G7.14. In G7.15, we mention the subsequent payments to Zectrade by London Power Consultants, formerly Wealden Consultants, a company controlled by Mr Barker, and we set out the various amounts and dates.

The nature of the payments to Zectrade becomes a bit clearer from capital gains tax calculations. The total consideration of £22.3 million is treated as a payment to Mr Golding, Mr Hume-Kendall, Mr Barker, Mr Thomson and Mr Ingham in the ratios that we have seen before. The payments of £2.5 million to Mark and Tom and £1 million to Terry are then treated as deductible expenses. So, if we look at <EB0108317>, we see an email that Mr Sedgwick sent to Mr Peacock, copying Mr Hume-Kendall, and Mr Barker on 13 November 2018 with the subject "Sale of GRP/Elysian". He says: "Dear Michael.

"Further to our recent conversation I would be grateful if we can agree the appropriate instructions and calculations for the gains arising from the sale of the shares in GRP/Elysian to Prime.

"As you are aware the final sale price of the shares in Elysian was in the gross sum of £22.3 million which was payable as to £10.3 million as to the original sellers of GRP and by loan notes and as to £12 million by the issue of preference shares of which £2.5 million were to be issued to the shareholders of Elysian (Mark & Tom) and £9.5 million to the original sellers of GRP. "The majority of the consideration has been paid but some was paid during the current tax year and if that payment can be established to be in respect of the repayment of loan notes the CGT on that balance can possibly be deferred a year. However, for the time being, I will leave that issue to one side. "The

agreement has been varied by the sale of LUKI and IRM to Prime [which I mentioned yesterday] whereby Prime became responsible for the repayment of the LUKI debt with a £ for £ reduction of the gross purchase price.

"What we now need to deal with is to assess and calculate the liabilities that can be deducted from the gross consideration to calculate the actual taxable gain.

"As I see it the following expenses need to be considered."

The first expense is the sum payable to Mark and Tom for their shares in Elysian, which is £2.5 million. Then 2, commission payable to Zectrade for the introduction of Prime, £1 million; then 3 is the share of the proceeds promised to Peter Jones and Mike Starkie, that's said to be £400,000; 4, paid and payable to the Telos investors, that's said to be a sum of £1,575,000; and then paid and payable to El Cupey, by which I think he means the Sanctuary investors, £3.2 million. That's a total of £8.675 million. He says:

"This leaves a figure of £13.625 million as the net proceeds for the GRP shareholders. The shareholders are SG and family, SHK and family, EB, MAT and MI and the relevant percentages are ..."

And he sets them out. It is the 42.5, 42.5, 5, 5 and 5:

"What you and I need to do is to check that these are all the allowable expenses against the sale price and to get the precise figures for each item so that Humphrey & Co can approve the calculations for the various tax returns to be submitted."

So, as I said, the calculation proceeds on the basis that £22.3 million is the gross sum. The expenses incurred to achieve that result have to be deducted from that gross sum to calculate the gain. The sums payable to Mark and Tom and Terry are treated as being expenses that became payable along the way to achieve that end result because we will submit to your Lordship that's exactly what they were, they were sums paid to actors who were paid for playing their roles.

This draws back the veil and reveals that these transactions were put in place, as we have pleaded, as devices to extract money from LCF.

The sum paid to Terry is described as "commission payable to Zectrade for the introduction of Prime". Well, Zectrade is Terry's company, Prime is Terry's company, Terry seems to have introduced himself as someone who could assist for a fee of £1 million. Well, we know he initially wanted £2 million but got negotiated down. So that shows what really happened here, and it is consistent with other descriptions of the Zectrade fee. For example, at <D2D10-00055574>, there is a report by Humphrey & Co chartered accountants, strictly private and confidential, London Group LLP capital gains tax report dated 21 January 2019. On the next page, on the top left, it says:

"The members of the London Group LLP have instructed us to advise on the capital gains arising from the transactions listed below.

"This advice is based on the information contained in the documents made available to us ... and responses to queries provided by Robert Sedgwick. "As we are engaged to prepare tax returns for Elten Barker and Spencer Golding only, we cannot accept responsibility for the accuracy or otherwise of the tax returns for other members."

Then it says that London Group is a limited liability partnership which was appointed as the agent for the following individuals to receive their share of the proceeds of sale, and then it identifies the

transactions and the percentages are set out in the table on the right. It says underneath that: "SG is not a member of the LLP but his shares were held by EB as nominee."

The total consideration figure is set out. I'm not sure what's gone wrong because the figures we have seen are 10.3 and 22, not 10.3 -- sorry, 10.3 and 12 is what I meant to say, not 10.3 and 12.2. So, it seems to have been overstated slightly. Everything we have seen today has given rise to a figure of £22.3 million, not £22.5 million. But there we are.

On the next page, when the various costs are examined, it mentions at the top "Amounts due to Mark Ingham and Thomas McCarthy" and it mentions their entitlement to £2.5 million. Then 4.2, "Zctrade commission":

"We have been advised that commission of £1 million was paid for the introduction of PRD, thus facilitating the sale of ERG. We have not, however, been provided with any documentary evidence to support this. Please refer to appendix 5 for a list of outstanding points." Again, the explanation that's being given is that Mr Mitchell charged a fee for introducing himself. He offered to help them extract monies from LCF for a fee of £1 million and, as we have seen, the result of that is that he gets 4.484 per cent of every drawdown. My Lord also saw, and it is worth mentioning it briefly, the management fee for Terry and co, which in the combined Prime SPA is £200,000 a month. We see that in the documents. For example, <MDR00114707>, where Paul Seakens emails Mr Sedgwick to say: "Robert, can you please transfer as soon as possible today £100,000 from the trustee account to Prime for the December management fees for DR."

My Lord saw there was another £100,000 a month for Waterside.

At <MDR00114776>, we see Mr Seakens telling Mr Sedgwick that the drawdown of £800,000 was going to be split as follows: £500,000 to loan note/preference share repayment; £200,000 to Inversiones, and my Lord has seen that there are still liabilities to the El Cupey investors, including the interest that has to be paid to the Sanctuary investors; and then £100,000 to Prime for the Waterside management fee for December. So that seems to have been another sum that was to be paid out from the drawdowns, as we have seen in the payment waterfall in the combined Prime SPA in clause -- I think it was 6.4 or 6.5 in that document.

I see the time, my Lord. I don't know if that would be a convenient --

MR JUSTICE MILES: I just want to understand this. There is the £1 million fee commission, introductory fee, or whatever it is called --

MR ROBINS: Yes.

MR JUSTICE MILES: -- which is going to Zctrade.

MR ROBINS: Yes.

MR JUSTICE MILES: And then, is this additional, the --

MR ROBINS: Yes.

MR JUSTICE MILES: So, £200,000 a month going to Prime.

MR ROBINS: Yes, to Prime, for management fees, and we saw it in the combined Prime SPA in the payment waterfall in clause 6.5, if we could go back to it just briefly, it's at <EB0066393> at page 11. 6.5 has the obligation to borrow as much as you can from LCF and then the funds raised are to be disbursed by the security trustee in accordance with the waterfall at (a) is up to £200,000 per month

to discharge the establishment and running costs of the company and the subsidiaries. What happens is that Paul and Terry want, and often receive, £100,000 a month as DR management fees and £100,000 a month as Waterside management fees.

MR JUSTICE MILES: But this envisages that it is to discharge the establishment and running costs of the company and the subsidiaries, those sums of money.

MR ROBINS: Yes. They come to be described in the documents, including the email we have just seen, as "management fee", which I agree is not consistent with the terms in which it is described in this agreement, but that's what happens.

MR JUSTICE MILES: On the face of it, just looking at the wording, that looks like it is a fee being charged by Prime -- sorry, who is paying that?

MR ROBINS: It is coming from LCF. It is being borrowed by the subsidiaries that are transferred under this agreement -- Waterside, Costa and Colina. In administrative terms, it's being paid to Mr Sedgwick's company, Global Advance Distributions, and he's disbursing it, 200 a month to Prime, interest goes straight back to LCF -- this is a point where Mr Sedgwick is involved in the administration of the Ponzi scheme, because they draw down the money from LCF and he pays back whatever LCF needs for interest, and then the balance is split and half of that goes to the repayment of the loan notes and preference shares. In reality, as we will see, it is more than half, but that's for later on this afternoon.

MR JUSTICE MILES: We will take five minutes. Thank you. (3.17 pm)

(A short break)

(3.25 pm)

MR ROBINS: My Lord, in terms of the payments under the Prime SPA, we set those out in our written opening submissions at <A2/1/121>. In G8.1, on

2 November 2017 -- so this is five days before the second Prime SPA -- Mr Mitchell emailed Mr Sedgwick, copied to Mr Sands and Paul Seakens, to say: "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." In the next paragraph, we explain Mr Sedgwick replies to Terry to explain that Terry would have to send an email to London Capital & Finance requesting a drawdown, and he provides Terry with the wording to use for the drawdown request, payable to IRG. Terry replies to ask why would it go to IRG? He then asked if Mr Sedgwick's draft wording with the funds going via IRG was correct, and Mr Sedgwick replied to explain:

"I have taken over the account and am managing it as if it were the account for Global Security Trustees." Then, on the next page [page 122], at the top, we explain that the name of IRG was subsequently changed on 9 November 2017 to Global Advance Distributions, and it re-registered as a private company. Mr Sedgwick explained to Mr Hume-Kendall and Mr Barker on 8 January 2018:

"GAD is the company to which the consideration for the sale of Elysian is paid and everyone assumes that it is under my control."

In fact, it did subsequently come under his control, because, during January 2018, the shares in GAD were transferred to Global Realisations Limited, a company owned by Mr Sedgwick.

In the next paragraph, G8.5, we explain that Mr Sedgwick explained to Mr Peacock that GAD was being used as a means of receiving and distributing the proceeds of sale of Elysian. So that's a reference to the second Prime SPA or the combined Prime SPA, I'm not sure.

On 2 November 2017, then, in G8.6, Terry sent a drawdown request to LCF asking for the sum of £450,000 to be paid to GAD. On the next day, 3 November 2017, LCF paid a total of £450,950 to GAD. GAD paid some of this money straight back to LCF, and we will come to look at that in due course, but some of what was received from LCF from new bondholder money was paid back to LCF to discharge interest liabilities and redemption liabilities to existing bondholders. On 6 November 2017, GAD used the rest of the money from LCF to pay a total of £200,000 to Sands Equity with the reference "Share Purchase".

In G8.7, on 17 November 2017, Mark Ingham provided Katie Maddock with a drawdown request in the sum of £100,000 payable to GAD.

In the next paragraph, we see that Mark Ingham then emailed Tom McCarthy, Ian Sands, Paul Seakens and Mr Sedgwick to say:

"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." The attached drawdown request still provided for a drawing of £100,000. Ian Sands signed it and returned it to LCF.

Then if we look at the next page, in G8.10 we mention that there is a text message that is sent saying:

"Should be £990,000 in LCAF this morning ... should be able to split £500,000 as a share payment. I've told SHK you are planning on coming in later." I think we should probably look at that because I have a recollection it may have been the other way around. I think it may have been Mr Barker to Mr Golding and not Mr Golding to Barker, as we have set out.

The footnote is <EB0065391>. If we just go to that, I may need to correct what we say in G8.10. These are text messages to Spencer from Mr Barker. So it is Mr Barker saying, "Should be £900,000 in LCAF this morning ... should be able to split £500,000 as a share payment. I've told SHK you are planning on coming in later."

So, if we go back to <A2/1/122>, at the top of the page, we need to transpose the references to D4 and D3 in that paragraph. So it is Mr Barker who says there "should be £990,000 in LCAF this morning ... should be able to split £500,000 as a share payment". Then a revised drawdown request was 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. Then in G8.12, on 17 November 2017, LCF paid £700,350 and £100,678.56 to GAD and GAD paid £700,000 of that money to Sands Equity with the reference "Share Payment".

Then in G8.13, Sands Equity used the money to pay £212,500 to Mr Golding, £212,500 to Mr and Mrs Hume-Kendall, £25,000 to Mr Barker, £25,000 to Mr Thomson and £25,000 to Mr Ingham.

Then in G 8.14, we mention that Lucy Sparks sent a text message to Mr Barker on 23 November 2017 about a drawdown request by Prime. Mr Barker responded: "Get them to draw £870,000 and we will sort out how it is split tomorrow."

Lucy replied, "That's exactly what SHK said". Then Mr Barker sends a text message to Mr Thomson saying:

"Prime are going to draw today ... please can I have the available balance?"

Mr Thomson replies:

"We have £726,000 available to draw today." That's followed in G8.16 by Paul Seakens emailing Terry to say that he's preparing a draw for £700,000. Prime then submits two drawdown requests in the total sum of £700,000 payable to GAD. LCF pays almost £708,000 to GAD on the same day.

On the next day, in G8.17, GAD pays £500,000 of that money to Sands Equity, which pays £212,500 to Mr Golding, £212,500 to Mr and Mrs Hume-Kendall, and then £25,000 each to Mr Barker, Mr Thomson and Mr Ingham.

On the next page, further payments. On 30 November 2017, Prime submitted a drawdown request in the sum of £800,000 payable to GAD. But LCF did not have the full amount available in its bank account. So Mr Sedgwick emails Paul Seakens to say: "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 ..."

So, the revised drawdown request is then submitted. In G8.19, LCF pays a little over £650,000 to GAD which pays £500,000 of that money to Sands Equity, which then makes the payments set out: £182,750 to Mr Golding, £182,750 to Mr and Mrs Hume-Kendall and £21,500 to each of Mr Barker and Mr Thomson.

Then in G8.20, now to December 2017, the 7th, Prime requests drawdowns of £425,000 for Costa Property, payable to GAD, and £470,000 for Waterside Villages, payable to GAD.

In G8.21, LCF makes those payments, or thereabouts, sums a little in excess of the amount requested, to GAD, which paid £500,000 to London Group LLP, with the reference "Share Purchase" and it is now London Group as the second intermediary instead of Sands Equity which remits that money, £170,000 to Mr Golding, £170,000 to Mr and Mrs Hume-Kendall, £20,000 each to Mr Barker, Mr Thomson and Mr Ingham.

Then, in G8.22, on 14 December 2017, Paul Seakens emailed Ian Sands to say:

"Apparently there is £950,000 available so Terry has instructed via Elten to draw this amount". Ian signed the drawdown requests for a total sum of £950,000, which is £540,000 for Waterside Villages payable to GAD and £410 for Colina Property payable to GAD.

Then over on the next page, we see that in G8.23 LCF paid £950,000 to GAD on the same day and, over subsequent days, GAD paid £540,000 to London Group LLP, which paid £170,000 to Mr Golding, £170,000 to Mr and Mrs Hume-Kendall, £20,000 to Mr Barker, £20,000 to Mr Thomson and £20,000 to Mr Ingham.

Then at G 8.24, we are now into early 2018, Prime requests 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 and LCF makes payments slightly in excess of those sums to GAD which, in G8.25, on the next day, paid a total of £1 million to London Group LLP. Five days later, so it's now 10

January 2018, London Group LLP paid £289,000 to Mr Golding, £289,000 to Mr and Mrs Hume-Kendall, £34,000 to Mr Barker, £34,000 to Mr Thomson and £34,000 to Mr Ingham.

Then G8.26, my Lord can see how frequent these payments are and how little time elapses between them. This is now 11 January 2018. Prime asks for £300,000 for Waterside Villages, £170,000 for Colina Property, £130,000 for Costa Property, all payable to GAD. As we know, LCF had well over £2 million in its bank account. There was plenty of scope for these drawdown requests to be increased. Presumably, someone thought they should be increased because Prime then lodged revised drawdown requests in the total sum of £1.2 million, comprising £600,000 for Waterside Villages, £320,000 for Colina Property and £280,000 for Costa Property, all payable to GAD.

In G8.27, on the following day, LCF paid a little over £1.2 million to GAD, which shortly afterwards paid £1 million to London Group LLP, which made the payments set out, £321,075 to each of Mr Golding, on the one hand, and Mr and Mrs Hume-Kendall, on the other, £45,000 each to Mr Barker, Mr Thomson and Mr Ingham. Then, over on the next page, we note, at the top, G8.28, London Group also paid £41,251.50 to each of Mr McCarthy and Mr Ingham on 16 January 2018. So, this is out of what becomes their £2.5 million. That's starting to be paid out.

In G8.29, we note that Katie Maddock of LCF emailed Paul Seakens to say:

"We have £1.8 million available to lend today." That's an email sent on 19 January 2018. He replies with drawdown requests in the total sum of £1.8 million, £600,000 for Waterside Villages, £600,000 for Costa Property and £600,000 for Colina Property, all payable to GAD. On 22 January, LCF paid a little over £1.8 million to GAD, which, as we explain, then paid £1.3 million of these monies to London Group LLP, which paid the sums there set out.

Then further drawdown requests at G8.31, that's another £1.8 million, and in G8.32, we explain that GAD paid £1.3 million of that to London Group, which paid it out to the various recipients we have identified, and we explain, in G8.33, that, by this point, the aggregate sum owing by Waterside Villages, Costa Property and Colina Property, under the new facilities granted after the Elysian SPA, had grown to more than £35 million. Over on the next page, we explain, at G8.34 -- and this is something I have mentioned previously -- that Mr Thomson seems to have become concerned that there was nothing on file to justify the ever-increasing level of borrowing and there was 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". Mark Ingham sent an email, that we've mentioned, to Mr Sedgwick and Mr Hume-Kendall to say "they are not paying off loan notes and pref shares until ... they have the new headroom".

In G8.35, we mention that, during this payment holiday, Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding formulated a new device to extract monies from LCF, which evolved to become the LPE SPA. In summary of that new device, as we call it, as your Lordship has seen, Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding received payments funded from drawings on LOG's facility with LCF, and initially those payments were said to have something to do with LPC preference shares but they were later recharacterised as being payments under the LPE SPA. We will come to that in due course.

The point to make before we continue with the final payment under the Prime SPA relates to what happened during that so-called payment holiday. As we will see in a moment, Mr Hume-Kendall and Mr Sedgwick began to scrutinise the sums being drawn down by Prime. So, for example, when Prime did actually need some monies to pay some expenses to do with Waterside, Mr Hume-Kendall and Mr Sedgwick demanded information and scrutinised -- tried to limit the drawdowns.

That's because, we say, the Prime SPA was a mechanism to extract monies from LCF for payment to Mr Golding, Mr Hume-Kendall, Mr Barker and Mr Thomson. After the start of the payment holiday for the Prime SPA, those individuals start to take monies from LCF in another way, as I have said. When they have set up that new mechanism for extracting monies from LCF, they try to stem the flow of monies from LCF to the Prime companies to limit their expenditure to what's strictly necessary in an attempt to maximise the amount that is available for them to take under their new device. We can see this in a few emails, at <D2D10-00043102>. On the next page, we see, at the top, Mr Sedgwick emails on 13 March 2018. He says:

"With regard to the drawdowns to the Global Advance account, we have received two drawdowns in the last week which are intended to be used for refurbishment works at Waterside. In my role to administer the distribution of the funds drawn down, I simply ask Paul or Ian to give general details of the intended use of the funds so that I can operate the waterfall in accordance with the terms of the agreement. Paul seems to be reluctant to give too much detail of anticipated expenditure. It would help me in operating this agreement to know what level of detail you require me to get from Paul. If you are happy to rely on his generic descriptions below let me know otherwise I will ask for more detailed information."

We can see on the previous page who he sent that email to. At the bottom of the page, the email chain includes Mr Hume-Kendall and the people in the cc field are Mr Barker, Mr Ingham and Mr McCarthy. So, it's not a question that Mr Sedgwick is asking of Mr Thomson or anybody else at LCF, "What level of detail do you require?", he's asking Mr Hume-Kendall and the others -- Mr Hume-Kendall replies:

"No, I am sure that LCAF will require at minimum a brief schedule of application of funds." I think he says something else over the next page, if we could look at that. Oh, it's just "Simon". He signs it off. On the first page, Mr Sedgwick replies: "LCAF do not require any detail!"

At the top, Mark Ingham says:

"My thoughts.

"Since they are not paying off loan notes and pref shares until April when they have the new headroom. They should be identifying spend exactly to show how it is being used to add value and create new headroom. It's just a spreadsheet identifying the spend that can be reconciled later with invoices."

Then at <MDR00135832>, at the bottom of the page, Mr Sedgwick emails Mr Seakens, copying Mr Sands, Lucy Sparks, Mr Hume-Kendall, Mr Barker. He says: "Dear Paul.

"I understand that some sums have been drawn down from LCAF to GAD and these have not been distributed as yet. Can I please set down the procedure that needs to be followed.

"1. When making a drawdown request to LCAF a copy should be supplied to me together with a spreadsheet setting out the proposed distribution of these funds. "2. Some general evidence of the use of the funds should be supplied when money is drawn to be used for any purpose other than interest, redemptions or share repayments.

"3. If the details are too vague I may need to ask for further information."

Then over the next page, he says:

"I understand that in the last week of March/first week of April there are significant sums required for redemptions and interest. These amount to almost £850,000. I just mention this to ensure that you have planned for it."

On the left, we can see Terry's response to Paul Seakens:

"I'm not buying into this so can you discuss with Simon please?"

MR JUSTICE MILES: I think it is the other way around, isn't it, it is Mr Seakens to Mr Mitchell.

MR ROBINS: Sorry, did I say it the wrong way around? Mr Seakens to Mr Mitchell:

"Terry, I'm not buying into this so can you discuss it with Simon please? Thanks, Paul."

We see at <MDR00135861> Terry responds. He says: "Agree Paul.

"I will speak with Elten first then if needed Simon."

So, when Prime lodges drawdown requests, it provides a spreadsheet, a drawdown calculator, and we can see an example in a moment. There are drawdown requests on 23 March 2018.

<MDR00137569> is the first for Waterside Villages. That's not a signed version, but it is £335,000 payable to GAD in respect of Waterside Villages Plc. We see the name at the top. There are similar such drawdown requests for Costa Property in the sum of £375,000 and Colina Property for £430,000. I think I may have just got those the wrong way around. It is Colina Property £375,000, Costa Property £430,000.

As I say, those were accompanied by a drawdown calculator in the form of a spreadsheet, which is at <MDR00137581>. We need to see it in native form. The drawings shown are calculated in rows 36 to 40, and that's how we get to, in column D, the sums that I mentioned a moment ago, £335,000 for Waterside Villages, £375,000 for Colina and £430,000 for Costa Property. Those are sums that are calculated on the basis of this spreadsheet, which takes into account the forthcoming expenses that will have to be paid by those companies. Most of the sums that have to be paid are in the nature of interest and redemption payments to LCF, and my Lord can see that in C12 and D12. So a very substantial part of what has to be drawn from LCF is going to go straight back to LCF to pay interest and redemptions to existing bondholders.

But there are also some business expenses that have to be paid in respect of the company that we saw mentioned previously, Waterside Cornwall, which we see in row 16. If we read across, there is some known expenditure, including £10,000 in respect of a golf cart and £54,000 for operating expenses and losses. In the "Requirement" column, K, we can see that the requirement for Waterside Cornwall is a little over £97,000, and that's carried across to the "Total" column, column N, where it says in N16 or 17, again, a figure of £97,000-odd.

The company below that is Waterside Villages. There is nothing in the "Requirement" column or the "Total" column for Waterside Villages, other than a small dash. There is a requirement for Inversiones for "Restaurant Purchase Cala Bonita", just over £52,000 in the "Requirement" column and that's carried over into the "Total" column. So it is not simply sums needed to be paid back to LCF as part of the Ponzi scheme; there are also, it seems, some business expenses that have to be paid.

Mr Sedgwick receives this document --

MR JUSTICE MILES: I'm just looking very quickly at this. The amounts that have to be repaid, is that 788 or --

MR ROBINS: Interest is column C.

MR JUSTICE MILES: I'm just looking in the totals over that in N.

MR ROBINS: Oh, yes, I see what my Lord means, where it says "London Capital & Finance Limited". Yes, that's right, because we see in E there's a rollover or top-up which is deducted. So that's how we get to the --

MR JUSTICE MILES: So there is 788 over there, and then there's a total below that of £1.138, so is this right that, of the 1.138, 788 is, as it were, financing costs?

MR ROBINS: Yes, to put it neutrally, yes. There is 97 for Waterside Cornwall, trading costs and 252 for -- Inversiones' trading costs seem to be connected with the purchase of the -- we saw the photos of it, there is a sort of shack, a former restaurant, on the beach. Although that would be Tenedora --

MR JUSTICE MILES: It looks as if the number of 1.41 million is a kind of rounding --

MR ROBINS: Exactly. They took the figure of the 1.138 and it is rounded up a bit. So the drawdown requests are based on this spreadsheet which is sent to Mr Sedgwick. We see at <EB0085810> Mr Sedgwick forwards it to Mr Barker and Mr Hume-Kendall. The attachment, my Lord can see, "Drawdown and calculations". That's the document we were just looking at. He says: "Please see the drawdown request now submitted. It would seem to me to be sufficient information to enable us to release the funds but I would welcome your views." At <MDR00137727>, we see on the next page, please, the -- one more page on, please. We see Chloe Ongley of LCF, she's an operations and accounts assistant, replies to Mr Seakens saying:

"Afternoon, Paul.

"Unfortunately, we do not have the sufficient funds available to send you for your drawdown request so we will have to accumulate them and I shall let you know when we have enough available to send over to you." On the previous page, Paul Seakens forwards that to Terry, saying:

"For your information. Confused as we keep getting told they are 'awash' with funds?"

Then Terry replies towards the top on the left: "Yes bizarre.

"I just had a call from Simon.

"His only query was that we hadn't included anything for Waterside in the drawdown.

"I told him next week or after Easter." And Paul replies:

"Which is interesting as of course I do not send Simon the drawdown calculations."

On the previous page, we see Mr Mitchell replies: "Yes, they obviously turn to SHK for guidance." Ian Sands chips in at the top to say:

"Paul, you sent it to Robert."

So Mr Hume-Kendall appears to be scrutinising the intended expenditure and the drawdown requests during this payment holiday when none of the money is being used to make payments --

MR JUSTICE MILES: Sorry, I just want to understand this. Sorry, I need to get this clear in my mind. Who is the drawdown request made to?

MR ROBINS: To LCF.

MR JUSTICE MILES: Is that the spreadsheet?

MR ROBINS: That accompanies the drawdown request.

MR JUSTICE MILES: Can you just show me that?

MR ROBINS: The spreadsheet or the drawdown request?

MR JUSTICE MILES: Well, how that works.

MR ROBINS: A drawdown request is the sort of thing we saw at <MDR00137569>. It is headed "Prime Resort Development" but it is from Waterside Villages Plc.

MR JUSTICE MILES: That is 23 March.

MR ROBINS: And that's 335 --

MR JUSTICE MILES: 335.

MR ROBINS: From that spreadsheet we were just looking at. These are signed by Ian Sands on behalf of the borrower because he's been appointed as a statutory director. I think we can see that at <MDR00137603>. There we are, it is signed by Ian Sands. My Lord saw --

MR JUSTICE MILES: Does he -- is that spreadsheet sent over --

MR ROBINS: The spreadsheet --

MR JUSTICE MILES: -- to LCF?

MR ROBINS: -- is -- I don't know. It is sent to Mr Sedgwick, we saw that, because he's in control of GAD's bank account. He's responsible for disbursing the funds and he said that he wants the spreadsheet setting out the proposed distribution of the funds. That was the email that we looked at earlier. We don't need to go back to it, but it's <MDR00135832>. He said he wants -- he told Paul Seakens:

"When making a drawdown request to LCAF a [copy] should be supplied to me together with a spreadsheet setting out the proposed distribution of these funds." So I don't think the spreadsheet is sent to LCF.

MR JUSTICE MILES: So, then, going back to that email about the drawdown requests --

MR ROBINS: Was that the one we were just looking at?

MR JUSTICE MILES: Yes. This is 23 March.

MR ROBINS: Yes. It was <MDR00137727>. We started with Chloe Ongley's response, which I think was on page 3 or maybe 4. She says -- she has received the drawdown request, the one-page document signed by Ian Sands, and she tells Paul, "We do not have the sufficient funds available to send you for your drawdown request".

MR JUSTICE MILES: Right.

MR ROBINS: He's confused because he keeps being told they are awash with funds. Terry says, "Yes bizarre. I just had a call from Simon. His only query was that we hadn't include anything for Waterside in the drawdown". So that's a reference to the spreadsheet that we saw where there's a sum for Waterside Operations but nothing for Waterside Villages -- or was it Waterside Cornwall?

That's what it was called. The golf buggy for Waterside Cornwall, but just a dash for Waterside Villages. So Simon's only query is that, "We haven't included anything for Waterside" and Paul says:

"Which is interesting as of course I do not send Simon the drawdown calculations."

He is commenting it is a bit strange that Simon --

MR JUSTICE MILES: When he is talking about the drawdown calculations, he is talking about the spreadsheet.

MR ROBINS: Yes, as my Lord saw, that's where there is a dash for the Waterside Villages it's not getting anything, and Simon is a bit puzzled about that. And Paul says it is interesting because, of course, he doesn't send Simon the drawdown calculations. On the previous page, Terry says -- they obviously turn to SHK for guidance, and Ian says "You sent it to Robert". I think Ian is implying: well, you sent it to Robert. He is the one who has shown it to Mr Hume-Kendall. It is nothing about turning to him for guidance, it is Mr Hume-Kendall scrutinising the expenditure.

MR JUSTICE MILES: I see.

MR ROBINS: So, we have this payment holiday, and it all gets rather awkward because Prime want to draw monies but they feel that obstacles are being put in their path. Ultimately, this is resolved by the letters that we have seen previously. I said I would take my Lord back to them in context. Ultimately, Mr Thomson asks for a letter from Prime giving the value of the sites so that he can put that on file to justify the recommencement of substantial drawdowns by Prime. We see that at <MDR00145328>, where Terry emails Angel Rodriguez to say:

"I had a good session with Andy (LC&F) this morning and agreed that whilst we are awaiting meaningful revaluations of all sites that the directors would write giving an opinion of the current value and short paragraph as to where we are with each project. Could you please draft a note.

"I will then attach the letter to the recent Aperio reports highlighting the relevant sections." Then the draft letter --

MR JUSTICE MILES: That's written to --

MR ROBINS: Angel Rodriguez of Prime. Then we have <MDR00146131>, which your Lordship saw before the draft letter. It is addressed to LCF but they miss off the name, it is just the address, "The Old Coach House, Eridge Park", which Terry mentions in a covering email to Andy in due course. It is the second paragraph in this draft:

"When compared to the recent local valuer's figures ... the directors are of the opinion that the current values are in excess of \$50 million each." That's about, as we see from the previous paragraph, Atlantic Hills (Inversiones) and Magante (Tenedora). He's saying \$50 million each. Then, as regards Waterside, he refers to a refurbishment programme, which he says is under way, and he says the directors are of the opinion that the current value of the entire development is in excess of £30 million." So that's the draft. Mr Mitchell sends that to Mr Hume-Kendall, <MDR00146132>. He says: "I have attached a draft letter to Andy and a status report and would really appreciate your views before sending."

It becomes apparent that Mr Mitchell has also shown it in draft to Mr Thomson, <MDR00147399>. Where Terry tells Angel he would just like the redrafted letter. It is a bit cryptic, but we see a further explanation at <MDR00147405>, where Mr Mitchell explains: "Andy has asked for a mention of the additional land at Magante in the letter re the values et cetera. I have included. Please sign and scan

to me." The revised letter we have seen before is <MDR00147410>. This is the expanded version. The values for Inversiones and Tenedora have been changed in the second paragraph. It was \$50 million each. It is now \$52 million and \$50 million, presumably. Then the text about the additional land that Mr Thomson had wanted included is set out. It says: "There is adjoining land at Magante that PRD has agreed to purchase ... The valuation of this land, once the land has approvals, is £76 million", et cetera. Then the text about Waterside, still, with a director's opinion, "the current value of the entire development is £30 million".

MR JUSTICE MILES: Can you remind me, had PRD agreed to buy adjoining land? Is there evidence about that?

MR ROBINS: There is some adjoining land referred to as Magante 2. There do seem to have been discussions about buying it, but I don't think Tenedora ever bought any of that. I'm looking at Mr Shaw. He tells me they had bits of it. Some of the parcels of Magante 2 are what were included in that spreadsheet from Serulle that we saw last week.

So, it's been acquiring the patchwork of parcels and that includes some of the parcels in the adjoining land. Waterside, the value is given at 30 million. That's signed by Mr Mitchell. It is also signed by Angel Rodriguez in due course. I don't think we need to turn that up just to see a signature, but we can look at <MDR00147513>, which is the covering email from Mr Mitchell to Mr Thomson, saying:

"Hi Andy.

"I have attached the amended letter that I see has missed LC&F off. I will be able to send the correctly addressed one tomorrow morning."

That's the problem, as I said, the address is included but not the name.

The next thing that happens very shortly afterwards, let's see, this is 2.21 pm on 11 May. Let's look at <MDR00147564>. At the top of page 2 -- bottom of page 1, top of page 2, 11 May at 4.40, so just a couple of hours later.

Mr Sands emails Mr Seakens and Mr Mitchell to say: "Hi Chaps.

"Just had a call from Simon HK on a number of things but included was that the letters to LC&F were fine and that we can resume drawing down funds.

"I haven't made contact with LC&F."

We then have --

MR JUSTICE MILES: Sorry, wait a minute. Yes.

MR ROBINS: We then have some further drawdown requests on 15 May, so just a few days later. The first is <MDR00148058>. This is in the format my Lord has seen on Prime Resort Development paper. This is 15 May 2018, as I said. This one is from Colina Property Holdings Limited. It bears a signature of Ian Sands. It requests, in the middle of the page:

"Amount of drawing: £750,000."

To be paid into the following account, and it is an account of a company called London Power Consulting Limited, formerly known as Wealden Consultants. That's Mr Barker's company.

Then <MDR00148061>. There's a second drawdown request, this time Costa Property Holdings. It would also like LCF to pay £750,000 to Mr Barker's company, London Power Consulting Limited. So, a total of £1.5 million.

We can see that LCF complies with that. <MDR00007015>. This is LCF's bank statement. At page 5, we see, towards the bottom, the first payment to London Power Consultants, £750,012.50. Then, on page 7, there's the second payment towards the top in the same amount. So those two payments are made by LCF to London Power Consultants. We can see what London Power Consultants does with the money at <EB0131946>. This is its bank statement. The two payments from LCF come in on 15 May, just above the halfway point, if my Lord can see that. London Power Consultants then, on 22 May, pays £497,625 to Mr Golding, £497,625 to Mr Hume-Kendall, £112,500 to Mr Thomson and £112,500 to Mr Barker. Then, further down the page, on the 24th, there are some payments described as "Share Payments". The first to Mark Ingham and the second, if we could see the full thing, it would say "Mr and Mrs Tom McCarthy". Those are the final payments in the spreadsheet headed "Share payments from Global Resorts and Prime" that my Lord saw previously.

Just to confirm, for the avoidance of any doubt, that the money hit Mr Thomson's bank account in particular, because he says in his witness statement and his written submissions that he never received a penny from London Power Consultants, that's <MDR00173805> at page 12. My Lord will see this is Mr Thomson's bank statement. Page 12. About three-quarters of the way down the page, 22 May, "London Power Consu £112,500". We have got the same for the other bank statements, but I don't think I need to take my Lord to them because nobody else denies receipt of any money from London Power Consultants, that's an idiosyncrasy of Mr Thomson's position.

The letter my Lord saw being worked on and commented on and signed seems to have been intended to result in LCF having something on file so that further drawdowns could be made and £1.5 million is drawn down and distributed to the recipients that I have just mentioned. That's the end of the Prime SPA.

MR JUSTICE MILES: You explained how Zctrade was getting its 4.484 per cent.

MR ROBINS: Yes.

MR JUSTICE MILES: That wasn't done through these various payments that you have listed in your document.

MR ROBINS: That's right. There are the other --

MR JUSTICE MILES: How were those being paid?

MR ROBINS: As --

MR JUSTICE MILES: Was that against the invoices?

MR ROBINS: Round sums against the invoices. Let's just go back to it, because it can be done fairly quickly by reference to our opening written submissions. It's at <A2/1/120>. I think it is G7.15, where we set them out by reference to the bank statements. It is, curiously, not the figures that are produced in the spreadsheet. It is --

MR JUSTICE MILES: That's really why I asked the question.

MR ROBINS: -- round numbers. G7.15, the payments were made by -- well, the first one is in G7.14, which is 111,500 euros. Then the subsequent ones are in sterling, in G7.15. It is London Power

Consultants that makes the payment. £50,000 on 9 July 2018; £50,000 on 11 July 2018; £50,000 on 11 October 2018; £50,000 at the end of that month, 31 October; £50,000 on 16 November; £100,000 at the end of November; £100,000 on 10 January; and £100,000 on 17 January. So, there seems to be a bit of a lag and it is not a match because they are round sums on invoices rather than the exact 4.484 per cent.

MR JUSTICE MILES: Sorry to cut across you, how does that tie in with the spreadsheet which refers to that percentage?

MR ROBINS: 4.484? Well, the 4.484, as I've explained, is £1 million --

MR JUSTICE MILES: That's a percentage of the consideration.

MR ROBINS: Exactly. It is £1 million.

MR JUSTICE MILES: Sorry to keep cutting across you. Are these payments that you have listed here shown in the spreadsheet --

MR ROBINS: No.

MR JUSTICE MILES: -- which then add up to the 4.484?

MR ROBINS: No. If we go back to the spreadsheet, Terry is included in the spreadsheet with his million, which is mathematically 4.484 of 22.3 so the spreadsheet produces a sum which should be payable to him, but, in reality, he gets these lump sums on various dates as and when he invoices.

MR JUSTICE MILES: So the spreadsheet isn't recording these actual payments? It seems to be somewhat notional.

MR ROBINS: Yes. It's the amount that Terry should get but he gets it as and when he puts in an invoice for a lump sum and it's paid over -- it might be that he's paid later or that he's paid in advance, depending on what the position is in respect of the drawings. The spreadsheet is <EB0123428>. Column Y is Zectrade, if we can go across to the right-hand side. If we scroll down -- if we click on, for example, Y35, we see the 4.484 in the formula bar, but that's not a sum that was paid to him. We just saw the figures. He got £50,000 -- in fact, right at the bottom of the page, maybe that is -- maybe these are ones that are paid. Could you click on Y42. Yes, the formula has now gone and it's being recorded as just a lump sum of 50,000. Let's just look at the dates for those. Those are rows 42, 43, 44, 45. If we go all the way to the left, what have we got? We have got 11 October, 31 October, 16 November and 30 November. I think, subject to checking, that those are the dates we were just looking at in the opening written submissions.

MR JUSTICE MILES: Approximately. There may be a day or two different, but ...

MR ROBINS: So the spreadsheet seems to be envisaging that Terry will get his 4.484 per cent of every drawdown, but it evolved to being he gets lump sums and those are just put in in place of the formula.

MR JUSTICE MILES: How much is the total that was actually paid to the defendants under the Prime SPA? Perhaps you could just --

MR ROBINS: I will have to have a look, because this spreadsheet combines Elysian and Prime in one.

MR JUSTICE MILES: Right.

MR ROBINS: If my Lord wants it separated out, we will need to do that job separately.

MR JUSTICE MILES: Okay. All right.

MR ROBINS: But the individuals involved combine them in a single spreadsheet, and in B53 we see that they give a total of just over £20.9 million for Elysian and Prime.

MR JUSTICE MILES: Yes, okay. But is this right, that includes Mr Ingham, Mr McCarthy, and Zectrade?

MR ROBINS: I believe so. If we click on B53, there might be a formula. It is the sum of B4 to B52, which is the column --

MR JUSTICE MILES: That's the whole of what appears above, but that seems to be the total, doesn't it?

MR ROBINS: -- on the left. That seems to be the total of all the drawdowns from -- LCF applied for this purpose. So that would include, I think, subject to checking, all the columns to the right.

MR JUSTICE MILES: Yes. Right. Thank you. 10.30 am tomorrow.

(4.26 pm)

(The hearing was adjourned to Thursday, 29 February 2024 at 10.30 am)

Transcript originally produced by:

Epiq Europe Ltd www.epiqglobal.com Lower Ground Floor, 46 Chancery Lane London, WC2A 1JE

And converted to a more readable format using an automated process by:

Daniel Cloake www.mouseinthecourt.co.uk

Investor names and contact information have been redacted