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 9 - Monday, 4 March 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, just to begin, there are four loose ends from last week we need to address. The first relates to the first disqualification of Paul Seakens. My Lord spotted that the dates didn't quite match. We had got documents that must have related to the second disqualification.

We have now got a document relating to the first disqualification in the trial bundle at <R1/11>, if we can go to that, please. It is pursuant to an order of this court on 3 July 2018. It disqualified him from 24 July 2018 to 23 July 2031. There was then a second disqualification order made by the Southwark Crown Court on his conviction, which your Lordship saw last week. Then there was your Lordship's question about the drawdown calculation spreadsheet that we saw last week. I told your Lordship that it wasn't sent to LCF, it was sent only to Mr Sedgwick, but we didn't have the documents in the bundle. We have now got those documents. The first is <MDR00137602>.

This is, at the top, an email from Ian Sands to Paul Seakens, copied to Terry Mitchell, attaching the drawdown requests. I think the attachment is going to be <MDR00137603>. This is what was attached to his email. It is a PDF containing three drawdown requests: the first, on page one, is for Waterside Villages; the second, if we can go to page 2, is for Costa Property Holdings; and then there is a third on page there for Colina Property.

That's what's then sent to LCF. That's at <MDR00227551>, from Paul Seakens to Chloe Ongley at LCF: "Chloe.

"Please find attached our drawdown requests for today."

We can see the attachment at <MDR00227552>. My Lord can see it is the same PDF, if we can just look quickly, please, at pages 2 and 3 to confirm that. So, that's what LCF received.

The drawdown calculation spreadsheet was sent to Mr Sedgwick at <MDR00227548>. This is an email from Paul Seakens to Mr Sedgwick, copied to Ian Sands. My Lord can see the attachment is the drawdown calculation spreadsheet that we looked at last week. Paul Seakens says:

"As discussed on Tuesday the amounts below are the ones not distributed by GAD to ERG. As agreed we have amended the drawdown calculation spreadsheet so it now provides more information (have attached this week's by way of example) please let me know if this works for you."

There is a follow-up email at <MDR00138874> where Paul Seakens says:

"I was hoping the new spreadsheet sent on Friday had a sufficient level of detail; does it not? Have reattached it for ease of reference but cannot see how we could add much more detail."

So that deals with that.

The third loose end relates to the company that was incorporated under the name London Power & Technology Limited with company number 11424900. That's the company that was to be the purchaser in the first draft of what became the LPE SPA, which we saw Mr Sedgwick circulating on 20 June 2018. It was replaced by LPE as the purchaser in the subsequent version. My Lord asked about the company. We have added some documents to the trial bundle. In short, there was one share owned by Mr Hume-Kendall, who was the sole director, and I think we can see the document at <R1/12>.

There is the company. It became London P&T Limited and has since been dissolved. If we look at <R1/13>, I think we can see that Mr Hume-Kendall was the -- in fact, Mr Sedgwick was also a director. I have misremembered. There is another page, page 2, that has Mr Hume-Kendall's details on it.

Then <R1/13> is a page from Companies House that shows -- sorry, <R1/14>, that records that Mr Hume-Kendall was the person in significant control. As I mentioned, there was a single share owned by him. Fourthly, my Lord asked about the transfer of the Support companies to LV Resorts. The document that we found in relation to that is at <MDR00225000>. It is not perhaps precisely what we were expecting to find, but it's what we found. It is a share purchase agreement dated 6 December 2017 between London Group LLP and Elysian Resorts Group Limited. If we look on page 3, I think, after the contents, my Lord can see from the recitals that it's a contract by which Waterside Support, Costa Support and Colina Support were transferred from London Group LLP to Elysian Resorts Group Limited.

So this seems to have happened after and, one assumes, pursuant to the combined Prime SPA, by which Prime acquired Elysian. These various Support companies were turned into subsidiaries of Elysian.

We have found a couple of share transfer forms. We haven't found all three but there's one at <MDR00225001> in relation to the transfer of Costa Support Limited by London Group LLP to Elysian Resorts Group Limited. Then <MDR00225002> relates to Waterside Support. I don't know why we have only found two. There is, presumably, a third one in existence somewhere, but, as I say, we haven't been able to find it. So that deals with the loose ends.

On Thursday last week, my Lord, we were looking at the LPT SPA, as it is known, the share purchase agreement by which Mr Hume-Kendall and Mr Barker sold the preference shares in LPC to London Power & Technology (2018) Limited. That's the other London Power & Technology company, the one that was incorporated under the name London Power & Technology (2018) Limited and which changed its name to London Power & Technology Limited on 20 August 2018. We saw the document, we might as well bring it up, <MDR00008549>. We saw, on page 3, the vendors were Mr Hume-Kendall and Mr Barker, the purchaser was a company incorporated under the name London Power & Technology (2018) Limited and the sales shares, towards the bottom of the page, were the 25 million redeemable preference shares of 1p each in London Power Corporation Limited.

The first point we make about this transaction is that the beneficial ownership of those preference shares didn't change. My Lord saw last week the preference shares were owned initially by London Group LLP. They were distributed by London Group LLP to Mr Hume-Kendall and Mr Barker and then Mr Hume-Kendall and Mr Barker sold them to London Power & Technology (2018) Limited. My Lord saw last week, and perhaps we should go back to it, <MDR00197584>, this is after the change of name when London Power & Technology (2018) Limited has become London Power & Technology Limited. As I say, that change of name happened on 20 August 2018. We saw this last week, it is a declaration of trust made by Mr Hume-Kendall, on 30 November 2018, recording that he's the registered owner of the one share in London Power & Technology Limited, and in clause 1.2 he declares that he had at all times, and continues to hold, the share as nominee and on trust for London Group LLP. So, as I say, the preference shares were owned by London Group LLP, they're distributed to Mr Hume-Kendall and Mr Barker, who sell them to LPT, which is owned beneficially by London Group LLP. Nothing changed in terms of the beneficial ownership of the shares. The only consequence of the transaction was to entitle Mr Hume-Kendall and Mr Barker to a sum in excess of £32 million.

The transaction gives rise to questions: why have a sale at all? Mr Hume-Kendall and Mr Barker could have simply transferred the LPC preference shares to LPT or, indeed, London Group LLP could have transferred the preference shares to LPT. If and when those preference shares came to be redeemed in the future, the proceeds would have then flowed to LPT, which would have distributed them to London Group LLP. So, it is strange to have a sale at all.

It is even more strange to have a sale for cash, if there was any reason for a sale of the LPC preference shares to LPT, then the obligation to pay for those shares could have remained outstanding until the preference shares came to be redeemed in the future. Then LPT, as the purchaser, would have received the proceeds of redemption and could have used those proceeds to discharge its obligation to pay the price to Mr Hume-Kendall and Mr Barker.

So, it is very strange to see a transaction (a) for a cash consideration of £32 million-odd and (b) which is paid immediately in advance of any redemption of the preference shares. So those are some rather strange features of the transaction.

But, more importantly, the price of more than £32 million was entirely unsupportable. If we can go back to <MDR00008549>, this is the LPT SPA, my Lord saw last week on page 4 at the bottom, clause 3.1: "The purchase price is £32,225,096 payable as set out below. The purchase price is based on the draft balance sheet for the company as at 31 May 2018 and is subject to variation in the event that there is any change in the audited accounts for the company when they are produced with the intent that the purchase price shall be the sum which is 30 per cent of the net asset value of the company as at 31 May 2018." We have spelt out the reasoning implicit in those words in our written opening submissions at paragraph I9.2, but just to explain it orally, we need to start by looking at the addendum to LPC's articles, which we find at <D2D10-00044901>. This is, as my Lord can see, an addendum to the articles of association of LPC adopted by special resolution on 28 April 2017. On page 7, we find article 2.23 under the heading "Redemption of the redeemable preference shares", which says:

"The company may at any time upon giving not less than 28 days' notice in writing to the holders of redeemable preference shares redeem the redeemable preference shares or any of them as specified in the notice. The amount payable to the holders of each of the redeemable preference shares shall be a sum equivalent to 0.0000012 per cent of the net asset value of the company as at the date of the redemption of that redeemable preference share."

Now, as my Lord knows, there were 25 million redeemable preference shares in existence. The total amount payable by LPC on redemption would therefore be a sum equivalent to 30 per cent of the net asset value of LPC.

On page 2, we can see the definition of the term "net asset value". It is defined in the middle of the page to mean:

"The net asset value of the company [LPC] as assessed by the auditors of the company from time to time acting as experts on the assumption that the company is being sold as a going concern by a willing seller to a willing buyer."

So, those are the relevant provisions of LPC's articles. We then need to look at the estimated balance sheet for LOG as at 31 July 2018. That's <D2D10-00047741>. Just taking the bottom line figure, "Net asset" figure, just under halfway down the page, my Lord will see that there is a net asset figure of £107,416,985.

This is, as we see from the top, the balance sheet, or estimated balance sheet, for London Oil & Gas Limited.

The reasoning implicit in the LPT SPA was that, since LPC owned LOG, LPC could be treated as having net assets in this figure of £107,416,985. So, it seems to be assumed that, if the subsidiary had net assets of that amount, then the parent, LPC, would have net assets of that amount. If LPC then decided to redeem the preference shares, it seems to have been assumed that the auditors, acting as experts on the assumption that LPC is being sold as a going concern by a willing seller to a willing buyer, to use the language that we just saw in the articles, would conclude that LPC had net assets in this amount, £107.4 million, and that, on redemption of the LPC preference shares, LPC would then be required to pay £32,225,095 to the holders of the preference shares. It's 30 per cent of that amount. Then the final step in the reasoning seems to have been, well, on that basis, if the LPC preference shares would give rise to proceeds of £32.2 million on redemption, LPT could agree to buy them from Mr Hume-Kendall and Mr Barker for £32.2 million. We submit that that reasoning was obviously artificial and wrong. First, LPC's auditors had not concluded whether, acting as experts on the assumption that LPC was being sold as a going concern by a willing seller to a willing buyer, or indeed otherwise, that LPC had net assets of £107.4 million, and there was no realistic prospect of them doing so. The reality was that LPC's shares in LOG had no value.

The reason for that is, as we know, LOG had two assets. The first and most valuable was the investment in Independent Oil & Gas. We have got expert evidence on the value of that investment. The experts, Mr Osborne and Mr Wright, agree that the investment in Independent Oil & Gas should be valued on the basis of the Black-Scholes model, and we can see that, for example, at <D2/1>, page 22, in Mr Osborne's report -- he's the claimants' expert. In paragraph 3.13, he says: "The first approach to pricing derivatives, securities (such as options) that are based on the characteristics of other, underlying assets, was put forward in the Black-Scholes model. The model estimates the value of an option using five inputs ..." And he sets out the various inputs. Those inputs include in (v):

"The expected volatility of the underlying asset." He explains:

"All else equal, the more volatile is the price of the underlying asset, the more valuable will be the option."

So, the higher volatility, the higher the value. He also explains in (iv) that the risk-free rate is part of the calculation as well. It is used in the model as a limiting condition as it is assumed that somebody could borrow to purchase the asset or sell the asset and lend the funds during the period of the option charterparty.

On page 24, at 3.24, he says:

"For the purposes of my valuation, I have agreed with Mr Wright [the expert of Mr and Mrs Hume-Kendall] to use a BSM framework to value the options ..." He takes the view that the Black-Scholes model, or BSM model, is the correct approach.

Mr Wright for Mr and Mrs Hume-Kendall says much the same. We see that at <D2/3>, page 3. In his report -- sorry, this is the joint statement. In paragraph 2.2 of the joint statement, "Valuation approach": "The experts agree on the broad method of valuation of the portfolio. More specifically, each component of the portfolio can be assigned an individual theoretical valuation ... Furthermore, the experts agree that the theoretical valuation of the warrant instruments should, and that of the call options embedded in the convertible loans can, be calculated using the Black-Scholes model ..."

Then, on page 5, at paragraph 2.6 of the joint statement:

"The experts agree that the estimates of the underlying value of assets held by IOG, such as licences and physical assets, are not directly relevant to the valuation of LOG's portfolio of interests in IOG. To the extent that IOG's share price differs from the value implied by any given estimate of the value of the underlying assets, it is the share price that provides the better evidence as to the value of LOG's interests in IOG. Neither expert has attempted to estimate the value of the underlying assets held by IOG."

That's obviously a logical point because what LOG owned was interests in IOG, loans that could be converted into shares, warrants that could be converted into shares. IOG has its own separate assets and the market may know certain things about IOG's assets and the market knowledge is something that's priced into the IOG share price. But what LOG owned was the right to acquire shares in IOG. That's what the experts say it should be valued and they agree it should be valued on the Black-Scholes method.

As to the values that the experts come up with, applying that agreed method, the claimants' expert, Mr Osborne, considers that LOG's interest in IOG was worth somewhere between £26.4 million and £53.6 million on 27 July 2018. We see that at <D2/1>, page 7. He gives various dates in figure 1.1. The date, for present purposes, is 27 July 2018. His low value is £26.4 million, his mid point is £40 million and his high value is £53.6 million.

Mr and Mrs Hume-Kendall's expert, Mr Wright, considers that LOG's investment in IOG was worth a bit more. He gives a range of £56 million to £62.2 million. We can see that at <D2/2>, page 23. This is his calculation for 27 July 2018, and he gives a value range, as I say, of -- I have rounded it up to £56 million and £62.2 million.

So, between the experts, we end up with a range of possible values of 26.4 to 62.2. The claimants' expert occupies the bottom half of that range, if I can put it that way. Mr and Mrs Hume-Kendall veers more towards the top half. But that's the range between the experts, 26.4 to 62.2 for IOG, for LOG's interest in IOG. My Lord knows that LOG had also made an investment in P/F Atlantic Petroleum. As at 27 July 2018, LOG had loaned £1.88 million to P/F Atlantic Petroleum, and the accrued interest on that loan, which hadn't yet been paid, stood at £324,625, and we can see that at <MDR00002063>. We need to look at it in native form. This is LOG's loan account with P/F Atlantic Petroleum. If we look at row 8, it starts on 27 April 2016. If we scroll down, we can see that it runs all the way to 23 January 2019. That's obviously a bit later than the date that we need, but if we scroll back up to look at where it starts, to see the first row, that's row 8. The principal amount is D8. If we scroll down, please, to July 2018, we can see there's an advance on 25 July 2018 in row 48, and the principal amount is in D48. So, if we pick an empty cell somewhere and type into the formula bar "=SUM(D8:D48)", we should get the running total as at 27 July 2018 of £1.88 million. There is some accrued interest. It is billing up, but not being paid.

If we go through the same exercise -- I'm not sure we need to do it -- you come to just under £325,000 of interest.

So, in comparison to the investment in IOG --

MR JUSTICE MILES: I thought you said £125,000?

MR ROBINS: I think I said £324,000. Let's do the same. Can we go back up to the top? The accrued interest is in E. If we go back to the cell that was edited and put a new formula below that, if we say E8 to E48, so remove the Ds and replace them with Es, "E8:E48". So, there's the loan to P/F Atlantic

Petroleum, but it is small in comparison to the investment in Independent Oil & Gas. Those are LOG's assets.

LOG had also incurred substantial indebtedness. It owed around £87.5 million to LCF as at 27 July 2018. We can see that at <MDR00171190>. This is the internal LCF document recording the loan balance with LOG. If we look at the top, we see the date, the gross amount, the cost of funds, fee and cash advance. So the gross amount is column B, and the first is B2. If we scroll down, we see the various dates of the advances. There is one, if we go down a bit further, on 24 July, in row 75. Sorry, we are in the wrong tab. We need to look at tab 1, "New drawdowns". If we look up at the top, we see "Date", "Gross", so the gross is still in B and the first is B3, in fact, which is 21 March 2015. That's the first in the LOG loan ledger of LCF. If we scroll down, it's going to be a bit further down than I thought, to maybe row 172. There's a couple of drawdowns on 26 July, three, in fact. There is one in row 172. If we go to an empty cell somewhere and add in the formula bar "=SUM(B3:B172)". That captures everything up to and including 28 July, it is slightly higher than I thought, the balance is £88.9 million. I think I said 87.5. It is 88.9.

So, if LOG's assets, my Lord, are the investment in IOG with a value in the range of 26.4 to 62.2, and the loan to Atlantic Petroleum, which we saw a moment ago, and the liabilities to LCF alone are in the region of £88.9 million, then it is clear that LOG's liabilities are significantly greater than the value of its assets. LPC's shares in LOG, therefore, had no value, and, since LPC had no assets other than its shares in LOG, it follows that the asset value of LPC was, itself, nil. So, that's the reality of the position. It follows that the --

MR JUSTICE MILES: Can I just look again at the document which had the estimated net asset figure?

MR ROBINS: Yes, we will go to that now. The balance sheet dated 31 July 2018. That's <D2D10-00047741>. Perhaps it is easiest to start with the liabilities position because we were just looking at that. This balance sheet for liabilities includes a liability to London Capital & Finance in a sum of a little over £47.5 million. Well, that's not right. We were just looking at the loan ledger. The true figure was £88.9 million. That wasn't some sort of secret. Everybody was aware of the level of LOG's indebtedness to LCF.

We see, for example, <D2D10-00047690>. On 19 July 2018, Mr Elliott sent an email to Mr Barker and Mr Hume-Kendall, among others, attaching, among other things, the LCAF loan profile, and that's the attachment at <D2D10-00047695>.

My Lord can see that, as at that date, the total is already £76.7 million, in the first column after the date. So the balance sheet, if we go back to that --

MR JUSTICE MILES: The balance sheet says on it that it's been produced as at 31 March.

MR ROBINS: <D2D10-00 --

MR JUSTICE MILES: I mean based on figures taken from the trial balance as at 31 March.

MR ROBINS: -- <D2D10-00047741>.

MR JUSTICE MILES: Which may explain it.

MR ROBINS: <D2D10-00044901>. No, wrong one. It is <D2D10-00047741>.

MR JUSTICE MILES: It says at the top it is as at 31 July and note 1 says:

"The above balances (excluding the valuation and deferred tax) have been derived from the unaudited draft management accounts as at 31 March ..."

MR ROBINS: Yes. The point that I was making is that, by the date of this balance sheet, 31 July 2018, everyone knew that LOG's indebtedness to LCF was considerably higher than the figure of £47.5 million set out in this balance sheet. In fact, it had grown to £88.9 million. So, this figure was not accurate. It may have been accurate historically, but it wasn't accurate as at 31 July 2018. So this balance sheet understates the liabilities by a very considerable margin. The figure for fixed assets, at the top of the page, is given as £162,446,721. We know where that figure comes from. We have got the document. It is <EB0094738>. It is headed "London Oil & Gas valuation summary" and the figure that we were just looking at is the penultimate line on the page, "Total valuation". We can see how that was calculated. There are two parts. What we are looking at now is the second. The first, just above that, if you go back to the full page, please, shows the Black-Scholes option model.

MR JUSTICE MILES: Sorry, what is this document?

MR ROBINS: This is the document which shows how the -- it is a contemporaneous document. It shows how the balance sheet asset value was calculated, the figure of £162.4 million.

The first exercise is undertaken, at the top of the page, under the heading "Black-Scholes option model" and is a Black-Scholes valuation of the type that Mr Wright and Mr Osborne undertake, but the volatility has been cranked up to 100 per cent. My Lord saw that the higher volatility gives you a higher valuation. So, whoever prepared this turned the volatility all the way up to 100 per cent. On the Black-Scholes valuation, you get an implied value of investments and put option in the sum of £71,195,740.

MR JUSTICE MILES: Sorry, can you go back to the -- yes.

MR ROBINS: So, that's the Black-Scholes valuation. But that --

MR JUSTICE MILES: Sorry, I'm just looking at it. But that's with -- I see. So, that's the BSM with 100 per cent.

MR ROBINS: Yes, with volatility at 100 per cent. That's why it comes out higher than Mr Wright and Mr Osborne, because they don't think that it should be 100 per cent. But if you turn it up to 100, then that's what you get, just under 71.2. But that's, of course, lower than the debt to LCF of 89.9 million. So, on that basis, LOG would be balance-sheet insolvent and LPC's shares in LOG would have no value.

So, the table goes on to do another calculation, and that's under the heading "Underlying NPV valuation of equity". It's said that the net present value of IOG at PV10 and 2P (post tax) is £398,906,000. A risk factor of 0 per cent is added. And then, general and administrative costs -- there's the G&A costs of £8.8 million deducted. The underlying equity value is then said to be £390.1 million and 62 per cent of that figure is taken on the basis that LOG's warrants and options, if exercised, would give them 62 per cent of the shares in IOG. That produces what is said to be an implied total value of investment and put option of £243.5 million.

They have two values. They have the Black-Scholes value of just under 71.2 and this value based on the NPV of IOG which is said to be £243.5 million. What they then do, essentially, is to add them together and divide by 2. They take an average described as "Midpoint valuation selected", that's the average of the two. If you add them up and divide by 2, you get £157.356 million.

There is then an estimated value of Atlantic Petroleum of a little over £5 million that's added and that gets you to a total figure that goes into the balance sheet. It is what we submit is a completely nonsensical approach to the valuation of IOG. There is no support for taking an average of the value of LOG's investment on the Black-Scholes basis and 62 per cent of the asserted NPV of IOG's assets. That's not a market value. It is not what you could get for LOG's investments from anyone. It is the calculation that seems to have been performed to bump up the end result, and for no other reason. It is, therefore, rather telling to see that Mr Hume-Kendall has misdescribed how the calculation was performed.

If we go to <B2/2>, page 40, we see in his defence, at paragraph 96, he says:

"After a period of negotiation between the shareholders, it was agreed at a board meeting on 14 June 2018 that a new company would be formed to purchase the preference shares in LPC, which were to be valued at 30 per cent of the net asset value of LPC (calculated using the Black-Scholes formula, an established method for valuation in the oil and gas industry which was recommended by BDO, the company's auditor)."

So, he seems to know that it should have been Black-Scholes, but, as my Lord has seen, it wasn't Black-Scholes. Black-Scholes with volatility turned up to 100 per cent came out at a little under £71.2 million. That's on their own reckoning, with maximum volatility. But they took that Black-Scholes value, added £243 million and then divided by 2 to get to £157.3 million. They then added, as my Lord saw, the £5 million for Atlantic Petroleum to produce £162 million. That's not a Black-Scholes valuation. If we go back to <D2D10-00047741>, my Lord can see the other items on the balance sheet. We have got the figure at the top that we just saw calculated of £162.4 million. The current assets are then said to include trade debtors, intercompany debts, other debtors, prepayments and cash at bank.

The bulk of the figure is intercompany debts. That includes LOG's loan to ITI, which ITI had on-lent to Asset Mapping. It includes LOG's loan to London Group LLP. For reasons which we have already explained, those assets were irrecoverable. They shouldn't have been included on the bank sheet. My Lord has heard what we have to say about the position of Asset Mapping.

The calculation here of net assets of £107.4 depended on overstating the value of the assets, including the investments in IOG, and understating the liabilities to LCF.

The exercise that was gone through in calculating those values gives rise to further questions, including, why proceed on any interim basis at all? If, as we have seen, the Black-Scholes valuation of IOG was lower than the indebtedness to LCF, it would seem that LOG had no value. Why should LOG borrow further monies from LCF with the grossing up which that involved to pay sums to Mr Hume-Kendall and Mr Barker, when the alternative would presumably have been to wait to see what the position was in respect of the value of IOG or to seek greater certainty? Why not, for example, go through the experts determination process in the articles to establish the redemption value of the preference shares? It wouldn't have been that difficult to ask the auditors to calculate the net asset value of LPC as experts on the assumption that LPC is being sold as a going concern by a willing seller to a willing buyer. That exercise could have been gone through. They could have waited to see what the auditors, acting as experts, said and, if there was a need to go ahead with some transaction, they could have based it on the auditors' assessment. But, instead, as my Lord has seen, what we have here is another transaction put in place to justify the continued payment of monies from new bondholders to Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding. There seems to be no

difference in true characterisation between this transaction and any of the prior transactions on which I have already made submissions to your Lordship.

There is one related point that I should address at this juncture, which is something that comes out of the defences of Mr Golding and Mr and Mrs Hume-Kendall. We see it in Mr Golding's defence at <B2/5>, page 1. That's the first page of his defence. Then, at page 10, at the end of paragraph 17.5. In support of the contention that the preference shares had a substantial value, it is said:

"Mr Golding received a third party offer in October 2017 from Blueprint Capital for his interest in LPC (through which his interest in LOG was held) for £70 million."

Mr Hume-Kendall makes the same point at <B2/2>, page 40, at paragraph 99 of his defence. He says: "It is to be noted that in the period in early-mid 2018 when negotiations were ongoing among the shareholders of LPC regarding the purchase of the preference shares, a third party offer was received for the purchase of Mr Golding's interest in LPC from Blueprint Capital Partners, led by a former managing director of Goldman Sachs. The offer provided for consideration of £70 million to be paid." So, what's being said is that the shares in LPC did have a substantial value because there was an independent third party offer to buy Mr Golding's interest for £70 million.

Well, to understand the position relating to Blueprint Capital Partners, we need to start by what was described at the time as the North Sea commodities bond. We can see that at <MDR00077223>.

MR JUSTICE MILES: What was Mr Golding's interest in LPC?

MR ROBINS: Well, he was a beneficial owner of London Group LLP, which held the preference shares.

MR JUSTICE MILES: Sorry, what I meant was, what was the extent of it?

MR ROBINS: At that point, the ratio was 42.5:42.5:7.5:7.5, I think. We saw that Mr -- it was originally 45:45:5:5, but Mr Barker and Mr Thomson went up to 7.5. This is an email from early March 2017 from Kerry Graham of InfoConnections, also of Surge, to Mr Hume-Kendall, copying Mr Sedgwick and Clint Redman, with the subject "North Sea commodities bond", and my Lord can see that Kerry's chasing for information. She says she's ready to work on the IM, the information memorandum, and she wants information including: "1. New company number for North Sea Commodities Bond Limited."

She wants, in 5, an organogram, et cetera. My Lord can see this is a document relating to the proposed North Sea commodities bond, as it was described, which was something that Kerry Graham of Surge was working on for Mr Hume-Kendall and Clint Redman.

We can see at <MDR00077664>, a few days after this, Mr Sedgwick has incorporated the company North Sea Commodities Bond Limited, and he tells Kerry Graham, he also tells Mr Hume-Kendall and Clint Redman, who were also copied into this email.

The difficulty that emerges with this proposed bond relates to the security that it's said is going to be given to the bondholders. It is said, in a nutshell, that the bondholders' rights in respect of bonds would be secured by charges over licences in respect of oil and gas, but Kerry Graham looked very closely at the licences and discovered that they were due to expire before the end of the bond term, and she set that out at <SUR00072835-0001>. Can we have a look at the next page? On the left-hand side, in the email to Clint Redman she says in number 1:

"I didn't know that a number of licences expire in 2017, this valuation highlights this issue, it also seems to suggested that renewal will be obtained but this could still be a problem because the bond

is secured by a debenture over the licences." I think she says something towards the top of the same page. She says, in the final paragraph: "Please read my email below, I have identified a potential problem re the assets upon which the bond is secured have an expiry date before the end of the bond term! I will speak to them about this tomorrow and come up with some sort of fix."

We see further discussion of that at <SUR00077229-0001>. Where Kerry Graham emails Mr Careless again and she says at the top of the page: "Spencer told JRM all licences would be renewed. "I've spoken to Clint and Simon and they acted completely surprised and said they had agreed no such thing and 'where is my evidence they need renewing'. They pulled a new one on me and said 'your solicitor doesn't understand the industry, licences don't expire, that's not how it works'. I said but you sent me a table with a list of expiry dates, all this year, some already expired. They are really trying it on and its pointless because you can't pull the wool over the security trustee. We need a Spencer intervention." So the plan to issue the North Sea commodity bond is running into difficulties because the licences are expired or expiring and Mr Hume-Kendall and Mr Redman are saying that there's no need to renew them. Kerry says she wants a Spencer intervention. It seems that Spencer does intervene, because we see at <MDR00093095>, she says at the top in an email to Mr Hume-Kendall and Mr Redman with the subject "New timeline": "Good meeting with Spencer today."

She sets out the details in relation to the proposed bond. The difficulty which then becomes apparent is that Mr Hume-Kendall wants to launch the bond as soon as possible, but Kerry Graham is saying it is not really ready yet, we need to take our time and put everything in order and get it right. You see that at <MDR00096516>. Where Kerry explains in an email to Clint Redman, copied to Mr Hume-Kendall: "I have spoken to Simon today, he explained that you might not have finalised contracts until December. I understand that time is of the essence and you would prefer to launch the bond sooner.

"We can go live at any point in time but people are less likely to invest in a proposition that is pre-production licences and at MOU stage than if there was a formal contract in place.

"Because the contracts are some time away, Simon suggested we meet to look at what we have got and consider how it would look if it went live now." So Mr Hume-Kendall wants to push it forward as quickly as possible but Kerry is saying there's a difficulty with that. We then come to the offer letter, which we see in draft. There is an email at <MDR00104304>. Clint Redman sends an email to someone called Sarah Griffiths with the subject "Offer". The attachment is <MDR00104305>. It is a draft letter to Mr Golding, dated 25 September 2017, and it is "Subject to contract":

"Dear Sir.

"Offer to acquire all of your interests in London Power Corporation Plc ..."

The offer is, it says in paragraph 1:

"... to acquire the total interests in LPC UK for a total consideration of £70 million ..." The key assumptions, in paragraph 2, include, in (i):

"As agreed, use of bond monies supplied by Surge via the North Sea Commodities Bond, as long as suitable wording can be found to facilitate this." We can see the rest of the offer on the second page. There are some various conditions. And then the third page. It's not signed yet. But this is the draft letter, which envisages payment to Spencer of £70 million from the bond monies supplied by Surge via the North Sea Commodities Bond.

My Lord saw it's an attachment to an email from Clint Redman. He is working at this time for London Group LLP, and we see an invoice on the very same day as the email attaching this draft offer at <MDR00100103>. As I say, it's the same day, 5 September 2017, the same day as the formulation of the first draft of that offer. It is an invoice from Blueprint Limited to London Group LLP in the sum of £250,000. It is payable, as my Lord can see from the bank account details, to CJ Redman.

It is said to be paid in respect of the Paradise Beach project. It says "to be paid monthly upon signing with 10 per cent (£25,000) paid on 29 September 2017 and the balance of £225,000 paid monthly at £18,750".

The obvious oddity is that, by this point in time, there is no Paradise Beach project anymore. My Lord saw, the week before last, on 7 June 2017, John Cotter sent a letter from Paradise Beach ASA to Mr Hume-Kendall and Mr Sedgwick confirming termination of the agreement between CV Resorts and Paradise Beach ASA. So this looks rather peculiar. One asks why, on the day when he drafts an offer to pay £70 million from the North Sea commodities bond to Mr Golding, does Mr Redman become entitled to £250,000 in respect of a non-existent project?

My Lord, I note the time. Given the slightly later start due to the technical problem, I think we are at the midpoint.

MR JUSTICE MILES: Yes. Let's take the five-minute break. Thank you.

(11.52 am)

(A short break)

(11.59 am)

MR ROBINS: My Lord, before the shorthand writer's break, we were looking at the first draft of Clint Redman's offer on 5 September 2017 and his invoice of the same date in the sum of £250,000.

Just over a month later, Mr Hume-Kendall was expressing frustration to Kerry Graham about the slow progress in relation to the North Sea commodity bond. We see some of that at <MDR00106616>. At the bottom of this page, Kerry Graham emails Mr Hume-Kendall to say: "Good to speak to you today ...

"On our call you mentioned the fact that a bond could have been constructed faster than the current progress. This is very true -- as I have always maintained -- a S21 bond can be constructed in 6 weeks.
"We could indeed have gone live with a bond 6 weeks after we first commenced discussions back in March. Or 6 weeks from any point in time that we decided to 'press the button'.

"However, we weighed up the balance between going live with a strong investable proposition versus going live with what we had on the table at the time. All things considered the decision was taken to go live at the point we had solid foundations."

On the next page in the second paragraph: "I am sure it is frustrating to have a great plan but no bond yet but we are where we always intended to be and the bond will go live 6 weeks after I have the final items outstanding ..."

At the end of the email, at the end of the final paragraph, she sets out her view:

"A good offering takes in millions of investment a month, a weaker one takes in hundreds of thousands." My Lord can see, on the left, Mr Hume-Kendall's response. He says:

"This is all absolutely correct and makes perfect sense.

"However, although you have been very clear about the constraints on the levels of funds able to be raised by going to the market with an incomplete product, we have corporate strategic timing considerations that mean an entry into the market before the end of this year would be desirable and additionally it will assist us in pushing along any lingering outstanding agreements." Ms Graham forwards her email to Mr Careless at <SUR00084461-0001>. She explains:

"Just to keep you in the loop, Simon HK expressed dissatisfaction that we don't have a bond yet. Andy told him he could have created them a bond in next to no time and he taught me everything I know." In the next paragraph:

"Officially the ball is still in their court. I don't have half of what I need but according to them it is coming imminently."

Then she says:

"If I had done a draft of the IM he would have felt more relaxed I think and this is most likely why they are getting restless ...

"I am frustrated because at every single meeting with them I have said, we can deliver you a bond in 6 weeks, you have to say when you are ready but if you wait for X, Y and Z you will of course raise more money and that is the recommendation. They have always made the choice to wait and always said I will have everything by the end of the month.

"John and I agreed with Spencer in August to go live on the bond with what we had, the following week I sat down with Clint, SHK and IOG and they wanted to wait for the better proposition because it was so imminent. Their choice!"

My Lord saw Mr Hume-Kendall's response to Kerry a moment ago, that was dated 12 October 2017. He referred to corporate strategic timing considerations. The only thing we can see relating to what might be described as corporate strategic timing considerations relates to the proposed use of the bond monies. We can see where that's got to at <MDR00106600>. This is the same date as Mr Hume-Kendall's response, 12 October 2017. <MDR00106600>. Clint is emailing someone called Ante Razmilovic with the subject "Strictly private and confidential". He says: "Take a look up dated now."

The attachment is <MDR00106601>. It is now on Blueprint Capital Partners headed paper, still addressed to Mr Golding, still in paragraph 1 involving payment of £70 million to him and the key assumptions in 2(i) still say:

"As agreed, use of bond monies supplied by Surge via the North Sea Commodities Bond, as long as suitable wording can be found to facilitate this." It is still an offer of £70 million payable to Mr Golding from the North Sea commodities bond money. Mr Redman provides a draft of this to Mr Golding a few days later, <MDR00107202>. He says: "Dear Spencer.

"Please find attached the offer letter as discussed."

The attachment is the offer letter that my Lord has seen. But the bond is still further delayed. We see some further correspondence about that at <EB0066585>. On page 2, Kerry, at the bottom of the page, emails, saying:

"I am aware that you are very dissatisfied that the oil bond has taken an unreasonable length of time to come together. I sincerely apologise for my part in this."

And makes some comments in her defence. On the same page, we see just above this section Mr Hume-Kendall's response. I think we need to go -- if we look at page 1 and page 2, that would be great. He says: "Hi Kerry.

"Thank you for your rapid response.

"Please be reassured that there is no criticism from us as harsh as your email suggests.

"We just could not understand the apparent lack of appetite for a product with these credentials of LPC and its subsidiaries."

He makes various comments. He doesn't understand why she thinks the bond won't be successful. One of his comments, in the third paragraph from the end, is:

"Bondholders' position is immeasurably better protected by our convertible loan structure with £2.5 billion of gross assets being leveraged at less than 1 per cent LTV initially."

Kerry comments about that. On the left, she says: "Hi Simon.

"Thank you that is reassuring because we are more than excited about launching this. When all building blocks are in place it's more investible than LCF. We have gone to great expense to build new marketing channels for this bond specifically ..." et cetera. But matters are still delayed. We go to the beginning of 2018, <MDR00120267>. By now, Kerry is emailing a draft brochure to Mr Redman, copied to Mr Barker and Mr Russell-Murphy, Mr Hume-Kendall is also a recipient of the email. She says:

"I have revised the brochure content to reflect the new structure (attached). This is a working draft which I will finalise based on your feedback and will update when the new draft of the IM is received. "For the brochure, the key objective is to simplify everything, this is the document that will be our main selling tool. It is essentially a 'teaser' document to gain interest from prospective investors. Our experience shows that the retail investor -- our target market -- is put off by complexity and unfortunately, reference to multiple companies, convertible loans and intercreditor agreement all count as complexity. The sophisticated investor would of course buy into the current structure but we need to cater to the masses who we serve and to do that I have streamlined massively." Mr Hume-Kendall forwards that to Mr Thomson at <MDR00120288>. So my Lord can see Mr Thomson is also involved in these discussions: Mr Hume-Kendall says: "Please see Kerry's email below. To me it makes no sense that she is not communicating with you directly." Then <D2D10-00040186>. Mr Sedgwick emails Mr Hume-Kendall and Mr Barker, on 8 January 2018, to say:

"I was speaking to Andy today with regard to the proposed oil bond and in particular discussing the use of Global Security Trustees Limited as the security trustee for the bond. We both agreed that if that is to be the case it is essential that this company is not connected with me so he is suggesting that a new company is formed which buys GST from me."

So there are still discussions in the first part of January 2018, but Mr Hume-Kendall explains in his trial witness statement that his discussions with Surge about the potential funding did not come to anything and Surge were unable to raise the required finance. He says that the efforts in 2018 aborted at an early stage and, sure enough, my Lord, we find that the email traffic about the proposed oil bond peters out at the end of January 2018. That would seem to be because, on 2 February 2018, Mr Thomson, Mr Hume-Kendall, Mr Barker and Mr Golding began taking monies from LOG's facility with LCF with the reference "LPC pref share payments". It seems to us that they had found a new way to make payments to Spencer. The oil bond idea wasn't needed anymore.

So, I have taken my Lord through that material to deal with the suggestion that there was a third party arm's-length offer to buy Mr Golding's interest in LPC in the sum of £70 million. The former managing director of Goldman Sachs to whom Mr Hume-Kendall refers seems to be Clint Redman. It was not an independent arm's-length offer. It was an offer from Clint. It seems, in reality, to have been a mechanism to pay £70 million of the proceeds of the North Sea commodities bond to Mr Golding. It provides no support for the idea that the LPC shares were worth anything.

My Lord, the next topic is what we described as the MOU and the SPA. To explain to my Lord what we mean by that, we can see what the defendants say about it, first of all in Mr Thomson's trial witness statement at <C2/1>, page 7.

In paragraph 24, Mr Thomson says that he discussed this with Simon, Elten and the others "and we entered into two written agreements, which were signed on 15 July 2015: a memorandum of understanding and a share purchase agreement". That's, as I say, the MOU and the SPA. Mr Thomson continues:

"By the former, it was agreed that I would withdraw from the businesses we had set up or developed together. I would retain/be considered to have a shareholding of 5 per cent in each of them but would take no part whatsoever in running the business and would, if it was ever appropriate, vote my 5 per cent shareholding as directed by the others. By the latter, I agreed to sell my interests to Simon and Elten for a price reflected the realised value of the businesses over the next 5 years, capped at £5 million. The businesses were set out in the schedule by reference to the companies which owned them. Any new companies which took over or became connected with those businesses, for example, as part of a restructuring, were also included."

So, it's said that the parties there mentioned signed the MOU and the SPA on 15 July 2015. We can see what Mr and Mrs Hume-Kendall say about that in their opening submissions at <A2/4/13>. Paragraph 37. They say:

"In July 2015, it was agreed between D1, D2 and D3 that D2 and D3 would separate their remaining interests from D1 and this was documented in a series of agreements.

"38. Under a memorandum of understanding, D1 would continue to own and develop his own separate business, LCF, without any involvement or interest from D2 or D3. D1 would continue to have a 5 per cent interest in D2 and D3's companies. This retained interest arose out of necessity as D2 and D3's companies had insufficient cash flow to facilitate a total financial separation of their interests. D1 was not to take any active or passive role in D2 and D3's businesses other than as a minority shareholder. It was expressly recorded that the 'parties shall each operate their separate businesses totally at arm's-length'.

"39. D1, D2 and D3 also entered into a share purchase agreement at this time to recognise D1's beneficial interest in and subsequent transfer of his shareholding interests in D2 and D3's companies. The purchase price was stated to be an amount which is equivalent to 5 per cent of the value of each of D2 and D3's companies which is realised during the period of 5 years up to a maximum of £5 million." Those passages of the Hume-Kendalls' opening written submissions reflect their pleaded case which we see at <B2/2>, page 11. The second half of paragraph 17, well, it is three lines from the end:

"The parties entered into a Memorandum of Understanding and an SPA (herein collectively the separation agreement) dated 15 July 2015 by which: "17.1. Mr Thomson would sell his shares in a

number of companies on which the parties to the SPA had worked together but would retain an interest of 5 per cent in those businesses; but

"17.2. Once Mr Thomson had received a total sum of £5 million in respect of his interests ... or a period of 5 years had passed, he would receive no further sums thereby capping his receipts under the separation agreement at £5 million; and

"17.3. Mr Thomson's role would be entirely passive and the businesses would be operated at arm's-length from him."

So, that's what's said. My Lord might be thinking at this point, well, we looked very closely at the events of July 2015. Why didn't Mr Robins take me to these documents in the correct chronological context? The answer to that is that I am taking your Lordship to these documents in the correct chronological context. They were created after the FCA's raid on LCF's offices, which took place on 10 December 2018.

The FCA supervisory notice is at <MDR00195123>. My Lord can see it is dated 10 December 2018. The FCA required LCF to withdraw communications in respect of the ISA bond. The first issue raised by the FCA is the issue relating to the ISA bond. That's on page 2 at paragraph 5, where they explain:

"In order for bonds to be qualifying investments for an innovative finance ISA they have to meet certain conditions, including that they are transferable ..." And they refer to regulation 8A(2) and (4) of the Individual Savings Account Regulations 1998. They say:

"LCF's website makes clear that its bonds are nontransferable. It therefore appears that LCF's bonds do not qualify to be held in an ISA account and that investors are being misled by being told that the interest they earn will be tax free."

So, the basis of the FCA's intervention was, first and foremost, what could be, I suppose, described as a technical point relating to ISAs, but it was really more significant than that because the ISA bonds were being marketed on the basis that the interest payable would be tax free. However, the fact that bonds were non-transferable meant that they didn't qualify for tax-free treatment and the statements to the effect that the interest would be paid tax free were wrong. So that was the basis on which the FCA intervened. But it rapidly became apparent that the FCA had wider concerns or suspicions relating to LCF. It wanted to know the identity of LCF's borrowers, it wanted to know what security LCF held, it wanted to know what happened to all the money raised from bondholders.

One gets a flavour of that from the notes of the meeting with the FCA on 10 December 2018 at <MDR00195589>. My Lord can see these are meeting minutes of 10 December 2018. The FCA attendees are set out. The LCF attendees are said to be Kobus and Andy Thomson and next to Andy Thomson's name it says "(joined slightly late)".

We see where Mr Thomson joined the meeting. It is on page 4, just over the halfway point, "Andy joined the meeting". At the bottom of the page, Ed of the FCA says:

"We have a number of questions."

Over the page, he asks about due diligence on borrowers. He wants to know about how the business works. He asks about the borrower companies. Then, over on the next page, page 6, he asks towards the top: "How do we find investors?

"Do we have relationship with them?", et cetera. Mr Thomson sets out the names of the borrowers, he mentions Costa, Colina, Waterside, the Support companies. He mentions Simon, Elten, LOG,

Atlantic, Cape Verde resorts. Ed asks, "What does that look like?". Mr Thomson says "A development site". Right at the bottom, Ed asks:

"Have either of you received anything back from the companies in remuneration/financial benefit?" And my Lord can see that Kobus and Andy's response is said to have been "categorical NO".

Also on the 10th, we have seen before, if we just go back to it, <MDR00195610>, Katie Maddock provides the FCA with information about the loan balances. This is the position as at 10 December 2018. LOG owes a little over £122 million to LCF; Costa Property owes £20.5 million; Atlantic Petroleum Support, £19.2 million; Colina Property, £15.9 million; Waterside Villages, £15.5 million; Cape Verde Support, £7.6 million; Costa Support, £6.9 million; River Lodge Equestrian -- that's the equestrian business of Mr Golding which we covered in our written opening submissions -- £6.4 million on the first loan; Colina Support, £5.8 million. There is then a second loan to River Lodge, £5.4 million; Waterside Support, just under £5.2 million; Cape Verde Resorts, 4.7 million; and Express Charters -- that was to buy the helicopter for Mr Golding -- £825,000. So that's the borrowers. There are no what one might call independent or unconnected borrowers, they are all the companies with which my Lord is familiar.

As my Lord saw, the FCA are asking about the borrowers, they are asking what's happened to all this money, they are asking if Mr Thomson has received any of it. Although he gives the answer "categorical NO", he has of course received just over £5 million deriving from bondholder money.

There seems to be some obvious sensitivity about that. He's concerned that the FCA will discover that fact and start asking questions.

So, we see, the very next day, a new document was created. It is a Word document. <D8-0044884>. We will read it in a moment, but my Lord can see at the bottom it says "Dated July 2015". We know it wasn't prepared on that date because, if we go to the "Properties" tab to look at the metadata, the document information. If we open it in native we should be able to see it, if we can't see it the other way. Then go to "File" and "Info" at the top. We can see on the right, my Lord, "Created", and the related date is 11/12/2018 at 19:32. It says that the author is Robert Sedgwick, although it might be that it was typed on his computer rather than by him. But the metadata, as my Lord sees, shows it was created on 11 December 2018. That's obviously the day after the FCA raid. This is the earliest version of this document that anybody has been able to find. No earlier version exists anywhere.

If we go back to look at the document itself, we can see what it says. It is headed "Memorandum of Understanding":

"1. This memorandum is intended to set out the basis on which Elten Barker (EB), Simon Hume-Kendall (SHK) and Michael Andrew Thomson (MAT) shall co-operate in their business activities in the future. "2. The parties have hitherto invested together in other matters in the proportions EB 50:SHK 45:MAT 5. MAT has agreed to withdraw from these business activities in consideration of the following. "3. It is agreed that MAT should continue to own and develop his separate business London Capital & Finance Limited without any involvement interest on the part of EB or SHK. He will manage and run the business in accordance with all laws and applicable regulations. "4. In all other matters MAT shall continue to have an interest of 5 per cent in all businesses in which EB and SHK jointly invest. However, MAT shall not take any active role in the businesses that EB and SHK shall invest in and shall at all times vote his shareholding in accordance with the directions of EB and SHK and if their instructions differ then he shall abstain from voting. MAT will accept all decisions by EB and SHK as to the purchase and sale of businesses, investment and management decisions. EB and SHK shall conduct their ongoing businesses in accordance with all laws and applicable regulations."

So, this is the document that is created on the day after the FCA raid. It is not signed at this point. It is a Word document. The thinking behind it was, presumably, that, whilst it was possible to explain Mr Thomson's receipts of monies under the Lakeview SPA and the Elysian SPA, on the basis that he was a party to those transactions, whilst it was also possible to explain his receipt of monies under the Prime SPA, on the basis that he was a beneficial owner of London Group LLP, there was nothing that could explain his receipt of monies under the LPE SPA or the LPT SPA. He wasn't a party to those transactions. The sellers were Mr Hume-Kendall and Mr Barker. There needed to be something to explain why he received monies under those transactions. They wanted a document that could be given to the FCA. And so this document was created. Before we leave it, I would ask my Lord to note four points on it. First of all, in clause 1, the word "co-operate"; secondly, in clause 2, the words "in the proportions EB 50:SHK 45:MAT 5"; thirdly, in paragraph 4, the words "any active role in the businesses that EB and SHK shall invest in"; and, fourthly, the fact that there are only four clauses, there is no clause 5. that's the first draft of the MOU. We then have another document, the first draft of the SPA, and that's a PDF, it's <D8-0046802>. My Lord can see it's been dated 10 August 2015 in manuscript. It is a share purchase agreement between Michael Andrew Thomson, on the one hand, and Mr Barker and Mr Hume-Kendall on the other.

Can we look at the properties tab, please. My Lord can see the document date is 5 February 2019. The time is given at 15:57GMT. So that's when this document was scanned and saved. We will look at it in a moment, but I should first explain that it is attached to an email dated 5 February 2019 which is <D8-0046801>. So it is from Mr Sedgwick's disclosure. My Lord can see the email has been withheld on the grounds of relevance.

MR JUSTICE MILES: Sorry, say that again?

MR ROBINS: The email has been withheld on the grounds of relevance. This is a covering email and my Lord can see it says "Place holder -- not relevant". So the SPA dated 10 August 2015 was sent by someone to someone attached to this email but the email is described as being not relevant and it hasn't been disclosed.

MR JUSTICE MILES: Who said that? Mr Sedgwick?

MR ROBINS: It is Mr Sedgwick's disclosure. To go back to the document itself, it is <D8-0046802>. My Lord can see, as I mentioned, the date of 10 August 2015. On page 3, we see the parties. Mr Thomson is the seller, Mr Barker and Mr Hume-Kendall are the buyer. It says in "Background": "A. The seller has worked with the buyer to develop the companies but the parties have agreed to separate the companies from the new business of the seller in acquiring and developing London Capital & Finance. "B. To enable the separation of the companies from LCF the seller has agreed to sell and the buyer has agreed to buy the sale shares subject to and on the terms and conditions of this agreement." On page 4 at the bottom, my Lord will see clause 2 "Sale and purchase":

"The seller shall sell free from all encumbrances and the buyer shall buy the sale shares ..." The term "Sale Shares" is defined at the top of the page:

"The shares representing 5 per cent in the value of the shares in the companies which are held by the buyers on trust for the seller including the shares held by any of the companies in trust for the seller and any shares subsequently transferred to the seller by the buyer or any of the companies."

The term "Companies" is defined on the previous page, page 3 of the PDF, and "the Companies" means: "The companies details of which are set out in the schedule together with such companies

and businesses established by the buyers jointly as part of their Joint Endeavour [capital J and capital E]."

And "Joint Endeavour" is defined to mean: "The intention of the buyers to create a group of companies to develop the existing business of the companies and to add to the group such further companies in the fields of oil and gas exploration and sales, artificial intelligence and other IT fields as they deem appropriate."

My Lord will see the definition of "Companies" cross refers to the schedule. The schedule is on page 9. It sets out particulars of companies. It mentions London Trading & Development Group. It mentions London Oil & Gas Limited. That's the original Bosshard London Oil & Gas Limited company number ending 4629. My Lord will note, as we are going through, that the registered office given for that company is Wellington Gate, 7-9 Church Road, Tunbridge Wells. The next company mentioned is Leisure & Tourism Development Plc, then International Resorts Group Plc, then Lakeview Country Club Limited, then LV Resorts Limited and CV Resorts Limited and International Resorts Partnership LLP. I can't remember if there is anything on the next page. Let's have a look. No, that's the end of it. So those are the companies specified.

If we go back to page 3, my Lord saw how that schedule fitted into the definition:

"The companies details of which are set out in the schedule together with such companies and businesses established by the buyers jointly as part of their Joint Endeavour."

The term "Company" is slotted into the definition of "Sale Shares" on the next page to mean: "The shares representing five per cent in value of the shares in the companies which are held by the buyers on trust for the seller including the shares held by any of the companies in trust for the seller ...", et cetera. Then on page 5, at the top we have got the purchase price in clause 3:

"The purchase price is an amount which is equivalent to 5 per cent of the value of each of the companies which is realised during the period of 5 years from the date hereof up to a maximum of £5 million which shall be paid by the buyers to an account of the seller notified to the buyers from time to time."

In 4.1, "Completion", it says:

"The seller agrees that his signature of this agreement shall constitute the resignation by him of all offices, whether as director or secretary, of each of the companies on the date hereof together with all other companies associated with the companies. "4.2. Each completion shall take place on the date or dates when the buyers are able to and do raise value on the disposal of the sale shares.

"4.3. At each completion of the sale of the sale shares the seller shall co-operate with the buyer to execute and complete any documents required to realise the value of each of the sale shares ... "4.4. On the completion each of the sale shares the buyer shall procure that the value of the sale shares is paid to the seller at the same time and pro rata to the payment of the consideration payable to the buyers for sale of shares of the same class as the sale shares in respect of that company."

Then 5.1 under "Warranties":

"The seller warrants to the buyer that each of the warranties set out in this clause 5 is true and accurate and not misleading at the date of this agreement ..."

And (a) is:

"The seller is the sole beneficial owner of the sale shares free from encumbrances; and

"(b) the sale shares are free from all encumbrances and there is no agreement or commitment given to create an encumbrance affecting the sale shares." And then clause 6, "Mutual covenants":

"The seller covenants with the buyer that he: "(a) will operate his business (LCF) independently of the business of the companies and shall comply fully with all laws and regulations that are applicable to LCF and any subsidiaries or associate companies of it. "(b) will not interfere or seek to interfere with the buyers' management of the companies and will accept and comply with all decisions of the buyers as to the realisation and sale of the sale shares. "6.2. The buyer covenants with the seller that they:

"(a) will operate the companies independently of the business of LCF and shall comply fully with all laws and regulations that are applicable to the companies and any subsidiaries or associate companies of them. "(b) will not interfere or seek to interfere with the seller's ownership and management of LCF." So, this seems to be a development of the idea that we first saw in the MOU created on 11 December 2018. If we go back to page 3, my Lord can see that the parties are the same as the parties to the draft MOU: Mr Barker, Mr Hume-Kendall and Mr Thomson. Recital A reflects what we saw in clause 2 of the MOU, that the parties have hitherto invested together in other matters and MAT has agreed to withdraw from these business activities. Recital B seems to reflect what we saw in clause 3 of the draft MOU, which said it is agreed that MAT should continue to own and develop his separate business, London Capital & Finance, without any involvements or interest on the part of EB and SHK. When we look at the bottom of page 4 and the top of page 5, we notice there is a difference between this document and the MOU because the MOU, as my Lord saw in the draft in clause 4, provided for Mr Thomson to continue to have an interest of 5 per cent in all businesses in which EB and SHK jointly invest, whereas the SPA provides for him to sell the sale shares as defined to Mr Hume-Kendall and Mr Barker for a price equal to 5 per cent of the value realised from those companies within five years to a maximum of £5 million. So whereas the MOU is he will retain the shares, the SPA is he sells them to Mr Barker and Mr Hume-Kendall. The reference to the concept of a sale is new, the reference to the maximum of £5 million is new.

On page 5, the resignation in clause 4.1 is new. That's not something that we find in the MOU: clauses 4.2 and 4.3 are also new. They seem to be a consequence of what's in clauses 2 and 3 of the SPA. Clause 5 of the SPA is also new. That's not in the MOU. That's part and parcel of it being a sale.

But then, on page 5 of the SPA, clause 6.1 of the SPA, if we could look at that, please, reflects what we saw in clause 3 of the MOU about Mr Thomson managing and running the business of LCF in accordance with all laws and applicable regulations. Clause 6.2 of the SPA reflects what we saw in clause 4 of the MOU about EB and SHK conducting their ongoing businesses in accordance with all laws and applicable regulations. Page 9, the schedule of the companies is new because the MOU just referred vaguely to "businesses". So, that's the first version of the SPA which we see on 5 February 2019, signed and dated 10 August 2015. I don't think we have looked at the signatures. It might be worth just looking at those. Is that the previous page? No. Let's go to the end. So there's the signatures: Mr Thomson, Mr Barker and Mr Hume-Kendall. That's dated 10 August 2015. Then, if we could look, please, at <EB0118238>. There's an email from Paul Sayers to Mr Sedgwick, Lucy Sparks, Mr Barker and Mr Hume-Kendall. It is dated 12 February 2019. Mr Sayers says he needs the following information. The first thing he needs is: "Agreement with MAT on his equity circa July 15 (Robert)."

So, whereas the first version of the SPA has been dated 10 August 2015, there seems to have been a decision that it should be dated July 2015. Then we go to the second version of the SPA, which is at

<D8-0047170>. My Lord can see that this has now been dated 15 July 2015 in typescript. If we could look, please, at the document date in the "Properties" tab, my Lord can see the document date is 12 February 2019. So, it's created on that date. It is then attached to an email to Mr Hume-Kendall of the same date. That's <D2D10-00057223>. It is an email from Mr Sedgwick -- well, it is to Paul Sayers but copied to Mr Hume-Kendall, dated 12 February 2019. The subject is "SPA for MAT's interest". The attachment is what we just saw, but in another location, <D2D10-00057224>. It is the same version, the second version, dated 15 July 2015 in typescript.

If we look at page 11, my Lord can see that the signatures on this version are -- it is the same individuals, but they have re-signed. The signatures extend beyond -- the signatures of Mr Thomson and Mr Hume-Kendall extend beyond the dotted line. So, it is not identical to the previous version. They haven't just stuck on a new cover sheet. It seems that it's been redated and re-signed.

There must, therefore have been some discussion between 5 February 2018, which was the date of the first version of the SPA dated -- sorry, 10 August 2015 in manuscript and 12 February 2019 about the appropriate date to put on it. Mr Sedgwick had initially selected 10 August 2015, but, on 12 February, that was revised to 15 July 2015.

If we go back to look at the schedule on page 9 of the PDF, my Lord will recall the declaration of trust in favour of Mark Ingham in respect of the shares in Global Resort Properties, which was backdated, which I described as a Sedgwick special because Mr Sedgwick had tried to backdate the document artfully, he hadn't just stuck the wrong date on the front, he had tried to refer to the companies by reference to their historic names. In that case, it was GRP, and he referred to it as London Group Limited. But he'd bodged it because he got the wrong number of shares.

We see the same sort of thing here. Mr Sedgwick has been quite careful to try to refer to the companies using their historic names. For example, by the time of the creation of this document, the original London Oil & Gas Limited had gone through several name changes, having been London Group Limited, London Group Plc, then Global Resort Properties.

He's referred to it here as London Oil & Gas Limited, under its original name. But he's bodged it again. He's made mistakes, which wouldn't exist if this document had genuinely been signed on 15 July 2015. For example, my Lord can see that the schedule on page 9 includes Lakeview Country Club Limited, and if we go back to the definition of the term "Sale Shares" that we saw on page 4 at the top, my Lord can see it refers to "the shares representing five per cent ... in the companies which are held by the buyers on trust for the seller". Well, on 15 July 2015, Mr Hume-Kendall and Mr Barker didn't hold any shares in Lakeview Country Club Limited and, therefore, did not hold any shares in Lakeview Country Club Limited on trust for Mr Thomson. To the contrary, as my Lord knows, on that date and until the completion of the Lakeview SPA on 27 July 2015, the shares in Lakeview Country Club Limited were held by Mr Thomson and Mrs Hume-Kendall. So, an error has slipped in, due to what seems to have been lack of care by Mr Sedgwick in preparing this document in February 2019.

There's a similar point, if we go back to page 9, in relation to the original London Oil & Gas with the company number 02404629.

On 5 July 2015, the shares in that company were still held by the Bosshards.

MR JUSTICE MILES: Sorry, you said 5 July?

MR ROBINS: Sorry, I mean 15 July.

MR JUSTICE MILES: Is that true also on 15 July?

MR ROBINS: Yes, that is correct. If we go to <A1/5/41>, my Lord can see this is the company with the company number 02504629, which was known as London Oil & Gas Limited from 3 November 1992 to 4 August 2015. If we go to the bottom of page 43, my Lord can see that the Bosshards were the shareholders until 1 September 2015. In fact, if we have a look at <D8-0001667>, my Lord can see that, on 27 July 2015, Mr Sedgwick emailed Mr Hume-Kendall with the subject "Sale of London Oil & Gas Limited" and said: "This is the agreement for the acquisition of LOG which needs to be signed by all parties." So, it hadn't been signed as at 27 July 2015. The attachment is <D8-0001668>. It is a draft share purchase agreement. If we go to page 3, my Lord can see that it's between the persons named in Part I of the schedule as the seller, and if we look at the schedule -- I'm afraid I don't have a page reference; it will be towards the end of the document -- we can see that they are the Bosshards. There is another email I've noted, I'm not sure if it adds anything, <D8-0001669>.

MR JUSTICE MILES: Just on that agreement, can you just go back to the first page, because I think it had the registered offices, did it?

MR ROBINS: Yes, that's another point. If we go to page 3, please. On 15 July 2015, LOG's registered office, the original LOG's registered office, was 5-7 Linkfield Corner, Redhill, Surrey, RH1 1BD. LOG didn't move its registered office to the Wellington Square address until 4 August 2015, some three weeks after the SPA dated 15 July 2015 was purportedly signed. My Lord can see that at <R1/15>. this is the new address details. My Lord can see it's received in electronic format on 4 August 2015. Again, Mr Sedgwick has slipped up in February 2019. If this document were genuinely signed and dated on 15 July 2015, it wouldn't have included LOG in the schedule, and it wouldn't have said that LOG's registered office was the Wellington Square address, because both of those things were wrong as at that date.

If we go back to the SPA that we were just looking at, it's <D2D10-00057224>, my Lord saw, on page 5, I think it was, the warranty provision. The seller, so that's Mr Thomson, warrants to the buyer that each of the warranties set out in the clauses is true and accurate. The first is, the seller is the sole beneficial owner of the sale shares. Well, Mr Thomson couldn't have had any beneficial interest in the original London Oil & Gas as at 15 July 2015 because it hadn't been acquired from the Bosshards yet. If this was a document that had genuinely been signed on 15 July 2015, the signatories would have known that it was wrong and nonsensical. It seems that this is another error that slipped in unnoticed when this SPA was created in February 2019.

There is one final point, if it would be convenient to take it now before the short adjournment. My Lord knows that the original London Oil & Gas with the company number ending 629 changed its name to London Group Limited. We have seen it before. There is a deed of trust, <EB0139158>. It is a deed of trust dated 28 August 2015 by International Resorts Partnership LLP by which that limited liability partnership, defined as the nominee, declares that the shares registered in the nominee's name listed below are held by the nominee on trust for the persons whose names are set out against each share, the beneficial owners. And that table is at the next page, I believe. My Lord can see that Mr Thomson is the final entry in the table. He owns 5 per cent on trust.

So, he hasn't sold his interest in that company to the buyers under the SPA as at the date of this document. He still owns it beneficially. London Group Limited then became London Group Plc and then it became Global Resort Property Plc. It is interesting to see what Mr Hume-Kendall says about it in his amended defence, which is going to be <D2/2>, paragraph 37.2, which is on page 19. At 37.2: "GRP was itself owned in the following shares from 30 September 2015:

"...

"37.2.3. 5 per cent as to Mr Thomson."

Well, quite, because the SPA, dated 15 July 2015, by which he had supposedly sold it to Mr Barker and Mr Hume-Kendall didn't exist.

I've got some more points on the SPA, but if it is convenient for your Lordship, I will deal with them after the short adjournment.

MR JUSTICE MILES: 2 o'clock.

(1.01 pm)

(The short adjournment)

(2.00 pm)

MR ROBINS: My Lord, before the short adjournment, we were looking at documents which show that Mr Thomson continued to own a 5 per cent interest in the original London Oil & Gas and that he hadn't sold that interest or even contracted to sell it to Mr Hume-Kendall and Mr Barker under the SPA because that document didn't exist, and that's why it is never referred to. We see some more examples, to take the first one, at <MDR00025711>. It's a note prepared by Mr Sedgwick. We can see the date on page 2. It is dated 15 December 2015. On the bottom, it says "RM Sedgwick. Company secretary". Paragraph 1 on the left-hand side of the page says:

"The shares in London Group Limited (company number 0254629) are opened by Elten Barker 45 per cent (voting), Simon Hume-Kendall 45 per cent (voting), Elten Barker 5 per cent (voting) and Andy Thomson 5 per cent (non-voting)."

No reference to him having sold, or even contracted to sell, his 5 per cent to Mr Barker and Mr Hume-Kendall. Similarly <MDR00039513>. There's an email from Mr Sedgwick, dated 7 March 2016, to Mr Hume-Kendall, copied to Mr Barker, where he says in the second paragraph:

"With regards to Lakeview Country Club Limited it is wholly owned by London Trading and Development Group Limited which in turn is wholly owned by London Group Plc."

Then in the next paragraph:

"London Group Plc has three shareholders, Simon Hume-Kendall (45 per cent all voting shares) Elten Barker (45 per cent voting shares and 5 per cent non-voting) and MA Thomson (5 per cent non-voting)." Again, no suggestion Mr Thomson has sold his shares in the original London Oil & Gas, which had, by this point, become London Group Plc under the SPA dated 15 July 2015, because it didn't exist.

Particularly, my Lord saw the first company in the schedule to the SPA was LTDG. My Lord has seen before the Golding-SHK agreement. The signed version is <EB0139239>. My Lord will recall this was circulated by Mr Sedgwick on 16 July 2015 and signed on or around the 27th. On page 2, paragraph 6, it says:

"Elten and Andy Thomson shall each be entitled to a 5 per cent holding in LTDG in non-voting shares ..." No suggestion that Mr Thomson had, in fact, sold, or contracted to sell, his 5 per cent under the SPA. My Lord saw also in the schedule to the SPA the reference to the shares in Lakeview Country Club Limited. I have made already a point that, as at 15 July 2015, those shares were not held by Mr Barker and Mr Hume-Kendall, who could therefore not have held them in trust for Mr Thomson as to 5 per cent. There is a second issue relating to the shares in Lakeview Country Club Limited, which is

that the agreement for the sale of the shares in Lakeview Country Club Limited to London Trading was being formulated and drafted throughout the middle of July 2015, in fact through to the 27th, when it was finally signed.

My Lord will recall that Mr Thomson held 76.25 per cent of the shares in Lakeview Country Club Limited, 71.25 per cent on trust for Mr Golding and 5 per cent for himself. Work was under foot to prepare an SPA for the sale of the shares held by Mr Thomson, and indeed the shares held by Mrs Hume-Kendall, to London Trading for the original price of about £2.1 million. So, we can see, for example, at <D8-0001216>.

An email dated 8 July 2015 from Mr Sedgwick to Mr Reid of Lewis Silkin, copying Mr Hume-Kendall and Mr Thomson, and he says he's reviewed the documents previously prepared to move the asset from Lakeview to LVR, and he attaches the following documents. One of the attachments is <D8-0001218>, which is the draft share purchase agreement that ultimately became the Lakeview SPA, and we can see on page 4 that the sellers are Mr Thomson and Mrs Hume-Kendall, the buyer is London Trading and it says in the recitals: "The seller has agreed to sell and the buyer has agreed to buy the sale shares."

The "Sale Shares" are defined on the next page, or possibly the page after -- the next page -- sorry, the previous page, to mean the shares in LCCL. That's 100 per cent of the shares in LCCL, including the 5 per cent held by Mr Thomson for himself. That's in draft form on 8 July 2015.

If we go to <D8-0001354>, my Lord can see this is now 16 July 2015. Mr Sedgwick emailing Mr Hume-Kendall and Mr Thomson, copied to Mr Barker and Mr Golding. This is the email we have seen before where he says: "I have amended the sale agreement for the sale of Lakeview to London Trading so that the total price is £2.1 million which is divisible (if my maths is correct) between the shareholders."

For Mr Thomson, his 5 per cent would yield £105,263.15.

The attachment to that is <D8-0001355>. This is the further draft. If we go to page 4, I'm guessing, we should see the parties. If we go to the next page, we see the purchase price, which is in accordance with clause 3. Just above that, loan notes -- it hasn't been updated in this. If we go through to the following page, I think it's been changed in clause 3. 3.1, it's the sum of just over £2.1 million.

So, that's what was going on in the middle of July 2015. There's an obvious problem with the chronology. Mr Thomson, Mr Barker and Mr Hume-Kendall knew about the preparation of the Lakeview SPA, and they were dealing with it throughout July 2015. It was signed on or around the 27th of that month, and Mr Thomson sold the shares held by him, including his own 5 per cent, to London Trading.

If the date of 15 July 2015 on the SPA were correct, the SPA between Mr Thomson and Mr Barker and Mr Hume-Kendall, it would mean that, in the middle of finalising the sale of Mr Thomson's shares in LCCL to London Trading, Mr Thomson sold his shares in LCCL to Mr Barker and Mr Hume-Kendall, and then they all went back to dealing with the sale of Mr Thomson's shares in LCCL to London Trading as if the SPA dated 15 July 2015 hadn't been signed and didn't exist. Ultimately, as I said, on the 27th of that month, Mr Thomson did sell his shares in LCCL to London Trading, notwithstanding that, according to the SPA dated 15 July, he had supposedly sold them to Mr Barker and Mr Hume-Kendall. So, there are so many difficulties, infelicities and errors, it's clear that, when Mr Sedgwick prepared

the SPA in February 2015, although he tried to refer to the relevant companies by reference to their historic names, he made a series --

MR JUSTICE MILES: Do you mean February 2019?

MR ROBINS: Sorry, what did I say?

MR JUSTICE MILES: 2015.

MR ROBINS: 2019. He made a series of errors which revealed that it's not a genuine document.

There's another issue that arises from clause 4.1 of the SPA, dated July 2015. My Lord saw on page 5 it says that Mr Thomson's signature of the SPA shall constitute the resignation by him of all offices, whether as director or secretary, of each of the companies on the date hereof. But subsequent to 15 July 2015, when Mr Thomson's resignation had not been actioned, no-one mentioned the SPA dated July 2015. No-one referred to clause 4.1 of that document. Everybody seemed to think that he was actually meant to have resigned in June 2015, not on 15 July 2015, or even 10 August 2015, which is the date on the first version of the SPA.

So, for example, at <MDR00058290>, this is an email from Mr Thomson to Mr Sedgwick, dated 16 September 2016, with the subject "Directorships et cetera". He says: "Hi Robert.

"Further to our conversation please see below the companies that I am still listed as a director of which I should have been removed from. Also also below is a list of the directorships that I resigned from in June but the resignation was not processed until much later. Please can you remove me from the below companies and also confirm that I should have been removed June 2015 and that I have had no involvement past June 2015." The companies include various companies mentioned in the schedule to the SPA, including Leisure & Tourism Developments, Lakeview Country Club Limited, et cetera. So, there's no reference there to clause 4.1 of the SPA and the date of the resignation is said to be June rather than 15 July or 10 August.

Mr Sedgwick provides Mr Thomson with a draft letter at <MDR00058342>, and he says it is a draft letter to Andy Thomson on London Group notepaper: "Dear Andy.

"Directorships.

"I write to confirm that you resigned all directorships in the companies which now form the London Group Plc as at the end of June 2015. Since that date you have not acted as a director or been in any way involved as such and the company records all show you as having resigned.

"Although I gave instructions for you to be removed from the records of all the companies at that time it was not done in every case immediately and indeed you have remained on some companies until now. I have recorded your resignation of the remaining companies with effect from the correct date and apologise for the fact that you remained on the record of the other companies later [than] the correct date." Mr Thomson replies at <MDR00058346>. He says: "Looks good but can you list all the companies including the ones from my email."

We then see a letter at <MDR00002260>, which is a letter on London Group paper dated 12 September 2016, signed by Mr Sedgwick, addressed to Mr Thomson: "Dear Andy.

"I refer to your resignation as a director from the various companies that now form the London Group. I confirm that you duly resigned all you directorships by the end of June 2015."

He lists the companies which, as I said, include various companies in the schedule to the SPA. But there is no reference to clause 4.1 of the SPA and the date of June is inconsistent with it.

Then at <D8-0006337>, Mr Sedgwick emails Mr Peacock, on 17 October 2016, to say:

"Can you as a matter of some urgency please arrange to resign Andy as director of each of these companies. If he is sole director of any Simon and/or Elten need to replace him ...

"Please show the date of his resignation as 30 June 2015."

Again, not 15 July, not 10 August, even though clause 4.1 says "on the date hereof". If the SPA dated 15 July 2015 had genuinely existed, had genuinely been signed on that date, then no doubt Mr Sedgwick would have referred to clause 4.1 and he would have got the date right.

What seems to have happened is, by February 2019, when Mr Sedgwick is drafting the SPA, he recalls that there was some problem regarding Mr Thomson's resignation not being implemented when it should have been, and so he caters for it by adding clause 4.1 to the SPA to cover it off. But, in doing so, he's made another slip because he's forgotten that the contemporaneous documents talked about Mr Thomson resigning with effect from June or 30 June. So, the SPA dated 15 July 2015 isn't a genuine document. It was created by Mr Sedgwick in February 2019. Presumably, he looked at the MOU and thought, "Well, this doesn't provide expressly for £5 million to be paid to Mr Thomson". It says that Mr Thomson shall retain 5 per cent. It doesn't say anything about payment to him. Presumably, Mr Sedgwick thought, "Well, I should recast it as an SPA so that it provides for a price of up to £5 million to be payable to Mr Thomson". That is, after all, what this document is seeking to explain.

But, in doing that, as my Lord has seen, Mr Sedgwick botched it. He made various errors which wouldn't have existed if it were a genuine document. What we are seeing subsequently is that that SPA, although it's been re-signed with the date 15 July 2015, is not deployed immediately; instead, the individuals in question reverted to the idea of the MOU and modified it a bit and signed it. One can perhaps see why they would do that. The MOU is a very simple and straightforward one-page document. Mr Sedgwick has produced a very lengthy and overcomplicated document. There must have been a fear that Mr Sedgwick had overengineered things. And they revert to the simpler version. The first time we see a signed version of the MOU is 19 February 2018. That's <D2D10-00057591>. My Lord can see it's been dated 15 July 2015 and been signed by Mr Hume-Kendall and Mr Thomson, and some changes have been made to it. First, in clause 1, where the Word version prepared on the day after the FCA raid said "co-operate", it now says "operate". Presumably, given that it was intended to demonstrate that there was some distance between Mr Thomson, on the one hand, and Mr Barker and Mr Hume-Kendall, on the other, the word "co-operate" seemed unfortunate and "operate" seemed more neutral. Then, in paragraph 2, where it said "in the proportions EB 50: SHK 45: MAT 5", those words have gone. Presumably, someone thought, "Well, hang on a minute, the old ratio was actually 71.25:23.75:5. We can't have something referring to 50:45:5". So that's been deleted at some point between 11 December 2018 and 19 February 2019.

Then, in clause 4, where it said in the second line "However, MAT shall not take any active role in the businesses that EB and SHK shall invest in", there are two changes. First, it says "any active or passive role" now, presumably to try to minimise the description of Mr Thomson's involvement. And they have also added the words "other than as a minority shareholder", which didn't appear in the 11 December 2018 version. There is also a new clause 5, which didn't appear in the 11 December 2018 version. It says:

"The parties shall each operate their separate businesses totally at arms' length."

Which, again, seems to reinforce the change that's been made to paragraph 1 of changing "co-operate" to "operate". It is an attempt to reinforce the idea that there was to be an arm's-length relationship going forward. That, as I say, is 19 February 2019. We can see that date if we open the "Properties" section and look at the document date. <D2D10-00057591>. My Lord can see the document date is 19 February 2019. It is timed at 9.09 am. It was sent on that date to Mr Hume-Kendall. We see that at <D2D10-00057590>. That's the covering email. Nicola sends a scan of it to Mr Hume-Kendall. He sends it on to Finbarr O'Connell one of LCF's administrators on the same day, <D2D10-00057594>. Mr Hume-Kendall says: "Finbarr.

"Here is the agreement with Andy Thomson as I referred to on Saturday pm."

The attachment, just to confirm it, is

<D2D10-00057595>. My Lord can see it is the signed version of the MOU with the changes. It is dated 15 July 2015. Mr Hume-Kendall is sending it to Finbarr O'Connell, one of the administrators, on 19 February 2019.

Even on its face, there are difficulties with this document as well. My Lord saw in the first week of the trial, perhaps it was the beginning of the second week, that Mr Thomson initially held all the shares in SAFE, as it was at the time, on trust for Mr Golding. The MOU dated 15 July 2015 therefore can't be a document that gives the shares in LCF to Mr Thomson because Mr Golding is not a party to it. Instead, this MOU has to presuppose that, as at 15 July 2015, LCF has already been given to Mr Thomson. But if that were the case, then they wouldn't have needed to give LCF to Mr Thomson in the Golding-SHK agreement, which was signed on 27 July 2015. We know that the Golding-SHK agreement is a genuine document because it was first circulated by Mr Sedgwick on 16 July 2015.

I should also point out that we never see any email in July 2015, or, in fact, at any point until after the FCA raid, attaching this MOU in draft or as a signed document. The first time we see the MOU in draft is the first version, which says "co-operate" and has the ratios, et cetera. That's a Word document on 11 December 2018, the day after the FCA raid. As I explained, it is amended at some point before 19 February 2019. So, it is clear that it is not a genuine, contemporaneous document. It has been created and backdated to create a false impression. That's even clearer when one tries to work out how the MOU and the SPA, both dated 15 July 2015, could sensibly have been intended to coexist when they say different things. The MOU, as my Lord has seen, says that Mr Thomson shall continue to have 5 per cent; the SPA says that Mr Thomson shall not continue to have 5 per cent because he sold it to Mr Hume-Kendall and Mr Barker for a sum equal to 5 per cent of their future realisations.

So, it's really either/or with these documents, they don't fit together, which is presumably why Mr Hume-Kendall provided the administrators with the MOU and not the SPA. He didn't send them both. He just sent them the MOU.

So, by 19 February 2019, the administrators have received the MOU from Mr Hume-Kendall. He's saying this is the relevant document.

They didn't get the SPA until over a year later. It was provided to them by Mr Barker's solicitors on 26 February 2020. They said that they were providing the administrators with the SPA as sent to their client Mr Barker. That's in the trial bundle, if we could look at <Q2/1>. This is a letter dated 10 February 2020 from Mishcon de Reya to Mr Barker's solicitors, Byrne and Partners LLP. They refer to Mr Barker's interview with the administrators. They say:

"During the interview, Mr Barker was unable to provide sufficient information in response to a number of questions. However, in some instances, he kindly agreed to provide this information following the interview. Unfortunately, we have yet to receive this information."

They set out the information. Can we look at the next page, please? My Lord can see the list. It includes, in 6, a copy of an option agreement. We will see that in a moment. And, in 7, a copy of the SPA in relation to the tech shares. Then, at 8: "A copy of the agreement entered in 2015-16 which provided the terms in which Mr Thomson 'would have an amount of money equal to, but not more than, and I think the limit on it was 5 million'."

Then if we go to <Q2/2>, we see the response from Mr Barker's solicitors. Over on the next page, they say in 7:

"We attach a copy of the agreement as sent to our client ..."

That's the agreement at <Q2/2.1>.

MR JUSTICE MILES: Is it 7 or 8? Is it the same numbering?

MR ROBINS: Oh, maybe --

MR JUSTICE MILES: Yes, but it's the same point.

MR ROBINS: Yes, the same point. Then <Q2/2.1>. That's the document they provided dated 15 July 2015. We can see from I think it is the final page that it is a signed version. So, that's when the administrators were provided with the SPA.

MR JUSTICE MILES: Are the two versions of the SPA the same, apart from the date?

MR ROBINS: Yes. The first version, the manuscript date is 10 August, and the second version, typescript, 15 July. Putting it all together, the chronology seems to be that, on 10 December 2018, the FCA raid LCF's premises. They ask Mr Thomson if he's received any of the money that was loaned to the borrowers and he says "categorical NO", but he has received quite a lot, and he wants to have something to explain it. In particular, as I mentioned, he needs something to explain his receipts under the LPE SPA and the LPT SPA because he's not a party to those transactions. So, the very next day, on 11 December 2018, either Mr Sedgwick or someone using his computer prepares the draft MOU in the first version. After that, in or around February 2019, Mr Sedgwick has a go at producing a lengthier and more formal document that is what becomes the SPA. On 5 February 2019, he circulates a signed copy with the date 10 August 2015. There is then some discussion -- they decide the date should be July 2015. My Lord saw the email from Paul Sayers. So, on 12 February 2019, Mr Sedgwick circulates a further version of the SPA dated 15 July 2015. It's been re-signed. But then Mr Hume-Kendall seems to have some reservations about giving that document to the administrators. So, instead, the MOU is amended and signed with the date 15 July 2015.

On 19 February 2019, Mr Hume-Kendall provides that signed version of the MOU to the administrators and then on 26 February 2020 Mr Barker's solicitors provide the second version of the signed SPA.

So, those documents are not contemporaneous documents which provide a genuine explanation of Mr Thomson's receipt of £5 million deriving from bondholders' money; they were created after the FCA raid, with that objective, and ought not to be relied on by the defendants in these proceedings. But my Lord has seen what's said about the documents in the pleadings and the witness statements and the opening submissions. So, that deals with the MOU and the SPA. Another topic relating to the

events after the FCA raid include the LOG board meeting and some further backdated documents. These documents seek to justify the LPE SPA. We can pick up the story a little bit before the FCA raid, on 20 September 2018, at <MDR00000890>, where Mr Elliott is emailing Mr Hume-Kendall and Mr Barker with the subject "Latest LCAF spreadsheet for LOG". He says:

"Hi Simon/Elten.

"Lucy let me have a copy of the latest LCAF spreadsheet (came in yesterday) for LOG and I have been pulling out some figures from it.

"According to their summary drawdowns list (which needs to be fully reconciled but up to now corresponds to funds paid into the LOG bank accounts) the total amount of drawdowns (including charges) is £104,983,000. This will increase slightly when the fees for top-ups/rollovers are added. I have not fully reconciled the balance since mid June, but there have been four large drawdowns totalling circa £22 million (with fees) from late June to August."

Then he mentions the interest point. So he's got the spreadsheet from LCF and he's noticed that there are some large drawdowns that he doesn't seem to have previously been aware of.

Then, at <D2D10-00055493>, we are now in early 2019, this is an email from Mr Elliott to Mr Hume-Kendall and Mr Barker, among others, dated 17 January 2019, and the subject is "Intercompany balance". He says: "Dear board members.

"Following the board meeting on 9 January 2019, please find attached notes on the various debtor balances with the tech group, LPT and LG LLP." The attached presentation, or notes, as he describes it, it is at <D2D10-00055494>. My Lord will see under the heading "London Oil & Gas", it says: "As requested by the board of directors of London Oil & Gas Limited, I have set out on the following pages [an] analysis of the various intercompany balances, including how they arose; the current outstanding balance and steps being taken to secure these loans (where possible).

"This information has been taken from the accounting records of LOG and also from other documents that have been supplied to me both from internal and external sources."

Then, over on the next page, we see the heading "Artificial Intelligence/Tech Group" and he says: "Group structure.

"The group comprises an intermediate holding company being LPE Enterprises Limited ... LPE and is itself owned by TW Private LLP.

"The group comprises four companies ..." And he refers to the 80 per cent interest in LAI, the 90 per cent interest in ITI and ITI's 50 per cent interest in Asset Mapping. He also mentions the 20 per cent interest in Reserec. Then he says: "Purchase of group companies by LPE.

"An SPA was entered into on 21 June 2018 between LPE and SHK/EB selling the shares in LAI and ITI to LPE for an initial consideration of £20 million." In the next bullet point:

"Net funds of £11.7 million were drawn down by LOG between February and April 2018 and allocated to the inter-company balance with LG LLP. These funds passed through the Metro Bank account. These funds were shown in the SPA as having been paid by LPE to SHK/EB and are proposed to be treated as a loan owed to LOG by LPE. An additional net £7.4 million was paid direct to SHK/EB in August 2018 and this is also now being treated as part of the purchase consideration."

Then, on the next page [page 3], it says: "There is a difference of £0.9 million in the purchase price to reach the £20 million total and this is likely to be a difference between what was logged on the spreadsheet supplied by LCAF showing lending and what was actually received.

"There have been instances where the net sum received ... does not agree to that shown on the spreadsheet as the initial costs charged differ ..." Then he says:

"In order to properly allocate funding, it has been proposed that whilst the net loan to LPE totals £19.1 million, this should in fact be grossed up for initial costs and also interest. A spreadsheet has been prepared on the same basis as those used for IOG ... "This spreadsheet shows that as at 31 December 2018 the total balance owed by LOG to LPE is £28.2 million. "It is proposed that a formal loan agreement will be drafted in support of the loan and that this will also be supported by a debenture put in place between LOG and LPE."

Then he deals with the funding of ITI. Over on the next page, he deals further with ITI's position. On page 5, he deals with the purchase of preference shares in LPC and he says:

"An SPA was entered into on 27 July 2018 between LPT and SHK/EB selling the preference shares in LPC for an initial consideration of £32.2 million based upon the unaudited balance sheet as at 31 May 2018." He mentions an adjustment from the next audited accounts would reduce the price and he says: "During July and August 2018, LOG borrowed £11 million on behalf of LPT and paid this sum directly from LCAF to the preference shareholders. During December 2018, £1.5 million was borrowed by LOG and paid directly by LCAF to the preference shareholders.

"In addition LPC borrowed £4.1 million from LCAF during June, September, November and December 2018 and paid this to the preference shareholders. "All of the sums borrowed by LOG and LPC have been treated as being borrowed on behalf of LPT and the total net borrowing is £16.6 million.

"It is proposed that this sum will be grossed up for the cost of borrowing and will be repayable by LPT." Then a few weeks later, at <MDR00220834>, we see an email from Mr Elliott to Mr Hume-Kendall, Mr Barker and others with the subject "LOG/LPC board meetings", and he says that there have been a number of developments and there will be some board meetings on 12 February. He sets out the items on the agenda in the bottom half of the page, and those include, in the seventh bullet point, summary of existing undocumented and unapproved loans by LOG to other London-Group-related entities and consideration of security package to support these and to be documented in due course. Ratification to be considered and risk of being set aside. So, that's an item on the agenda.

On the day before the board meeting, Mr Elliott sends an email that my Lord will find at <MDR00220555>. It is dated 11 February. He sends it to Mr Hume-Kendall and others, and the subject is "Summary of undocumented/unapproved loans by LOG to other London Group related entities". He says: "Dear board members.

"At the board meeting held on 9 January 2019, the loans made by LOG to other London Group entities were discussed and I was asked to prepare a paper setting these out. I circulated my analysis to board members on 17 January 2019 and re-attach a copy of the paper here. "The board will be asked to consider the following resolutions at the LOG board meeting.

"Ratification of the loan arrangements with LPE Enterprises Limited, Intelligent Technology Investments Limited and London Power & Technology Limited. The lending to date will depend upon the terms of the loan agreements entered into but based on current information the cash amounts loaned to each of the entities is approximately £19.1 million (LPE), £3.6 million (ITI) and £16.6 million

(being LOG £12.5 million and LPC £4.1 million). Further funding is likely to be required for ITI in order to provide funding for Asset Mapping but the exact quantum is unknown at present. However, as LOG is unable to draw down any further funding from LCF, any such support will be need to be made available from third party sources. The board will need to consider whether it was beneficial for LOG to enter into these loans in each case and the corporate benefit arising from each such loan. The board should consider taking legal advice before reaching such a decision, given the appointment of administrators over LCF. If the board conclude that the loans should be ratified, then the key terms of the loans will need to be agreed, such as maximum facility available, repayment terms, interest rates and fees, purpose of loan, type of commitment, et cetera, and the security/guarantee package to be entered into by LOG in relation to the loan payments and ranking as against any existing security in the entity."

Then he says:

"Board members should be aware that the administrators of LCF, Smith & Williamson, have been provided with information relating to these balances and they have requested further documentation in order to understand the background to the loans. Subject to board approval, it is intended that Stephenson Harwood are instructed to assist with the preparation of a wider position paper that the board can present to Smith and Williamson setting out the original planned restructuring of the oil group and tech group and be mandated to advise generally and assist us in the ongoing dialogue with the administrators. The board will also need to consider a number of other matters including ..."

And he mentions other matters. Then he says: "in the attached paper, I have referenced various sums loaned by LOG and also documents supporting these amounts. I would like to bring to the attention of the board the following ...

"The initial loans made in February/March 2018 are annotated 'pref shares' in the LOG nominal ledger. These were included in the draft March 2018 management accounts provided to the board and were treated as relating as an advance payment in relation to the payment for preference shares as set out in the Mazars restructuring paper, which was in draft form at that stage. These payments were allocated to the London Group LLP nominal ledger code as there was no further information in relation to their treatment. "When a reconciliation of the spreadsheet that was sent to Lucy Sparks periodically by LCF to the LOG accounting records was undertaken in late September/early October 2018, there were a number of payments made directly from LCF to the recipients during June, July and August 2018 and these did not pass through the LOG or LPC bank accounts. Neither the accounts team nor Jo Marshall were aware nor had they been advised about any of these payments or transactions at the time. The accounts team became aware of them in late September 2018 when Lucy Sparks passed over a copy of the spreadsheet received by her from LCF showing the loan analysis. Once a reconciliation of the spreadsheet to the accounting records was completed, these payments were allocated to the London Group LLP nominal ledger code as there was no further information in relation to their treatment. This was completed as part of the work required for the audit for the period ended 30 September 2018.

"As part of the audit for the period ended 30 September 2018, BDO required an analysis of the balance with London Group LLP and an explanation of how this balance would be recovered. Neither the accounts team nor Jo Marshall were aware nor had they been advised of the agreements detailed in my paper at the time they were entered. I was first provided with a copy of the agreements on 4 December 2018 after asking Robert to review my proposed note to BDO on the

recoverability of the debts. These were provided by me to the legal team during December and were then brought to the attention of the board at the meeting on 9 January 2019."

So, that's the background that he sets out. There is then a note of the board meeting at <MDR00212113>. This is the meeting on 12 February 2019. My Lord can see from the top this is the first draft. There are various subsequent drafts that we see in due course that were agreed by various of the attendees, but this is the first draft. My Lord can see, just above the middle of the page, before "Notes following order of agenda", it says:

"Joining by Telephone -- Deborah Farmer, Legal Department (Note Taker)."

So that's the person who has prepared this note, a legal assistant of Mr Sedgwick, I think, who listened to the call.

Various matters are discussed. It is a lengthy document. But we can skip straight to page 8. It follows the order of the agenda: at the top of the page, it says:

"Summary of existing loans by LOG to other London Group related entities and consideration of security package to support these and to be documented in due course. Ratification required and risk of being set aside."

That's the text that we saw from the agenda. "DE" is Mr Elliott. He's recorded as having said: "Moving now to the funding provided by LOG to both LPE and LPT, I have provided the board with a review of the various loans and also an email explaining the background, as far as I am aware, to the transactions. With regards to the LPE loan -- funds were transferred in February/March 2018 and in June/July/August 2018 were transferred directly to the recipient shareholdings. Therefore, the accounts and legal departments were not aware of the total payments until the LCF reconciliation for the audit for the period ended 30 September 2018 in early October 2018. As there was no further information available, all payments were posted to the London Group LLP intercompany balance and shown as a debtor. As part of the BDO audit, the auditors require an explanation of the debt and also to be certain of recoverability and at this stage the balance showing as due from London Group LLP to LOG was circa £33 million. Recoverability of that debt. In order to prepare a report for the auditors, Robert Sedgwick was asked to review the note that I had prepared in early December and in response to this he provided both his comments and also copies of agreements with LPE and LPT that dated from June/July 2018."

Mr Hume-Kendall is recorded as having said: "Yes, they were done by Lewis Silkin for the LPT preference shares and LPE."

Mr Elliott then says:

"As far as I am concerned, the procedure followed in relation to the purchase of preference shares by LPT was in accordance with the agreed step plan from Mazars. On the tech side of group, the intention to purchase those companies for £1 but with £20 million of debt was discussed and agreed by the board but there was no agreement at a board meeting of the mechanism. Whilst the board of LOG/LPC agreed these transactions, my concern is I do not consider that the board of LOG agreed to borrow monies and lend this to allow the purchase of preference shares or to support the tech group. One issue the board of LOG need to consider is the corporate benefit to LOG of approximately £50 million (gross) of borrowing from LCF. The LOG board need to consider if those loans should be ratified. I have not yet sought legal opinion on the implications of ratifying the loans at this time. Does the board want to seek legal advice before doing so? Smith & Williamson have asked for the

loan agreements and whether there is any security guarantee in support of these loans -- I am not aware of any such documents." Mr Hume-Kendall says at this point:

"RS [Robert Sedgwick] has showed you these." We will see in a moment what he is referring to. Mr Elliott responds:

"I have not seen anything in place. There is also a loan between LOG and ITI, but again I do not believe that this is documented. Copies of the estimated intercompany position have been provided to Smith & Williamson and these have been based upon LOG charging for the gross cost of the lending plus interest at 9 per cent."

He goes on to mention the fact that Mr Hume-Kendall had provided funds to LPE which had in turn been used to repay part of the intercompany balance. Then Mike Starkie says:

"Are you suggesting that we confirm and ratify the viability of loaning to the entities?"

Mr Elliott explains:

"That is what the board are being asked to consider. Do the board need to be advised of their legal position to ratify these loans due to the current situation with the administrators for LCF and if LOG were to be placed into administration? I am not in a position to advise the board on this matter and so it would need to seek independent advice."

Then, over on the next page, at the top, Mr Hume-Kendall is recorded as having asked: "Do people think we agreed to buy the tech side? JM [Jo Marshall] says she does not recall it being discussed. We discussed it at three board meetings and then Lewis Silkin set up LPT and put the preference shares in to it and then stopped because of the issues with Clint Redman. I thought it had all been agreed but David Elliott has a contra view."

Mr Elliott then said:

"I have very carefully stated that I don't disagree that the board agreed to purchase the tech side of the business and also that the Mazars plan would be followed. What I am stating is that I do not believe the board of LOG ratified lending to LPT and LPE." Mr Hume-Kendall said:

"JM was refusing to deal with the tech side so RS did it (he got permission to do it) linked to LPT and Lewis Silkin prepared it. LOG has an option of £1 to acquire the tech side in the loan agreement. Due to politics between RS and JM it seems the dots have not been joined. The price of tech was £20 million -- let's forget the other two companies, to RH [Robert Hudson] -- do you think the AI is worth £20 million?" Mr Hudson is recorded as having said:

"It's not a research project anymore."

Mr Hume-Kendall said:

"I put the prefs in in good faith (30 per cent of LPC, which LPT now owns) and through no fault [of] ours LCF is now unable to continue providing the funds it agreed to lend. There was a paper in August/September setting out details of the intended sale of shares in LPC and the conversion into LPT. The preference shares may now have reduced in value but I still did this with Graham Reid at Lewis Silkin properly and I thought I had board approval to proceed with the sale of the preference shares. I am sorry if it has been minuted wrongly, or I have put it to you wrongly, if this is not what you thought would happen. I have not spoken to any of you about it before today, apart from Robert Hudson briefly yesterday. I think it has been minuted wrongly."

Mike Starkie asked:

"Can the minutes be corrected?"

Mr Hume-Kendall said:

"Yes, but can we have an open discussion about this. Part of the problem is JM took the minutes over the phone and perhaps heard wrongly."

Mr Ruscoe then says:

"Well the principles were agreed but was each component ratified and voted on properly?" Mr Hume-Kendall said:

"[Mr Elliott] wants to ratify as the transactions have already taken place."

And Mr Elliott then said:

"I do not understand how the board can have ratified the borrowing at the time as the NatWest Bank account was only opened in June 2018 and in June/July/August funds were paid directly to the recipients. I don't dispute that the board had discussions to buy the tech businesses and also follow the Mazars plan. However, I consider that LOG has borrowed money that has not been ratified and there are no loan agreements or security in place. The board could not have ratified the loans as they did not know the money had been borrowed -- that's the fundamental difference!"

Mr Barker then said:

"LPT holds the preference shares."

Mr Hume-Kendall said:

"The Mazars paper says the preference shares should go to LPT."

Mr Elliott then reiterated his point:

"I do not consider that the board of LOG has ratified borrowing the money to pay for these transactions. LOG has borrowed approximately £50 million for these two transactions and the board have not ratified these loans to be made. Smith & Williamson will ask for evidence in relation to these loans and the board of LOG has not ratified these loans."

Mr Hume-Kendall then said:

"The board therefore has my apologies. I did not realise it had to be ratified -- I have not come across this before."

Then, on the next page, Mr Ruscoe said: "We were all aware of the acquisition, although I don't know if we gave executive permission to see the deal through."

Mr Hudson says:

"The value of the preference shares was discussed, that's my recollection."

Mr Hume-Kendall said:

"We went ahead with Lewis Silkin based on the 30 per cent agreed for the preference shares. The tech price was £20 million and we hoped to get half back if we sold Asset Mapping but this was

overoptimistic now, but at the time we were hoping for that, but it was based on a rather flaky valuation ..."

I wonder if that was the Clive Adkins valuation: "... we are now getting the tech companies properly valued -- DE knows of the firm carrying out the valuation and RH is closely involved with the AI ... I feel embarrassed sitting here."

Then Mr Elliott said:

"The LOG board minutes of 7 August say: "It was resolved that SHK, DE, JM and Lewis Silkin be and are hereby authorised to continue to progress the reorganisation provided that a meeting of the board (or a committee thereof) (and, if appropriate, a meeting of the company's member) will be called to vote on and approve the documents effecting the reorganisation." Mr Hume-Kendall said:

"I did not sign those minutes as they were wrong." Mr Elliott said:

"I am not disputing the agreement were discussed, but the minutes say that the board have to meet and be called to vote on the documents of the reorganisation and one of these documents would have been the LOG loan agreement to LPT. Now Smith & Williamson have asked for it and it does not exist! I am not aware/cannot advise on the potential implications if the board ratify this after the event."

Mr Starkie said:

"Could we get advice from Stephenson Harwood or elsewhere?"

Mr Elliott said:

"SH or perhaps Graham Reid."

Mr Ruscoe said:

"As long as it could be done quickly."

Mr Barker said:

"We have a tech company and RH is about to talk about how good it is."

Mr Hume-Kendall said:

"On the tech side, is there anybody who is doubting that this has taken place?".

Then it notes Mr Hume-Kendall left the room as he needed a break. Mr Elliott said he would contact Graham Reid to see if he has ratification of the loans and any security put in place. Mr Ruscoe said: "We obviously have a gap in the procedure." And then Mr Elliott said:

"I know SHK is feeling bruised but I also need to raise the issue of the Atlantic loan. In April 2017 there is a document that states that the loan was assigned to Atlantic Support, which is outside of the Oil & Gas Group and I have been told that LCF have secured lending to Atlantic Support (which may be residual debt after the sale to Prime?). This concerns me, as we have mentioned in our May 2017 audited accounts that Atlantic is an asset of LOG and have continued to act as if it was an asset of LOG." Then Mr Hume-Kendall says, about that assignment to Atlantic Support:

"I refused to sign it, I have said this to you, it has got to be the responsibility of Elten Barker and I, not of LOG's, did I not say that to you? I have just been given a document that Alex Lee had (in an email of 8 November 2018) stating it was the responsibility of SHK/EB and not LOG's. We had a pile of

documents to sign and I got to that one [I think he's talking about the assignment] and started to sign, but then thought NO so did not sign. You told me it was missing. RS had to get it from Alex Lee (JM had prepared it) it was tricky to get it into the obligations of LOG -- you have seen it!"

Mr Elliott said:

"I agreed in the morning you told me that it had not been signed -- in the afternoon you made a comment to me that I took as meaning that you agreed that it had been signed, although I agree the LOG signature section was not signed."

SHK says:

"I appreciate you are being meticulous -- JM keeps meticulous files."

Mr Elliott says:

"It says in the Bible for Atlantic that the assignment document is missing."

Mr Hume-Kendall says:

"I can now see in the minutes that there would be another board meeting."

Mr Elliott says:

"You say it wasn't signed and found an email to Alex Lee?"

Mr Hume-Kendall says:

"I gave Finbarr the email to Alex Lee about how it is going to be paid."

Mr Barker asks:

"What timeframe have we got, if we have MO [Martin Orrell] coming tomorrow? Should we be showing him the tech side tomorrow if it's not owned by LOG?" Mr Hume-Kendall says:

"It's de facto owned by LOG."

Mr Elliott said:

"I believe that we need to ask [Graham Reid] to advise whether the board has any risk now if they ratify loans and LOG goes into administration." Mr Hume-Kendall says:

"Well let's ring him now."

Mr Elliott says:

"He is not an insolvency lawyer -- so I should speak to him first and if not, I can ask an insolvency lawyer at Stephenson Harwood."

Mr Hume-Kendall said:

"If you give it to SH it will be a huge chunk of money."

Mr Elliott said:

"Well, it's up to the board".

Mr Hume-Kendall said:

"I absolutely dispute where it says 'the board will ratify'."

The note taker thinks Mr Hume-Kendall left the room again. Mr Starkie says:

"It should be a straightforward question for an insolvency lawyer to answer."

Mr Hume-Kendall says:

"Well, why don't we just ratify it now?". Mr Starkie says:

"I would like to get advice; shall we call GR now?" Then it records that Mr Hume-Kendall rang Graham Reid. Mr Hume-Kendall explained the situation to Graham Reid and asked if the board would be taking a risk if they ratified now as Mr Hume-Kendall had been acting as if it had been. Then there's a quote: "... '[David Elliot/Jo Marshall] were not aware the documents were prepared by [Robert Sedgwick] that you have seen' so the documents are in place but there are no board minutes to ratify them."

Mr Reid is recorded as advising:

"My understanding is that ratification happens after something has been done so it could be done now." Mr Elliott says to Graham Reid that LOG borrowed monies to make payments:

"No LOG board minutes exist to authorise LOG to borrow money to pay to LPE and LPT to carry out the transactions."

Then over the page:

"Given the LCF situation, do the board put themselves at risk by ratifying loans now if LOG goes into administration?"

SHK says to Graham Reid:

"The board agree that the deal was agreed, but we have unsigned minutes that state ratification was required and now money has changed hands without ratification."

Mr Reid says:

"Ratification is after the event so the board making a decision after that occurred -- it's not a problem. It's good corporate governance, just ratify it and move on, as the decision has already been made and it sounds like you are over-arching it by ratifying it." Mr Starkie asks:

"Are you saying it's not possible that LCF can find fault with ratifying after the date and it's more about the transaction itself that is correct?" Mr Reid says:

"Correct".

Mr Starkie says:

"Okay, so we have taken legal advice, so okay yes." Mr Ruscoe says:

"I'm happy."

Mr Elliot says:

"We have now got to deal with the loan security." Mr Hume-Kendall says:

"Can we just ring Robert about this please. The documents are in existence already, you saw them David when we came to you?"

Mr Elliott says:

"I did not see a loan agreement Simon." Then Mr Hume-Kendall rang Mr Sedgwick. He said to Mr Sedgwick:

"The board want to clarify that we have the documents in place and David is particularly interested in the loan agreement and option agreement of LOG-ITI." Mr Sedgwick said:

"[There] is a loan facility agreement dated June 2018 for LOG to LPE to ITI and then down to the AI companies. (a) a £20 million LOG has the right to acquire security over LPE or subsidiary companies; (b) a call option agreement for LOG -- shareholders for LPE (TW Private, LG LPE, SHK and EB). The option entitles LOG to buy shares in LPE for £1, LPE has liability to repay LOG the £20 million for the shares in ITI/AI."

Mr Elliott asks:

"Is there a loan agreement between LPT -- LOG for preference shares?"

Mr Sedgwick says:

"There is a similar agreement with LPT but no call option agreement -- LPT has preference shares can acquire after/to shareholders."

Mr Hume-Kendall said:

"I hold 1 share in trust for LPC."

On page 14, under the heading "AOB", a few pages on, on the right-hand side, Mr Elliott said: "SHK and I spoke after the meeting on Friday and I have decided to resign. We have agreed I will leave at the end of February and I have 4 weeks holiday due also to be paid."

He was asked if he might change his mind and he replied:

"Sorry, no, but I do believe that LOG will have a successful future in time. I think if Smith & Williamson let IOG go into the market then hopefully they will achieve full funding -- I believe they have a good model and future. However, I need a solid base from which to operate and I feel like I am on shifting sand. I do not agree that those documents were produced by RS back in June and I believe that RS produced the loan agreements recently."

Mr Hume-Kendall said:

"I think that's unfair about RS. Why would he backdate them?"

Then he asked if Mr Elliott might delay his resignation for a bit.

So, the documents that David Elliott thought had been backdated by Mr Sedgwick are what was described as a loan facility agreement dated June 2018 for LOG to LPE and a call option agreement for LOG/shareholders for LPE, TW Private, LG LLP SHK and EB, and he said the option entitles LOG to buy shares in LPE for a pound. So this is the document that Mr Sedgwick told Mr Elliott existed, and Mr Elliott was saying that he didn't agree that those documents were produced by RS back in June. They had, in fact, been produced recently and backdated, as Mr Elliott believed. We can see that first from <MDR00220087>, which is an email dated 8 January 2019 from Mr Sedgwick to Paul Sayers,

copied to Mr Elliott, Mr Hume-Kendall and Mr Barker, with the subject "LOG loan to LPE Enterprises". Mr Sedgwick said:

"I am adding to the facility agreement provision for LOG to have a call option agreement to purchase the shares in LEP [he meant LPE] enterprises for £1." So he was adding that call option agreement to the facility agreement in January, on 8 January 2019: "I believe that this then gives LOG full security for the loan. They will have the security by way of a debenture and in addition if they want to acquire the tech companies they can do so for £1 (subject of course to the outstanding loans)."

There is then a subsequent email on the same day at <MDR00220088>. It is another email from Mr Sedgwick to Mr Sayers and Mr Elliott, copied to Mr Hume-Kendall and Mr Barker, the subject is "Facility agreement re LPE and call option agreement". The attachments are "Facility agreement LOG LPE.doc" and "LOG TW Private call option agreement.doc" and Mr Sedgwick says:

"Please find attached the draft facility agreement and call option agreement.

"With regard to the facility agreement, the amount of the facility needs to be checked before it is executed."

There are two attachments, the first is <MDR00220089>. It is a draft facility agreement between LPE Enterprises and LOG. On the next page, we can see the contents page. On the page after that, we can see the parties: LPE Enterprises and LOG. It has various definitions. If we go through to the operative clauses, I think we are looking for clause 2.1 [page 6], it says: "The lender grants to the borrower sterling term loan facility of a total principal amount not exceeding £20 million on the terms, and subject to the conditions, of this agreement."

So, that's the first attachment on 8 January 2019. The second is <MDR00220090>. This is the draft call option agreement between LOG and TW Private LLP. The second page is the contents page. Then, after that, we see the parties. The background says:

"The seller is the legal and beneficial owner of the option shares and has agreed to enter into a call option in favour of the buyer on the terms of this agreement."

The seller is TW Private LLP, the buyer is LOG: "The company [which is defined to mean LPE Enterprises, the purchaser under the LPE SPA] is a private company limited by shares ..." And in C:

"The buyer has entered into the facility agreement on or about the date hereof."

My Lord can see from the definitions, as I said, the company is LPE Enterprises. The "Equity Shares" are defined to mean the shares in the equity capital to the share capital of the company. If we go through to -- in fact, while we are here, there is the consideration, the sum of £1, which is the purchase price for the option shares payable by the buyer on completion. Then the next page has the term "Option Shares" defined to mean:

"All the shares and other securities of any kind or description in the capital of the company ..." Page 5, clause 2.1 says:

"In consideration of entering into the facility agreement and granting the facility by the buyer to the company ... the seller grants to the buyer an option to purchase all of the option shares on the terms set out in this agreement."

And the option period is set out in clause 3. Then on the next page, we see "Exercise", clause 4. The option can be exercised and my Lord has seen that the exercise price of the option is £1. We saw that in the definitions.

So, those are the documents circulated on 8 January 2019. We then see signed versions of those. The facility agreement is attached to an email at <D8-0046917>. Mr Sedgwick emails it to Mr Sayers on 6 February 2019. He says:

"I attach a copy of the facility agreement between LOG and LPE.

"I will send you separately the call option agreement ..."

The attached facility agreement is <D8-0046918>. My Lord can see it's been dated 21 June 2018. If we just flick through a few pages, my Lord can see it's the document we have seen already, over on the next page we see some more definitions, over on the next page, or the next page, I'm looking for, there we are, clause 2.1 [page 6], the facility of £20 million. The signatures are at the end, if we could look at those, please, signed by Mr Barker for LPE Enterprises and Mr Hume-Kendall for London Oil & Gas. So, that's the signed facility agreement that has been backdated. The call option agreement is <MDR00214273>. My Lord can see this has also been dated 21 June 2018. My Lord saw a moment ago Mr Sedgwick having the idea, on 8 January 2019, where he said, "I'm adding a provision for LOG to have a call option agreement to purchase the shares in LPE Enterprises for £1", and he circulated the first draft on that day. It's obviously been backdated. If we flick through to page 2, I think, page 3, my Lord will see it is the same as the version we saw. The company is LPE Enterprises. The consideration is the sum of £1. The option shares, on the next page, is the definition that we saw. So, it's obviously been backdated. As I said, Mr Sedgwick raised the idea for the first time on 8 January 2019. We saw in the minutes of the meeting on 12 February Mr Elliott said:

"I do not agree that those documents were produced by RS back in June and I believe that RS produced the loan agreements recently."

Mr Hume-Kendall said:

"I think that's unfair about RS. Why would he backdate them?"

But Mr Hume-Kendall knew that Mr Sedgwick hadn't produced them in June and had only produced them recently because Mr Hume-Kendall had only signed them recently. If we could look at the signature page on this document, please, I think we will see -- page 10, I think it is -- this also bears Mr Hume-Kendall's signature. So, he knew that it hadn't been produced in June and had only been produced recently and backdated.

One can understand why Mr Elliott would have wondered what on earth was going on and why he said he felt he needed a solid base from which to operate and felt like he was on shifting sands. He had been copied into the emails on 8 January 2019, when Mr Sedgwick explained that he was preparing the call option agreement and Mr Sedgwick circulated it in draft. It must have seemed incredibly bizarre to Mr Elliott to then be told to his face that these had, in fact, been produced back in June and to be asked to accept, in front of everyone, that they hadn't been backdated when he knew that they had been. So, one can understand why he felt compelled to resign.

So, the call option agreement on which reliance is placed is not a contemporaneous document. It doesn't originate at the same time as the LPE SPA. It is something that is produced end of January 2019 in a subsequent attempt to justify the LPE SPA. That causes a problem for the defendants who rely on the call option agreement, for obvious reasons.

If we see, for example, what Mr and Mrs Hume-Kendall say about it, at <A2/4/49>, in their opening written submissions, they say in 167:

"The claimants are correct that: (i) prior to the LPE SPA, D2 and D3 owned shares in the technology companies; (ii) by the SPA, those shares were sold to LPE; (iii) ... LPE was owned by TW Private; (iv) TWP's ultimate beneficial owners included D2 and D3; and (v) D2 and D3 thus remained beneficial owners of the shares."

"168. However, Cs' narrative misses a key component: there also existed a call option, by which LOG had the right to acquire TWP's assets (including the shares of LPE) for £1."

That's wrong. They did not exist. The call option agreement is something that was created subsequently in January 2019 and backdated in an attempt to justify the LPE SPA. It is not a contemporaneous document. If the Hume-Kendalls' argument on the LPE SPA relies on the call option agreement, then my Lord has a fairly straightforward shortcut for reaching a decision on this point. It is not a document that had any contemporaneous existence. It was created subsequently and backdated. So what they say isn't right. There is a particular difficulty with the call option agreement arising from something we have seen previously. If we go back to Mr Hume-Kendall's trial witness statement, at <C2/2>, page 42, in paragraph 151, at the end of the paragraph, Mr Hume-Kendall says: "On 20 July 2018, LPT was incorporated and, on 27 July 2018, TW Private sold LPE to it for a £1 'acorn'."

We saw the document in those terms at <D2D10-00055044>, the share purchase agreement dated 27 July 2018 between TW Private and London Power & Technology (2018) Limited. We saw on page 3 the definition of the term "Company" to mean: "LPE Enterprises Limited ..."

And the definition of the "Sale Shares" to mean the shares in the company. On page 4, we saw clause 3.1, the purchase price is £1, which is payable in cash on completion. And we saw clause 2, the seller sells the sale shares to the purchaser.

We also saw clause 9 -- sorry, page 9, with the signatures, Mr Hume-Kendall for both parties. So, LOG can't have had an option to acquire the shares in LPE from TW Private for £1 if, as Mr Hume-Kendall says in his trial witness statement, TW Private had already sold those shares in LPE to LPT for £1. It seems to be another instance in which Mr Sedgwick has created something of a muddle by falsifying documents and backdating them in an attempt to explain what happened. Both of those things can't be right.

My Lord, I see the time. I wonder if that is a convenient moment for the shorthand writer's break?

MR JUSTICE MILES: We will take five minutes. (3.21 pm)

(A short break)

(3.27 pm)

MR ROBINS: My Lord, the next topic is the Ponzi scheme. I have explained to my Lord in week 1 why we say there were no underlying assets of sufficient value to repay the loans. My Lord also saw in that week that the borrowers didn't have businesses generating any income and, therefore, payments by LCF to existing bondholders were always and could only be funded by monies from new bondholders. Because the borrowers didn't have assets of sufficient value to repay the loans, this was always doomed to collapse.

The claimants have set out details of the payment flows in three witness statements by David Hudson. Rather than attempting to reinvent the wheel, I think it is simplest to take your Lordship to those. The first, Hudson 1, is at <C1/1>, page 1. He explains on page 3, in paragraph 8, that he's setting out evidence in relation to two propositions. The first, proposition 1, is that monies received from new bondholders were paid over to borrowers, including LOG and L&TD, with the borrower receiving a sum net of Surge's fee. The borrower then repaid funds back to LCF, either directly or via other entities, and those funds were then used by LCF to pay interest and redemption to existing bondholders.

Then proposition 2 is:

"In other instances, sums received by LCF from new bondholders was used directly to pay interest and redemptions to existing bondholders without first being laundered through a borrowing entity."

He then sets out examples in relation to those propositions. In paragraph 9, he says that in relation to payments from LCF to L&TD to LCF to bondholders, he has reviewed the LCF bank statements and the current account bank statements of L&TD and provides examples to illustrate the point.

The first example relates to bondholders called S***** and T*******. He says in 10.1:

"According to L&TD's bank account statement, on 22 January 2016, it held a credit balance of only £92.17 ..."

"On 26 January 2016, the L&TD bank account received two separate payments from LCF totalling £50,000." On the same day, L&TD paid two sums into the operational account. The first was a sum of £33,244.52 with the reference "T*********", and the second was a sum of £11,081.51, with the reference "S*******". He gives the extract from the bank statements. So L&TD has received the money from LCF but is paying it back to the LCF operational account.

In 10.4, he says:

"The LCF operational account ... shows the following three payments by LCF on 26 January 2016." There are two payments to * T******* which add up to £33,244.52. As Mr Hudson explains in paragraph 10.5, that's the precise amount of money that LCF received from L&TD with the reference "T*********". He also points out that LCF paid £11,081.51 to S*******, that's, again, the same amount that LCF received back from L&TD with that reference.

He confirms, in paragraph 10.7, that * T******* and * S***** were bondholders. He sets out the evidence in relation to that. On the next page, in (b) he quotes an email from Jo Baldock entitled "Redemptions" which was seen by Mr Thomson and Mr Barker, which mentions, among other things, that monies were due to S***** and T*******. So there can be no doubt that they were bondholders.

He mentions a slight discrepancy in (c), but that doesn't seem to undermine the point that he's making. Then, in paragraph 11, he gives further examples relating to bondholders R*******, A******, and L*** explaining that L&TD's bank statement in 11.1 had only £66.14 in it. LCF paid in £115,000. Then L&TD paid monies back to LCF, £38,777.12 with the reference "R******* 2", £11,079.18 with the reference "A******", and then, on the next day, £33,272.47 with the description "L***". That's at the top of the next page in paragraph 11.3.

He then explains in 11.4 that the receipts are shown in the LCF bank statements, and then, in 11.5, that the LCF operational account pays those sums out to R******* and A******, and then, the next

day, 28 January, two sums to L***. In 11.7, he explains that LCF's payments to R******* add up to £38,777.12, the precise amount of money that LCF received from L&TD, and the payment to A****** was, again, the same amount that LCF received from L&TD.

He explains in 11.9 that LCF's books and records confirm that R*******, A****** and L*** are bondholders. Then, over on the next page, paragraph 12 deals with another payment to S*****. It is essentially the same --

MR JUSTICE MILES: I'm not sure it is necessary to go through --

MR ROBINS: -- pattern.

MR JUSTICE MILES: -- where it is the same pattern.

MR ROBINS: I don't think so. I was just showing my Lord --

MR JUSTICE MILES: I have read this --

MR ROBINS: I'm grateful. By way of example, my Lord will have seen Hudson 2 really just exhibits some bank statements. Hudson 3 then gives further examples of proposition 1, explaining how it began to operate on a global basis.

My Lord will have seen we have also addressed the operation of the Ponzi scheme in our opening written submissions in section D. Again, if my Lord has read it and is content to take it from there, I don't think I need to go through it by way of example. It sets out further illustrations and shows the Ponzi scheme operating through various entities by reference to the documents in disclosure. The footnotes are hyperlinked. So if my Lord wants to open up any of the underlying documents, it is easy to do that from the footnotes.

MR JUSTICE MILES: The ones you just showed me were ones which went through L&TD, and then he also says -- Mr Hudson also says there are some which were direct, as I understand it.

MR ROBINS: Yes, that's proposition 2, that's towards the end of the statement. I'm not sure which page. We are going to have to flick through, I'm afraid. If we could just keep flicking through one page at a time. This is still L&TD. If we can just flip through a few more. He deals with LOG, I think, in this section. Proposition 1 on the right, Global Advance Distributions. That was the bank account controlled by Mr Sedgwick. It received sums of money from LCF and paid them back. He deals with that there. Then if we can continue through -- proposition 2, there we are. This is towards the end of the period. It was administered through GCEN and he explains in paragraph 36 that LCF had entered into a customer agreement with GCEN. He explains, in 37, monies payable by bondholders to LCF were paid by those bondholders to GCEN. And then, in 38, he says that GCEN would pay monies from bondholders to LCF's bondholder repayment and interest account.

Over on the next page, he explains that what was happening was essentially that GCEN was receiving new bondholder monies. This is towards the end of LCF's existence. It would pay those monies to LCF. Then the way I think it worked was that LCF would then pay those monies back to GCEN for payment out to existing bondholders. He explains, in 41, that 92.8 per cent of the money paid into LCF's bondholder repayment and interest account from 9 October 2018 until 6 December 2018 came from GCEN, which had in turn collected those monies from bondholders. Then, in 42, LCF used the monies in its bondholder repayment and interest account to make various payments, including very substantial payments to bondholders. He gives examples.

It is really just the tail end of the period that it operates on that basis through GCEN. For the bulk of LCF's existence there was a laundering entity, to use Mr Hudson's terminology, which was connected with various of the defendants, either L&TD --

MR JUSTICE MILES: In this section, is the bondholder repayment and interest account a bank account?

MR ROBINS: Yes.

MR JUSTICE MILES: Or is that an account --

MR ROBINS: I thought so. Hang on, let me check.

MR JUSTICE MILES: -- with GCEN? So, this is saying money comes direct from bondholders to GCEN, who then pay it into something called the LCF's bondholder repayment and interest account.

MR ROBINS: I'm afraid I can't remember, off the top of my head. We will have to check that, my Lord. I can't recall, off the top of my head. We will have to check that and come back.

My understanding was that it was a GCEN account, but that may be a misrecollection. We will have to check. For most of the period, the entity through which the money was paid was an entity connected with the various relevant defendants, such as L&TD or LOG or GAD, as we have summarised in our opening written submissions. The other topic I said I would come back to when we looked at it the first time relates to the contents of LCF's brochures and information memoranda and other communications to bondholders, prospective bondholders. My Lord may recall we looked at the documents showing that Mr Thomson was responsible for drafting the substance of the information memoranda and agreed that Surge could draft the brochures in what Ms Graham described as a more marketing-friendly approach. We can see an email attaching the three brochures as they existed in early 2016 at <SUR00132218-0001>. My Lord will see this is an email to a prospective bondholder from Jo Baldock. She says:

"Thank you for your recent enquiry. Please find attached information and literature regarding the LCF fixed rate bond."

Then she says:

"LCF is a financial institution that raises funds and makes loans to UK businesses. The company is registered with the Financial Conduct Authority ... for credit activities. LCF have an experienced team that assess all funding applications and all loans are made on a secured basis at no more than 75 per cent loan to value. The company has a proven track record and has recently issued a series of bonds to help with the growing demand for commercial finance. The LCF bonds offer the chance for investors to take advantage of this growing market in a secure way."

The attachments, of which there are three, are the brochures in respect of series 3, series 4 and series 5. We can look at <SUR00132221-0001> by way of example which is the brochure in respect of series 3. That's the 8 per cent bond. Sorry, can we go back to the email, <SUR00132218-0001>. My Lord will see the difference between the series is the different internal rates. The series 3 bond was a one-year term paying 3.9 per cent; series 4 was a two-year term paying 6.7 per cent; and series 5 was a three-year term paying 8 per cent. It is the series 5 brochure at <SUR00132221-0001>, series 5, three-year, 8 per cent income on non-transferable securities. That's obviously the issue that got them into hot water when it came to the ISA bond.

We can see, on page 3, for example, what was being said. It was said that the key investor benefits included a flexible, high-returning --

MR JUSTICE MILES: Sorry, can I just ask a very broad question, and it is quite a simplistic sort of question, but I saw, obviously, the FCA were concerned about the ISA element. But, in very broad terms, are these sales subject to FCA regulation at this time?

MR ROBINS: No. LCF was regulated only for credit activities, not for anything to do with issuing bonds. The way it worked -- my Lord may have seen references in passing to section 21. If you got your mini-bond signed off by a regulated person under section 21, then that would suffice. You didn't need regulation yourself, you would get a regulated person to look at it and sign off on it.

MR JUSTICE MILES: They were regulated?

MR ROBINS: Yes. So that was initially -- my Lord saw a reference to Sentient when we were looking at the preparation of the bonds. Kobus Huisamen had been with an outfit called City One, which was apparently shut down, according to Graham Reid's email. He then popped up at an outfit called Sentient and they provided what was described as "section 21 sign-off" for LCF's investment memoranda.

My Lord may recall the email where Ms Graham was referring to Mr Thomson agreeing that the Surge staff members could draft the brochure freehand from a marketing perspective. She said, "We will need to get this signed off as well". So anything you put before the public had to be signed off. Ultimately, Mr Huisamen moved to LCF and LCF gained the ability to sign off on its own --

MR JUSTICE MILES: Because he was a regulated person.

MR ROBINS: Because he was a regulated person. A couple of weeks ago, he was just banned by the FCA from working in financial services, due to the rather extraordinary approach that he took in the case of LCF's bonds. But that's a separate matter. But the key investor benefits were said to include flexible, high-returning secured investment. My Lord has seen the security was entirely illusory. It says on the same page, just after the halfway point:

"Asset secured at 100 per cent of capital invested." We know that wasn't true. It then says: "Independent trustee controls bondholder security." We can only assume that's meant to be a reference to Mr Sedgwick's company Global Security Trustees. Well, he was hardly independent. I'm not sure how he was meant to control bondholder security.

On page 4, we can see it says, on the bottom left in the second paragraph:

"LC&F is an expanding commercial lender that is seeking to support UK-based small- and medium-sized enterprises with the provision of credit ..." The implication, as my Lord saw from some previous documents, was that LCF was a lending bank for SMEs which one would naturally assume was unconnected with its borrowers. That's inherent in the concept. It goes on to say that, at the bottom left-hand side:

"Its principal activity is to identify opportunities in structured finance within the UK SME sector and to generate income via loan interest and associated fees." A phrase which clearly implies that LCF is looking at the UK SME sector, that's its principal activity. It is looking at the UK SME sector to identify opportunities in structured finance. Again, an implication it is not connected with its borrowers, it is going out into the wider world to try to find them. On page 5, it says there is a funding shortfall for SMEs. Above the text, it says:

"To continue to grow a profitable commercial loan business to meet the increasing demand of successful but cash-starved UK SMEs."

And on the left:

"At the end of 2014, there were 5.2 million businesses in the UK, of which SMEs accounted for 99 per cent. According to statistics published by the Bank of England, cumulative lending to SMEs ... has dropped by 111.3 per cent ... UK businesses continue to be starved of funding, creating an increased demand for short-to-medium-term credit facilities. Statistics from the BoE show that cumulatively between January 2012 and February 2015, net loans to UK businesses have dropped by £29.5 billion. However, over the same period, BoE statistics show that demand has risen by 79.2 per cent. In addition, the National Audit Office has predicted that by 2017, the gap between the amount of funding available to UK businesses and the amount of funding required by UK businesses will hit £22 billion." Why are we being told this? The implication is obviously that LCF is going to be finding its borrowers in this sector of the economy and that the monies provided by bondholders are going to be used to bridge this funding shortfall. The implication is that LCF's borrower constituency will be the UK businesses which we are told continue to be starved of funding, creating an increased demand for short-to-medium-term credit facilities.

On page 7, on the left-hand side, under the heading "Opportunity for LC&F":

"LC&F has developed a business model whereby it raises monies from private investors by issuing secured bonds and uses the proceeds from the issue of those bonds to make loans to SMEs on a secured basis. This provides private investors with the opportunity to make returns by investing in the bonds issued by LC&F and it enables LC&F to meet the significant lending demand from the SME sector."

Again, the reference to the "SME sector", signifying to prospective investors that this is where LCF would find its borrowers to which it would make loans of bondholder money.

On the right-hand side, it says:

"The funding lifecycle starts with funds being invested into bonds issued by LC&F and finishes when all interest and principal is returned to bondholders. During the funding lifecycle, LC&F will utilise funds raised via bonds to make loans to UK businesses that it considers creditworthy, that meet LC&F's lending criteria and that have realistic and robust repayment proposals."

My Lord has seen, on the basis of the materials that we have been through, all of those statements were untrue. The borrowers were not creditworthy. There were no lending criteria. We have not seen anything about any repayment proposals.

On page 13, there is a heading at the bottom "Diligent and Secured Lending". It says: "Once a potential borrowing company has been assessed as creditworthy and its business plan viable, agreed security in the form of a charge over either property and/or other assets of the borrowing company is taken at no more than 75 per cent loan to value. So, for example, for a loan of £750,000, the value of the charged assets of the borrowing company would need to be at least £1 million. Only when all legal and security documentation has been completed to LC&F's satisfaction will funds be transferred to the borrowing company."

Again, all untrue. My Lord has seen there was no adequate security. The loan to value ratio of 75 per cent was not maintained. In numerous instances, LCF started lending monies to connected companies before any loan agreement had been prepared, let alone signed. Under the heading

"Strong risk controls", it says: "In addition to the physical security charged, LC&F has controls in place to monitor the borrowing company and alert it to any potential repayment issues early on. By adding these additional layers of control and monitoring, LC&F has endeavoured to create multilayers of security and safeguards to protect bondholders' capital."

Untrue. But the suggestion of monitoring, again, reinforces the idea behind all of this that there is no connection between LCF and the borrowers, that it's lending to independent companies that it's found in the SME sector.

Under the heading "Security Trustee":

"LC&F has granted the security trustee a charge over all of its assets, which includes the value of security LC&F takes over the borrowing companies' assets. The security trustee holds this charge over LC&F's assets in trust for the benefit of all bondholders." Then, on page 14, under the heading "How is my money protected", towards the bottom of the page: "LC&F has endeavoured to create multilayers of security and safeguards to protect bondholders' capital, which range from upfront and ongoing due diligence on prospective borrowers ..."

Well, there is no evidence of any due diligence: "... to taking charges over borrowers' assets. The bonds are secured by a debenture ... over all the assets of LC&F ... which is held by an independent trustee ..." Again, if that is a reference to Mr Sedgwick, he is hardly independent:

"The nominated security trustee is Global Security Trustees Limited."

So that's what a brochure in the first part of 2016 looked like. We can look at some subsequent brochures. They evolved a bit over time. For example, <I2/3>, page 1. New photos. This is, again, for the three-year 8 per cent bond. It is said to be a simple and transparent investment.

On page 4, on the bottom left, it is quite small, if we can see it, we have that wording we have seen before: "LC&F is an expanding commercial lender that is seeking to support UK based SMEs with the provision of credit, whilst at the same time providing investors with an attractive return on their investment. LC&F is incorporated in England and Wales ... as a public limited company ... Its principal activity is to identify opportunities in structured finance within the UK SME sector and to generate income via loan interest and associated fees."

Under the heading "What is a bond?" It says: "LC&F series 5 income bond is a mini-bond which is a type of loan to a company. The company LC&F agrees to pay you a fixed rate of interest over a defined period of time (3 year). At the end of the period, your money is repaid. The money you invest in the bond is loaned to SMEs and is secured over all of the assets and undertakings of the borrowing SME, present and future." Again, we say the reference to SMEs implies this is a lending bank to SMEs. It is going out into what's been described as the SME sector to find borrowers who are not connected with LCF, which is untrue. The reference to "security" was also untrue. My Lord has seen that there were insufficient assets to secure the lending.

Then, on page 6, under the heading "LC&F business model", it has the wording we have seen before: "To continue to grow a profitable commercial loan business to meet the increasing demand of successful but cash-starved UK SMEs."

It says --

MR JUSTICE MILES: I have read that.

MR ROBINS: -- "At the end of 2014, there were 5.2 million businesses ...", et cetera.

There is a reference to UK businesses continuing to be starved of funding. Then, on page 8, we have the heading "Opportunity for investors". It says: "LC&F has developed a business model whereby it raises money from investors by issuing secured bonds and uses the proceeds to make loans to SMEs on a secured basis. This provides investors with the opportunity to make returns by investing in successful SMEs and enables LC&F to meet the significant lending demand from the SME sector."

At page 9, at the bottom, we have got the same wording we have seen before about LCF using the monies to make loans to UK SMEs that it considers creditworthy and that meet LCF's lending criteria and that have realistic and robust repayment proposals. On page 16, we have got the wording we have seen before about diligent and secured lending and strong risk controls, et cetera.

So those are the brochures. Surge would send those out to prospective bondholders. We have seen one example. There is another at <MDR00034121>, from Aaron Phillips of Surge, emailing from an lcaf.co.uk email address, attaching the information, saying: "LCF is a financial institution that raises funds and makes loans to UK businesses", et cetera. It is either the same or very similar to the form of email that Jo Baldock sent, which we saw earlier. On the penultimate paragraph, it says:

"An independent security trustee, Global Security Trustees Limited, holds a charge over all LCF's assets ... which it holds on behalf of all bondholders", et cetera.

Then there is a reference to the 75 per cent LTV ratio. So those are the brochures and that's how they are sent out. It's generally by email.

The information memoranda are rather longer documents. We can look at the series 2 information memoranda at <I1/1>, page 1. I think we may have seen this before. At page 3 it says:

"A proposition that benefits not only the individual investor but also takes advantage of the banks' reluctance to offer finance to Local SMEs. A highly secure opportunity that offers high returns whilst stimulating local economic growth."

There is a reference to full security at the bottom. My Lord will recall, if we go to page 6, for example, there's the Mervyn King quote, or purported Mervyn King quote. So that's an early information memorandum. A later one is series 5 at <I1/5>, page 1. On page 8, I think we have seen this before as well, "Principal activities":

"LC&F is a public limited company which intends to identify opportunities in structured finance within the UK SME sector to generate income via loan interest and associated fees."

At page 10, my Lord will recall there's a summary of the business that Mr Thomson drafted and so on. The information memoranda were sent out to the public as well. We see that, for example, at <MDR00033166>. An email from Aaron Phillips of Surge to a prospective investor:

"Dear Mr *****.

"Many thanks for your interest in our fixed rate bonds.

"As discussed, attached is our information memorandum for your perusal. I didn't catch if you were looking at a 1, 2 or 3-year bond so I have attached all three."

There are countless examples of the information memoranda being sent out. So it wasn't simply brochures that were used. The information memoranda were also sent out.

Many of the statements contained in the brochures and information memoranda were repeated and elaborated on in communications to bondholders. We have seen one email from Jo Baldock already.

There is another at <MDR00023601>, to a prospective bondholder, Mr *******. She says she understands he doesn't want to invest at this stage because:

"... our product is not covered under the financial services compensation scheme however any investment made would be fully protected by our own asset backed scheme. "Unlike the FSCS, which covers investments up to a limit of £85,000 (reducing to £75,000) at the end of the year, our scheme covers 100 per cent of your investment at any level.

"All bondholder funds are protected by an independent security trustee who manages the security held for the investor.

"London Capital & Finance Plc are a successful corporate lending company, they lend money to companies who have undergone a strict due diligence process and can provide adequate security for the loan. "What is adequate security? When funds are lent out, a charge over either property or other assets of the borrowing company is taken at no more than 75 per cent loan to value. So, for example, with a loan of £750,000 the value of the charged assets of the borrowing [company] would need to be at least £1 million."

So the reference to the independent security trustee was something that was relied on to say that LCF had a scheme in place that was better than the FSCS. Interestingly, after the bullet points, Jo Baldock said:

"Our parent company is London Group Plc ... and their accounts and balance sheets are available for public viewing."

There's a similar email at <SUR00130207-0001>. What my Lord will see is that the sales people had various templates which they would use and adopt as necessary in their communications with prospective bondholders. Again, here, we have Jo Baldock saying: "As discussed our bondholder funds are protected by an independent security trustee who manages the security held for the investor."

Again, she's set out the bullet points. She said: "Our parent company is London Group Plc ... and their accounts and balance sheets are available for public viewing on their website."

Mr Russell-Murphy sent out similar emails, for example, <MDR00026632>. This is 11 January 2016. He includes the text about LCF being a financial institution that lends to commercial businesses; a proven track record. Can we see the next page, please? He refers, at the top right, to security being organised and monitored by a third party company Global Security Trustees.

My Lord can see, in the next paragraph on the right, the point I made a moment ago about bonds being approved for the purposes of section 21 of FSMA by an FCA-regulated and authorised company, Sentient. Also in this email, on the left-hand side, in the second paragraph, he says:

"All monies lent are organised on a secured basis and LCF have an experienced team to assess all applications."

We have obviously not seen anything about any applications or any lending team. So, that's the sort of email that Mr Russell-Murphy would send out. There is another at <MDR00026697>. I think we have got the same reference to the experienced team in the second paragraph. There's the same reference to security being organised and monitored by a third party, Global Security Trustees.

It also, my Lord will see, in this email and the previous one, says, "100 per cent of your capital is invested with no administration or setup fees". Surge had various other employees who would

communicate with prospective investors as if they were employees of LCF. There was an individual by the name of Scott Allen. We see him mentioned at <MDR00044477>. This is an email from him to a prospective investor. He says:

"LCF is a financial institution that raises funds and makes loans to UK businesses."

He says, in the second line of that paragraph: "LCF have an experienced team that assess all funding applications and all loans are made on a secured basis at no more than 75 per cent loan to value." He also refers, three paragraphs up from the bottom, to an independent security trustee, Global Security Trustees Limited. There's a similar email from Jo Baldock at <MDR00024032>. My Lord can see the point I was making, that they seem to be templates that -- sorry, that's a wrong reference. If it's not <MDR00024023> then we can skip over it, because there are other examples. It may be a bad reference. Let's look at <MDR00024273>. My Lord can see this is Jo Baldock emailing a prospective investor. At the top of the page, she's sending it to Kerry Graham, saying: "Another one a little different."

I think she's providing Kerry with a full set of the templates. This version refers to the same matters. She says:

"As I explained, your funds are protected under our asset-backed scheme."

And then, a few paragraphs down:

"Bondholder funds are protected to 100 per cent of their value and has appointed a regulated independent security trustee who holds the security on behalf of the investor."

So, as my Lord can see from the top of the page, Ms Graham saw the various templates. Mr Thomson also reviewed them and commented on them. We see that at <MDR00026847>, where Mr Thomson says to Mr Hume-Kendall [sic]:

"Hi John.

"I had a think overnight re the wording and am currently working on [a better] version, please can you hold fire on sending any email out, I'll have the new version to you in the next half an hour." A further draft is either <MDR00026862> -- that might be the covering email. Yes, that's the covering email. The draft is <MDR00026864>. My Lord can see that Mr Thomson has reviewed it and he's expanded it. He's added the reference after the bullet points to GCEN, who is authorised and regulated by the FCA --

MR JUSTICE MILES: Sorry, can we just go back to the email?

MR ROBINS: Sure. <MDR00026862>.

MR JUSTICE MILES: Sorry, I'm just looking at the transcript. Sorry, the transcript said it was sent to Mr Hume-Kendall, but it's sent to --

MR ROBINS: Did I say that?

MR JUSTICE MILES: I don't know whether you did or not, but the transcript said it and I just want to correct it.

MR ROBINS: So Mr Thomson saw and reviewed and amended the templates. There's a further -- the bit he added is after the bullet points, a reference to GCEN, but it contains, after that, the reference to the independent security trustee, Global Security Trustees Limited, which holds a charge over all

LCF's assets which it holds on behalf of the bondholders. So it contains the materials we have seen before, and Mr Thomson has expanded it.

There is another form of email at <MDR00027962>, which is a frequently asked questions model. This is from Scott Allen to Mr Holland. He says: "Please see below answers to your questions as requested.

"How long has London Capital & Finance been trading for?

"Since 12 July 2012. The business model was tested on a small scale and proved successful. A £5 million bond was launched last summer which became fully subscribed. During last year we became FCA registered [as a credit broker] and a Plc.

"How many loans have been filled?

"In excess of 80 commercial loans, this changes constantly and we have a huge pipeline. "Where do you advertise?"

He says:

"Loans are advertised through our network of commercial mortgage brokers and IFAs."

He doesn't tell him what percentage of loan applications are rejected. He says they have experienced no bad debt and have a clean lending book. I think it must be over on the next page [page 2]. There is a request:

"When bad debt is experienced, what timescale is given on seizing property/assets?"

Scott Allen says:

"We go through the standard default process of sending out default notices in line with industry timelines. Once a default has occurred the case is swiftly paced to our legal team who commences proceeding to acquire and sell the borrowers assets." I'm not sure how that's meant to reconcile with the statement that there's been no bad debt, but there we are.

The reference to the independent security trustee is something that was relied on a lot, at <MDR00028436>, there's an email from Scott Allen to a prospective bondholder, again at the bottom of the page, now in bold, referring to the independent security trustee. Mr Careless has seen that and comments at the top: "Great email."

There's another FAQ version at <MDR00042902>. As we will see, this is based on information from Mr Thomson: "How many clients have we lent to?

"As at the beginning of May 2016 LCF has made 121 loans.

"Who do we lend to, what sector?

"LCF lends to all sectors.

"Average loan size?

"The total size of the loan book as at the beginning of May 2016 is £9,055,096.11, this drives an average loan size of circa £75,000."

There is a new email approved by Mr Russell-Murphy at <MDR00044165>. Scott Allen says:

"JRM has asked that we all use the below email regarding security. It has been amended slightly from my previous one."

And it says:

"Most people ask if we are covered by the Financial Services Compensation Scheme. Whilst we are FCA regulated we do not use the FSCS, but with reason. For bank deposits, the FSCS is a fantastic scheme, very comprehensive, and covers individual accounts for up to £75,000. Our bonds are classed as an investment, not a deposit, so in the eyes of the FSCS they are in a different category. The coverage offered by the FSCS for investments is very different, and indeed limited. It only covers investors for two scenarios: if the company goes out of business, or, if you have had and can prove bad advice from an IFA. It also has a £50,000 limit. Crucially, what it doesn't cover investors for is if the product underperforms, you lose money, but the company stays in business. Our asset-backed security does give investors security in the event of our bonds underperforming and us staying in business, and indeed if we go out of business. There is also no upper limit on the amount of invested funds that can be fully protected with asset-backed security.

"The way that we do that is quite simple. We are a corporate financier and we lend money to small/medium-size businesses. When we do so we have a strict lending criteria, one of which is that when a company borrows money they have to put up an asset, property, as security for the loan. We take a legal first charge over that asset, and we will only lend a maximum 75 per cent loan to value against the asset. So, the only way that there can be exposure to funds is if the borrower defaults (it's worth noting that since July 2012 we haven't had a single default on a loan) and the asset held as security devalues by more than 25 per cent. We also hold a fixed and floating charge over all the borrowing company's assets. "As an investor your funds aren't tied to one particular lending deal. We give investors the security of all the assets in our business. We do this through a third party security trustee who holds a debenture over all of our assets on behalf of the investors. So, if I can expand on that one example I gave you, imagine LCF have 100 loans to 100 companies with 100 first charges over 100 properties. If there were a dozen deals where both the borrower defaults and the asset devalues, firstly we can sustain that as a company, but more importantly, under the debenture, investors have the combined strength of the remaining 88 assets in that 100 example. So, there is a risk involved (as there is with any investment) and it is quite simply this: it would require a significantly high percentage of our business to have both the borrower default AND the security asset devalue by at least 25 per cent before we would be in difficulty. It's a worst case/doomsday scenario, but in theory it could happen. "Essentially, our business and investor funds are asset backed by UK property."

He goes on to say that the LTV is a maximum of 75 per cent:

"Our lending is typically in the 45-55 per cent range against an asset."

So that's approved by Mr Russell-Murphy. There is an example of that being sent out, so we can see it is actually used, at <MDR00044368>. That's the email that we just saw being used by Scott Allen and, in practice, sending it to a prospective investor, Ms Buckenham. Mr Allen is also using various other templates, including <MDR00044477>, which is in the form we have seen. So, they don't move uniformly to a new template. This is still the version with the reference to LCF being a financial institution, making loans to UK businesses, it has the reference to the experienced team who assess all funding applications, and the independent security trustee, Global Security Trustees Limited. We see the library that's built up of these templates at <MDR00045054>. Jo Baldock sends an email to Mr Thomson with a large number of attachments. She says:

"As discussed, please see attached the letter and email templates we currently use ..."

There are various draft communications or templates to be sent to prospective investors.

Ms Graham is copied. She comments at <MDR00045076>: "It is quite a library. Thanks!"

So, there are quite a lot of these templates, as I have said.

We see a further version at <MDR00046823>, where there is an email from Mr Barnard of Surge to a prospective investor, Mrs ******. She seems to have asked a question about the referendum, and in his answer to that, he says:

"We do not operate on the stock market. We only lend money to UK small and medium businesses. The loans we give are in high demand, we currently turn down over 60 per cent of applications -- this means that we have the ability to pick and choose who we lend to. Therefore if we had an applicant who we believe would be heavily affected by the decision [he is talking about the referendum] we would be able to reject the application."

The reference to turning down 60 per cent of loan applications is something that Mr Thomson seems to have specifically approved. We see an email from Mr Russell-Murphy to Mr Thomson at <MDR00052283>, and he says:

"... the AMs [the account managers or the sales people] have put a list of commonly used facts which are not noted in the IM.

"Please can you confirm that the information being quoted is accurate and can be continued." The attachment is <MDR00052284>. It says: "Commonly used information by the team." Number 2 is:

"2. Around 120 loans currently issued.

"3. We turn down around 60 per cent of loans apps." Mr Thomson replies to that at <MDR00052599>, where he says:

"I've answered the points the AMs have raised below."

For number 2, "Around 120 loans currently issued", he says, "Agreed this is okay". For 3, "We turn down around 60 per cent of loans apps", he says, "Agreed this is okay". Related to that, for example, in paragraph 12:

"We can be very selective over the types of companies we loan to, ie not one specific sector." Mr Thomson adds:

"Agreed, we are not restricted to any specific sector which aids in the diversification of the loan portfolio."

So, as I say, the reference to turning down 60 per cent of loan applications seems to be something that's specifically approved by Mr Thomson, but, as my Lord has seen, on the basis of everything we have looked at, it is entirely untrue. There is no large number of loan applications because there is no mechanism for borrowers to apply to LCF. Mr Thomson just makes loans to connected companies. My Lord, I see the time. There is one point I have been asked to mention. I will have to go away and look at this. Apparently Mr Sedgwick has sent an email to all parties to say that the document <D8-0046802>, which was marked "not relevant", should, in fact, have been withheld on grounds of privilege. Apparently, there's been some correspondence about this previously. So, I will have a look at that. But we saw the email marked "Placeholder -- not relevant". I'm told it should say

"placeholder -- privileged". I will have a look into that and let you know if there is anything further I should draw to your Lordship's attention.

MR JUSTICE MILES: Right. I have received a consent order -- is that right?

MR ROBINS: For Mr Thomson, yes.

MR JUSTICE MILES: That's obviously agreed by your side?

MR ROBINS: Yes.

MR JUSTICE MILES: And you would invite me to make that order?

MS DWARKA: Yes, my Lord.

MR JUSTICE MILES: I will have another look at that after court and, if appropriate, I will give my approval. 10.30 am tomorrow.

(4.27 pm)

(The hearing was adjourned to Tuesday, 5 March 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