

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 10 - Tuesday, 5 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, we were looking yesterday afternoon at the various communications between LCF and prospective bondholders. We have looked now at the brochures, the information memoranda and various email communications, of which my Lord will recall there were various templates.

There are two further categories of communication which my Lord will see in the course of this trial. The first is what are referred to as "chat" transcripts. In summary, there was a function set up by Surge's tech team on LCF's website by which members of the public could type in any questions that they might have. Questions were answered by Surge employees, who would take it in turn to be on duty manning the chats, as they put it at the time, and, by that means, a member of the public and a member of Surge's sales team could have a conversation in writing through the chat function. We see the first ever webchat at <D7D9-0002576>. This is on 6 January 2016. My Lord can see the form that they take. They were sent automatically to Mr Careless, we can see that on the left. At the top left, he's responded to say:

"First webchat!

"Nice route to a lead. Well done tech team. "Great conversation, well guided Jo."

My Lord can see the conversation immediately below. The visitor has asked whether the 3-year growth bond has a guaranteed 8 per cent and is a totally safe investment. Jo Baldock joined the chat. She said: "Good afternoon.

"Yes the 3-year growth bond is as stated at a guaranteed rate of 8 per cent for the 3 years. Your full investment is protected up to 100 per cent with an asset backed scheme. The assets are managed by an independent security trustee who ensures that there is 100 per cent coverage for your funds at all times." And asks if the visitor to the website would like to have a call. The visitor then asked:

"So in other words I am guaranteed to get my original investment back plus the 8 per cent interest whatever happens?"

Jo Baldock says, "Yes, that's correct", and then she gives her the contact details.

So that's the webchat functionality. We see various chats in disclosure. To take another example, <MDR00026162>. My Lord can see that, for some reason, this one has gone to Mr Russell-Murphy, not to Mr Careless. Jo Baldock answers in the middle of the page:

"Yes your money is protected. I can confirm the London Capital & Finance are regulated by the FCA ... your bond funds are protected for their full value by our asset backed scheme and this is managed by an independent trustee to ensure that your funds are protected up to 100 per cent at all times." The reference to an independent trustee is something that is often repeated. For example, <MDR00026254>. This one goes to Mr Careless, who replied to say: "I'd say this was perfectly executed.

"Well done Jo."

What Jo Baldock has said to the visitor to the website is:

"Good afternoon and thank you for your enquiry today. Yes your money is safe, we are regulated by the FCA ... Your funds are protected by the FSCS up to the value of £50,000 whilst they are held with our secure custodian ..."

I think that's a reference to GCEN:

"... once your funds are lent out then your bond funds are protected for their full value by our asset backed scheme and this is managed by an independent trustee to ensure that your funds are protected up to 100 per cent at all times. The bonds are secured by a debenture (a form of legal charge) over the assets of LC&F ... which is held by an independent trustee on behalf of bondholders. The secured assets include the cash reserves in the business and the security taken from the borrowing companies. The nominated security trustee is Global Security Trustees Limited." We see further examples. Let's go to <MDR00026340>. Jo Baldock says:

"The bonds are very secure."

It seems that the text is often recycled. It seems to be copied and pasted from templates. But in the middle of the page, there is something new in this one. She says:

"We are a commercial lender and our lending rates are higher than the high street banks due to the nature of the lending. It is because of the interest rates charged to our borrowers we are able to pass on the benefits to our investors."

There is another -- let's have a look at <MDR00026344>. It is the same form. So it confirms the impression that text is being applied from templates. There is another in a different form at <MDR00026953>, where, after the text that we have seen about the asset-backed scheme, and in the middle of the page a reference to being a commercial lender and offering short-term lending to SMEs at a premium rate, Jo Baldock says:

"No your funds are not at risk, we offer a variety of lending packages and all monies lent are only after a strict due diligence application process and all lenders have to provide adequate security over which we take only a first legal charge. The assets we take the charge on [are] managed by an independent security trustee to ensure 100 per cent of your bond funds are protected at all times."

So, that's the first of the additional categories, my Lord, the chat transcripts.

There are then call transcripts. These are transcripts of telephone conversations between Surge employees and members of the public. They were recorded by Surge's telephone system and a selection of them have been transcribed for the purpose of these proceedings. They are in I4 in the trial bundle.

To take one by way of example, can we go to <I4/3.1>. This is the format they take. My Lord can see this is a transcript of a telephone conversation between Neil Smith of Surge and a member of the public called S**** V*****, on 15 October 2016 at 10.01 am. My Lord can see, at the bottom of the page, it is a digital transcription by Marten Walsh Cherer Limited. On the next page, my Lord can see that Neil Smith introduces himself. The customer says, at D, that she's applied for the bond with a £5,000 deposit, and she says, at E, that she wants to ask some questions. At F, just above F, she says:

"... what sort of companies do you typically invest in?"

Mr Smith says:

"So there is no particular sector. They just have to beat -- well, not beat, but they have to come through a very strict lending criteria. So the companies have to be non-start-ups. They must have good credit history. They can't, you know, have a bad credit history. They must have, be asset rich. But they're all small to medium sized enterprises. So they're all companies that have got under 100 personnel." Then at the bottom of the page, at H, she says: "I mean predominantly, they are in the sort of construction sector. But you know, they're not all in there. They just have to fit the lending criteria. Most of the companies, you know, they're coming to us for a short-term loan, anywhere from between a week and under 12 months and it's usually, you know, they've finished a job, they're waiting for the invoice to go through to get the cash flow to start another job. So a lot of them come to us and go, I don't know, 'I need £100,000 for a month or two, whilst we're waiting for funds to come in'. They've got the assets. "...

"They've got the assets, like their factories and, you know, their offices, and things like that. But they just need the cash flow.

"...

"It's very difficult these days for them to get that from a bank without there being a longwinded process and then tying them up for, you know, over 12 months and wanting to charge them a lot of money. Whereas we're a quick, you know, a quick process, and that's why we charge higher rates."

The customer asks:

"Okay, and typically what's your success rate in, like, return on investment for people like me?"

"Operator: Okay, yes, so currently we've got a 100 per cent track record.

"Customer: Oh wow, impressive.

"Operator: We've never had a loan default and we have returned 100 per cent of all of our investors' full capital plus interest on the people that have invested in the bonds that have matured so far. We've only been going since July 2012, but we've got, you know, everyone that's invested and their bonds have come to maturity, they've all received their full capital plus interest back because of that strict lending criteria. We don't want to give out a bad loan. So, you know, the chances of these companies going bust or into liquidation in the short period of time that they've got these loans, we'd say is very limited, is very minimal.

"Customer: Okay.

"Operator: So our success rate is second to none." I think there may be more to the same effect on the next page, if we could look at that. Between A and B, Mr Smith says:

"So we don't use the Financial Services Compensation Scheme which covers back deposits up to £75,000. But we're classed as an investment, so the actual coverage for investment is a bit more limited. So what we do is we have the asset-backed protection. So in a nutshell, that is when a company wishes to borrow money from us, they must put up their assets as security against the loan that they take out.

"...

"What we do is we overcompensate and we never go above a 75 per cent loan to value. At the moment, we've got £25 million worth of loans out, but we've secured \$60 million worth of those companies' assets. So because your investment is spread across all of the loans, as opposed to one particular loan, because that's peer to peer and, you know, we consider that to be quite volatile, the

only way that there's going to be any exposure to your funds would be that a large proportion of the loans default at the same time, and obviously we've never had one yet, and assets of £60 million would need to depreciate to below the value of the loans going out of £25 million. So we'd argue, that's very slim, because that we're talking -- you know, the assets that we normally -- they can sign over, it can be anything. It can be stock, trucks, haulage, but most of it is land and property. So we're thinking, you know, if £60 million worth of land depreciates to £25 million, we're in a [doomsday] scenario.

"...

"It could happen. You know, we're regulated by the Financial Conduct Authority. So I can't say to you 'This is 100 per cent guaranteed', because it's an investment and there's an element of risk in any investment.

"...

"But what I can say to you is, we've got a 100 per cent track record and, you know, we're proud of that and want to keep it."

MR JUSTICE MILES: The FCA authorisation they had, you told me yesterday, was to do with credit; is that right?

MR ROBINS: Credit broking, I believe.

MR JUSTICE MILES: So, if they were -- what does that mean? If they were lending money to people to invest or --

MR ROBINS: Authorised to act as a credit broker. I'm going to have to check what that means.

MR JUSTICE MILES: But that's not to do with promoting investments?

MR ROBINS: No. And one of the things that we see time and time again is that LCF sought to trade off the -- or Surge's salespeople sought to trade off the limited and irrelevant authorisation that LCF had obtained, and the FCA got wind of it a number of times, for example, by looking at LCF's website or by seeing the adverts that LCF had placed in the media, or Surge had placed on LCF's behalf, and the FCA would be very quick to write to say, "You can't trade off your regulated status. It is irrelevant to the bonds that you are issuing. They are unregulated investments. You mustn't mention your FCA authorisation", so they had to be taken off. That -- we can provide my Lord with the details -- is a saga that was repeated a number of times. I think I'm right in saying at least three times. But we can give my Lord chapter and verse on that if that would be something my Lord would be interested in.

MR JUSTICE MILES: I have noticed that in all of these communications you have shown me -- I think all of them -- they have made the point that they were FCA regulated.

MR ROBINS: Yes. And one can see why the FCA would have a problem with that. I'm not sure there is anything on the next page, but let's have a quick look at it, just to see. This is, I think, just further questions. Let's look at another. <I4/5.1>. This is Neil Smith again and a member of the public, Mrs E***** A*****, 22 October 2016 at 2.25 in the afternoon. Let's look at the next page, please. She says in the middle of the page that she's downloaded something, presumably the information memorandum, to read it, and then says that she doesn't want all her eggs in one basket, she wants some real returns without leaving herself open too much in one place. Mr Smith says:

"I fully understand. Have you a minute and I'll just explain how we operate as a business?" She says that would be really useful. Mr Smith says:

"Okay, fantastic. So we're not a bank or building society ... we are a corporate financier ... and what we do is we raise capital through investors like yourself ... and the way that we make our money is we make business loans with that fund to small to medium sized UK enterprises in the shape of short-term loans, typically charging those businesses anywhere between 12 and 20 per cent."

And the customer says:

"Right. It's a very high rate, isn't it, for businesses?"

Mr Smith says yes. The customer says:

"Is that the going rate for businesses because when you look at the base rates, you know, the Bank of England base rate, which is why we're all getting our piddly returns ... is very low but why is it so high for commercial businesses then?" Mr Smith says, "Fully valid question."

MR JUSTICE MILES: Let me just read through, because it is probably quicker if I do.

MR ROBINS: Sure.

MR JUSTICE MILES: Yes.

MR ROBINS: Next page, please.

MR JUSTICE MILES: Yes.

MR ROBINS: Next page, please.

MR JUSTICE MILES: Yes. Yes. Yes. Yes. Yes. Yes. Yes. Yes. Okay.

MR ROBINS: Let's look at the next one. <I4/6.1>. This is the very next one in the bundle. It is not Neil Smith. This is Damien of Surge. Shall we proceed with my Lord reading it, rather than me reading it out?

MR JUSTICE MILES: Yes. Yes. Yes. Yes. Yes. Yes. Okay.

MR ROBINS: As I say, there are more that we could go through. They are in volume 14 of the trial bundle. But I think there's a law of diminishing returns, because they're all in the same, or substantially the same, terms, consistent with the other materials that we have seen. So, I'm not sure there's going to be a huge amount gained by going through further examples at this point.

What I should, however, take my Lord to is the summary of the misrepresentations that we have provided. We sought to extract and encapsulate various key representations that were made by or on behalf of LCF. We sought to boil them down and to set them out in summary form.

My Lord can see that at <B1/2>, page 2. In the re-re-amended particulars of claim. If we go to page 2, my Lord can see paragraph 7:

"To induce members of the public to become bondholders, LCF represented that:

"(1) Monies from bondholders would be lent by LCF to numerous unconnected small and medium sized enterprises in the United Kingdom (or, from around August 2017, UK businesses) in arm's-length transactions. "(2) Before agreeing to make any loan to any prospective borrower, LCF

conducted the due diligence to satisfy itself that the borrower would be able to pay interest on the loan and to repay the principal amount of the loan on maturity.

"(3) LCF generated income to cover its overheads and to pay interest on the bonds by charging borrowers a one-off fee equal to 2 per cent of the amount of the loan and interest in the region of 10 per cent per annum on the amount of loan until maturity.

"(4) LCF only lent monies to credit-worthy borrowers which were established small and medium sized enterprises (or, from August 2017, UK businesses) with a strong payment covenant.

"(5) No monies were (nor ever would be) advanced to any borrower before the execution of a legally binding loan agreement between LCF and the borrower.

"(6) Every prior loan had been (and every future loan would be) fully secured by debentures and other security agreements in favour of LCF over assets of the borrower with a value materially in excess of the amount of the loan.

"(7) Bondholders' interests would be protected by an independent security trustee which had no connection with LCF or any of its borrowers.

"(8) An investment by bondholders in bonds was a secure investment which was capable of generating high returns, often in the region of 8 per cent per annum or higher."

We set out on page 23 why we said these representations were false. In paragraph 21, subparagraph (1), we said:

"LCF did not lend any bondholder monies to any unconnected small or medium sized enterprises or businesses in the United Kingdom in arm's-length transactions. Instead, LCF lent bondholder monies to the LCF connected companies, including LOG and LOG lent bondholder monies to the LOG connected companies. As pleaded above, the only genuine commercial transactions at arm's-length were the Atlantic Petroleum loan ... and the IOG loan.

"(2) LCF did not conduct any due diligence on the LCF connected companies ... and was not concerned with whether those borrowers would be able to pay interest on the loan or repay the principle amount of the loan on maturity because the loans ... were not commercial transactions but were put in place to create a facade of legitimate business activities in order to conceal the fact that LCF's business was being carried on with intend to defraud bondholders.

"(3) Charges by LCF to borrowers did not consist of a one-off fee equal to 2 per cent ... with interest in the region of 10 per cent ... instead borrowers were required to fund the payment of 25 per cent of all bondholder monies to Surge purportedly by way of commission by adding that payment to the total amount of their loans. This was equivalent to an upfront arrangement fee equal to one-third of the net amount of the loan.

"(4) LCF did not lend monies to credit-worthy borrowers which were established small and medium sized enterprises ... with a strong payment covenant. Instead, LCF lent bondholder monies to the LCF connected companies and LOG lent ... monies ... to the LOG connected companies ... [which] included many companies which were not established businesses but were only very recently incorporated and/or which were dormant or otherwise non-trading ...

"(5) ..."

We have mentioned the advance of monies before the execution of loan agreements:

"(6) Loans were not fully secured ... there was no or insufficient security for the loans ... frequently it has transpired that borrower companies are insolvent ...

"(7) The security trustee, GST, was not independent but was owned and/or controlled by Mr Sedgwick and/or Mr Thomson and was thereby connected with LCF and the LCF borrowers. Further, GST did not carry out any duties as a security trustee and its role and involvement were purely nominal.

"(8) An investment by bondholders in bonds was not a secure investment and was not capable of generating the promised returns. LCF defrauded the bondholders by paying at least 57.41 per cent of all bondholder monies to the first to tenth defendants ..."

My Lord, at a very early stage of the proceedings, we received questions about our formulation of the representations. We were asked, for example, where did LCF say "numerous", where did LCF say "unconnected", and so we explained our process, our thinking, in terms of formulating the summary of the representations we had provided. That's at <B4/2>, page 5. It will be familiar on the basis of points I have made as we have gone through. At (i):

"LCF did not use the word 'numerous' ... that is the claimants' paraphrasing of LCF's description of its business model ... which included representations that: "(a) the pool of potential borrowers consisted of millions of UK-based SMEs which had been starved of credit facilities and which gave rise to many opportunities for LCF to lend;

"(b) LCF was an expanding commercial lender that was seeking to support UK-based SMEs with the provision of credit;

"(c) LCF was ready to expand its operations by issuing more bonds in order to raise additional finance thereby enabling it to increase the number and value of loans it made to the SME sector;

"(d) LCF was aiming to continue to grow to a profitable commercial loan business which could meet the increasing demand of successful, but cash-starved, UK businesses.

"(ii) LCF did not use the word 'unconnected' ... that is the claimants' paraphrasing of LCF's description ... including representations that:

"(a) LCF's borrowers would be SMEs from the UK business community and/or the SME sector; "(b) LCF's directors used their contacts among numerous professionals in the financial, accounting and legal professions to source additional lending opportunities and/or LCF would be hunting for potential borrowers (implying that it was not yet aware of them), eg that LCF would 'seek to identify opportunities in structured finance within the UK SME sector in order to meet the significant lending demand from the SME sector' and/or that LCF was involved in the 'sourcing' of borrowers and/or 'opportunities to lend' from a 'network of industry contacts/brokers'.

"(c) LCF's brokers assessed potential borrowers against LCF's lending criteria before referring them to LCF (again implying that LCF was not previously aware of such potential borrowers and would only be interested in knowing about them if they satisfied the lending criteria).

"(iii) LCF did not use the phrase 'arm's length transactions' ... that is the claimants' paraphrasing of LCF's description ... and the representations that: "(a) LCF was a 'commercial lender' which was lending to SMEs from the UK business community and the SME sector;

"(b) LCF made loans to SMEs on 'commercially competitive terms'.

"(2) The representation ... about LCF conducting due diligence ... was [set out] in the IMs and brochures ... More particularly, LCF represented ... that ..." And we gave quotes, like the reference to conducting "upfront and ongoing due diligence", "pre-lending due diligence", "full due diligence prior to lending", "full financial review of every application", et cetera. Over the page [page 7], please, more in (iii) and (iv). And then (3). The representation about generating income was something from the information memoranda, and we summarised what those documents said. Then (4): "The representation ... that LCF only lent monies to creditworthy borrowers ..."

That was something in the information memoranda and brochures, and we gave the quotes in respect of that. Over the page [page 8], (5):

"The representation ... that no monies were ever ... advanced ... before the execution of a legally binding loan agreement was [set out] in IMs and brochures." Then (6):

"The representation ... that every prior loan had been (and every future loan would be) fully secured ..." Again, something set out in the IMs and brochures. We gave examples. And then over, on the next page [page 9], (7), the representation about independent security trustee was something set out in the IMs and brochures to explain the point.

Then (8), the representation that an investment was secure, or a secure investment capable of generating high returns, was, again, something, if we turn over the page, we see we explained was set out in the information memoranda and the brochures, and we gave quotes to explain all of that.

So, we set out the basis for our summary. My Lord has seen, as we have gone through, numerous examples of those statements being made.

I think it is worth mentioning at this point that the claimants are not bringing a claim for misrepresentation. The relevance of the misrepresentations is in the context of the claimants' claims for fraudulent trading and breach of duty. Misdescribing your business to the public in order to raise funds is a form of fraudulent trading. That's the relevance of the pleaded misrepresentations. So, I think, my Lord, that's as much as I need to say on that topic at this point. I can move to the next topic, which is the first of a series of topics dealing with the position of Mr Careless and Surge Financial Limited, the first of which relates to the commission paid by LCF to Surge Financial Limited.

I should begin that by saying a few words about the invoicing arrangements. We think <MDR00003019> is the last invoice from Mr Russell-Murphy to LCF. It is dated 25 August 2015, in the sum of 25 per cent. My Lord saw previous invoices in the same form from Mr Russell-Murphy to LCF when it went by the name SAFE. This is, as I say, 25 August 2015.

<MDR00016849> is an email from Jo Baldock on the next day, 26 August 2015, to Mr Thomson with the subject "M*****", attaching an invoice, and the attachment is <MDR00003018>. My Lord can see it's an attachment in respect of a bondholder called Mr * M*****. The invoice is from Surge Financial Limited, trading as Investment Experts Online. On the top right, "Terms: Payable Immediately". The date of the invoice is 26 August. The due date is also 26 August. It is addressed to LCF and it spells out that Mr M*****'s investment amount was £60,000. It says commission claimed at 25 per cent, £15,000, the total balance due, therefore, is £15,000.

So, this seems to be the first Surge invoice, the date, I say, being 26 August 2015.

The way it worked throughout is that, as soon as the money from the bondholder arrived, initially, as my Lord knows, the money arrived with Buss Murton, subsequently with GCEN, but, either way, as soon as the money arrived, Surge would send out the invoice. It would be payable immediately.

My Lord has seen some documents which suggest that LCF was a bit slow to pay commission invoices at the very beginning of the period. But, ultimately, LCF paid the Surge invoices very quickly, often within 24 hours or so of receipt of the invoice.

My Lord will also see that this is an invoice in respect of a single client. That was the format that was adopted at the beginning. Surge would render one invoice in respect of each client, claiming commission of 25 per cent of the client's investment. We can see some invoices, for example, dated 7 September. <MDR00003013>. * E*****, an investment of £50,000, commission of £12,500. This is 7 September. <MDR00003014>. Again, the date is 7 September. This is Mrs * B*****.

<MDR00003016>. Again, the 7th. This is Mrs * E*****.

Then <MDR00003017>. Another invoice dated the 7th, this time in respect of Mr M*****. So, there would be one invoice per new bondholder. All the invoices on a particular day would be gathered together and sent across to LCF, usually under cover of a single email. For example, <MDR00031020>. My Lord will see this is an email from Jo Baldock to Katie Maddock, copied to Steve Jones, with the subject "Invoices", and there are three invoices attached: one in respect of C**** D*****'s investment of £1.25 million. The total investment figure covered by the invoices is £1.31 million, 25 per cent of which is £327,500. To take an example, the D***** invoice attached to this email is <MDR00002851>. It is in the form that my Lord has seen, still, at the top, "Surge Financial Limited trading as Investment Experts Online". With Surge ramping up the bond sales, a very large number of these individual invoices were issued. Surge would go through the invoicing process every few days, and the covering emails attach increasing numbers of invoices. We can take a few examples. <MDR00037083>. My Lord can see the date, 25 April 2016, from Jo Baldock to Katie Maddock, attaching a long list of invoices, the commission on all of them adding up to a little over £42,000.

<MDR00038536>, another example, to Anna Golding at LCF. We believe she may be Spencer Golding's daughter. My Lord can see a large number of invoices attached. At <MDR00040493> -- as I say, the number of attached invoices keeps on growing. At this point, a very large number attached. The total commission of almost £100,000.

Then let's have a look at <MDR00043038>. Another email in similar terms, we are now to June 2016, with a long list of invoices attached.

<MDR00047366>. A similar email attaching a large number of invoices. The total commission being just over £104,000.

There is normally by this sort of point a gap of two or three days between the emails. Sometimes they seem to be sent once a week, but they are usually more frequent. As time goes by, the gap between the emails shrinks and the number of invoices attached to each email grows. We can see that from some further examples. Let's look at <MDR00049581>. This is 14 July 2016. My Lord can see the attachments. There is a huge number of invoices attached. If we look at the next page, we can see that the total amount of commission on these invoices is £212,725. Then <MDR00050765>. Another email with a very long list of attachments. <MDR00051449>. The same again, almost £100,000 in commission on a single email. <MDR00055415>. Again, a very lengthy list. If we could look at the second page, please, it continues over, possibly, onto the third page, and the total commission is almost £167,000.

Shortly after this point, there is a move to what might be described as composite invoicing. Instead of having a single invoice claiming 25 per cent of each bondholder's investment, there is an invoice

that covers numerous bondholders. For example, <MDR00003865>, where we have a single invoice with a large number of investors. Let's have a look at the next page. My Lord can see the total amount of the investments is £223,000. 25 per cent of that is £55,750.

With the increasing volume of bond sales, it gets to the point where Surge is sending out two invoices like this per day. There is one in respect of the bonds, the non-ISA bonds, and one in respect of the ISA bonds. We can see a typical bond invoice at <MDR00004649>. This is 8 December 2017, commission of over £44,000. This is the non-ISA bonds. It's headed "LCF Bond Investments BSR", so I think it's bondholders who came through the BSR route. The ISA bond invoice should be <MDR00004650>. This is an LCF ISA investment invoice. Over on the next page, we can see that the investment amount is £373,200. 25 per cent of that is £93,300. The date is the 8th. So, as I say, two on the same day. Those two are on the 8th. The next week, for example, there are two a day on the 11th, two a day on the 12th, two a day on the 13th, two a day on the 14th, two a day on the 15th, and that pattern continues. Throughout 2016, 2017 and 2018. LCF is paying these invoices by making numerous, still substantial, payments to Surge's bank account every day of the week.

My Lord can get a flavour of that from schedule 2 to the neutral statement of uncontested facts at <A1/6/421>, which shows the position around the time of the invoices we were just looking at. Payments on the 5th, the 6th, the 8th, the 11th, the 12th, the 13th, the 14th. Over the page, please, we see payments on the 15th, the 18th, the 19th, the 20th, the 22nd. If we go through to the next year, page 425, we can see that the payments, I say, are made pretty much every weekday in very substantial sums. Let's look at the next page, to see more of the same. As my Lord knows, the total amount paid to Surge over this period is in the region of £61 million.

The next topic to address relates to the origin of the 25 per cent commission. We have seen that before, but I think we should go back to it in context. <SUR00001292-0001>. It is Mr Careless's email to Pat McCreesh and Phil Nunn, who are the two individuals behind Blackmore, dated 9 July 2015. Mr Careless says: "Right chaps, I'd like to give you a full update on where we are up to. I apologise in advance at the length of this email!"

My Lord has seen that he sets out the position in respect of the sale of leads to Blackmore's pension operation and he says, halfway down the page, "We can deliver 6,000 leads if they want to run weekends". Then he deals with Blackmore Estates and says: "Russell-Murphy (JRM for short!) is my new sales director. I have had to cut a very strong deal on my side to secure him ..."

We will see what that is in a moment:

"Having used our leads in March when he put £1 million into the SAFE product he can see the huge opportunity we have. His sales skills are second to none and he will be building us a sales team to deliver. He starts at 9 am tomorrow morning from my new offices." Then over the page, Mr Careless explains, in the middle of the page, that there are the two companies, InfoConnection and Surge Financial Limited. He says: "InfoConnection is entwined fully with you guys ..." And then, at the bottom of the page, he says that they're doing nothing but invest safely. Over the page, he says that John is "super impressed and I like him a lot":

"John has set up a deal with SAFE which will pay 25 per cent commissions. I intend to put IS live and deliver leads and have John and another sales guy who he wants to hire put £2 million into that bond in the first month. That is £500,000 in commissions to Surge Financial Limited over the next six weeks. I am currently eating what I kill with you guys and this venture is simply a drive for me to ease my cash flow issues. I am acutely aware that owning a fund is far more profitable in the long run but such big commissions are appealing especially with a product John has already sold well using the

very same leads. I would welcome you running due diligence on that deal if you wanted as I know you'll be screaming 'RINSE!' It's not." My Lord can see the 25 per cent commission was something Mr Careless said had been set up by Mr Russell-Murphy. Mr Careless also explained the state of play in another email a few weeks later, <SUR00129198-0001>. On page 2, we see Mr Careless's email to Mark Partridge, who he describes in other documents as "a trusted friend and advisor". Mr Partridge is an accountant. Mr Careless says: "Mark.

"Welcome back from your seventh holiday this year. "Here is an overview of what is happening in Carelessville.

"Aska Professional Limited.

"This company is not trading.

"Liabilities:

"Me, a director's loan of £85k.

"HMRC c£100k.

"The following two companies in the next 12 months will make at least £5 million EBITDA.

"InfoConnections Limited.

"Currently owned 100 per cent by Kerry Graham. "I hold an option to take 90 per cent shareholding and board seat for £100 at any time [in] the next 5 years ...

"This company is in a JV with a company called Blackmore Global (BG).

"We co-own a number of websites, the main one being www.the-investment-experts ... (TIE)."

Over the page, please. There is the screenshot of The Investment Experts' website we have seen before. Mr Careless continues:

"BG is owned by two guys aged 40, called Pat McCreesh and Phil Nunn. They are ex-City traders. BG is an alternative investment fund which is two years old and has £24 million assets under management (AUM). It operates from the Isle of Man but has offices in Manchester with circa 30 staff. BG takes people's pension funds and invests part of it in a multi asset approach. Last year it's coupon was 8 per cent. I met BG by selling them pension leads ...

"TIE produces cash investment leads. Around 70 each day. Each one has c£35k to invest. They look like this ..."

And he sets out what the leads look like. It is an enquiry from Debbi Wright, saying:

"I am looking to invest £100,000. What would you suggest?"

And he says:

"That is £100 million in cash leads looking for an investment each month. I have two offices now. My office in Hove at Maritime House with six staff who produce the leads and a second office in Eastbourne (long story) who are the sales office." "Eastbourne office."

There is a photo and a dimly lit room. We can't quite make out who is sitting in it. He says: "The sales team is led by John Russell-Murphy (JRM) who is now a shareholder in both of my companies. We also have eight sales consultants who deal with the leads from Eastbourne. They earn 1 per cent

commission for funds they convert into one of our products. We are looking to have 20 guys in total. They work from a script.

"Here is JRM."

There is a photo of Mr Russell-Murphy. Mr Careless continues:

"I own 33 per cent stake in a property investment fund called Blackmore Estates (BE) ... Phil and Pat own the other 66 per cent between them. The deal is that we share the cost of the lead generation 50:50 and then I receive 7.5 per cent commissions of funds into BE. We are currently putting into this fund circa £3 million a month. We do that by offering the TIE clients a fixed rate property bond at 6.5 per cent per annum/2 years or for 5 years with a deferred interest option with a 5 per cent bonus. They receive a loan note [from] BE. "The cash is used to invest in a mix of social housing with Housing Associations as well as other property opportunities that arise.

"We track the sales using a CRM called Pipedrive; here is a snapshot ..."

That's over on the next page [page 5]. Mr Careless says:

"The target into BME is £5 million a month. "We are building a £100m AUM UK property fund within two years.

"That is worth, if exited, pound for pound. A well managed UK property fund with £100m AUM would sell for £100m to a larger fund looking to increase their own AUM. Retail money is far more valuable than institutional for various reasons.

"Surge Financial Limited.

"Currently owned 100 per cent by Kerry Graham. "I hold an option to take 90 per cent shareholding and board seat for £100 at any time in the next five years ...

"This company operates a separate website called www.invest-safely ...

"Again this site generates cash investments leads, around £50m a month. These also go to my sales team in Eastbourne, however they sell a different product with these leads as it is owned by me, JRM and Kerry. I am the major shareholder. They sell a 2 year bond (8 per cent per annum) called London Capital & Finance. It is an SME lending company that also provide mez and bridging finance. The site is here."

He gives the link:

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

"We have just started with this product but JRM has known the company for some time and we have conducted DD. The deal for 25 per cent is because we can shift big funds. Our target between now and 1 September into LCF is £2m. That is comms, paid in real time of £500,000 into SF. We can do £3m+ a month once the guys are trained on the product.

"That is the overview."

And he asks for questions, comments and queries. Mr Partridge replies on the next day, back on page 1 of this document. He says:

"Mmm ...

"Where do I start?"

"Difficult to see why anyone would invest in BG -- looking at their website. But it isn't my money. Have you seen a copy of their accounts as audited by GT? "Blackmore Estates is errored and [LCF's website] needs a password.

"So you effectively own TIE (InfoConnections Limited) which provides leads to BE (which you own 33 per cent) TIE gets 7.5 per cent commission on funds invested into BE which is used to pay 50 per cent of Eastbourne, all of Hove and your lifestyle. "Are Eastbourne sales team commission only? "What commission do the other guys get, Phil and Pat? Have you any evidence of their track record in social housing?

"Also you effectively own Surge Financial Limited which provides leads to Eastbourne which sell one product, an 8 per cent bond, SFL get 25 per cent of any bonds sold. What commission do your guys get? "As you say this commission is insane. On a flat rate the fund would have to grow by 55 per cent in two years to pay your commission and the interest. "Who are LCF, is this the aim stock?

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

So that's the view of the trusted friend and advisor. But, as my Lord knows, Mr Careless proceeds to sell bonds for LCF and take the 25 per cent. The commission payable continues to grow. We should have a look at <SUR00002362-0001>, where, at the bottom of the page, Mr Jones, who is Mr Careless's finance director, sets out a summary of commissions that are on the way in from LCF, principally, there's one from MJS. It is a little over £260,000 in total in bold on the right-hand side. On the left, we can see Mr Careless asks:

"So £260k of comms by the end of the month possible/likely?"

And Mr Jones replies:

"By the 2nd October yes, end of September - possibly. It is very finely balanced, but give or take a couple of days, bloody exciting!

"Yep, there are still plenty of deals being worked, including the 3 'big' deals JRM is working on." Mr Careless replies, copying in his friend Ronak Patel, who is a GP:

"200k profit for one month."

So, my Lord can see, if the commissions are £260,000 and the running costs are 60, that the profit is £200,000 a month:

"Not including pensions or best savings advice. "Oh and we are embryonic.

"Good to have your support buddy."

On the same day, Mr Careless sends an update to Mr Partridge, <SUR00129449-0001>, where, if we look at the next page, he's forwarding the pipeline update provided to him by Mr Russell-Murphy. It provides for a combined total of over £1 million in the pipeline. On the previous page, where Mr Careless forwards that to Mr Partridge, he says:

"Nine days of sales left too. Plus I have pensions and best savings rates. Hello helicopter." It seems to be a reference to Mr Careless's longstanding ambition to buy a helicopter, which we see mentioned in other documents.

<SUR00129510-0001>. Katie Maddock, at the bottom of the page, has emailed Steve Jones to say that £170,000 would be released "today". That's commission payments. She apologises for the -- on

behalf of Buss Murton for the delay. This is when it was still being run through Buss Murton's client account. Steve Jones forwards it to Mr Careless, saying:

"That should be another £47,000 comms tomorrow!" I think it is £170,000 being released from Buss Murton to LCF. Then the commission is £47,000. Mr Careless forwards that to his father on the same day. <SUR00002843-0001>. We get another email which sheds light on the profit margin. Mr Careless emails Steve Jones with the subject "Thoughts", saying: "Just a few thoughts on our exposure.

"The only fixed salaries not tied to sales are going to be and will be only 6 people.

"...

"Payroll basic as a scrape: £30,000.

"Our offices and fixed costs, say £10,000. "Pensions.

"£1,000 minimum each for three folks, but they are already hitting £30,000 in revenues as a run rate in month 1."

At the bottom:

"If JRM and the team just hit £500,000 a month, which would be disappointing, we would be £100 in the profit.

"The truth is, from November I will expect £1 million as an absolute minimum every month. "That's £200,000 profit."

Mr Jones says at the top of the page:

"Yep agreed in principle, however the reality is that your earnings are a minimum of £25,000 per month and these also need to be covered, so £65,000 per month min required ..."

So he's saying that the overheads are higher than Mr Careless has envisaged, but there's, nevertheless, a high margin on the activities.

<SUR00131245-0001>. Mr Jones has sent an update to Mr Careless, who forwards it to his father saying: "Fyi Pops.

"£180,000 cash in bank.

"£140,000 certain next week.

"£350,000 probably next week.

"Feb we go for £1 million revenues and £650,000 net profit."

So, again, an indication of a very substantial profit margin.

We see that reflected in the Surge accounts at <MDR00224027>. These are the accounts for the period to 31 January 2016. So Surge has only been trading for around -- well, less than half a year, at this period. We can see, on page 6, the profit already is £353,870, and that has increased the net assets considerably on page 7. They are now £344,970. So, this is the position on 31 January 2016.

We can see <SUR00007377-0001>, a reflection of Mr Careless's excitement about earning such large commissions.

I should mention, before we look at this document, maybe we should go to it now, I don't know if my Lord has seen it yet, at <A1/12/1> is something that I refer to as the "telephone directory", which has been prepared for the purpose of this trial. It tells you, in the left-hand column, the Bates number of the document and the family date, the document date, it tells you the document type, whether it is a text message or a WhatsApp message, and, most helpfully, it tells you the names of the participants in the call, because, otherwise, you can find yourself looking at a text message and you see that it's between a number that doesn't particularly mean anything, it's not immediately recognisable, and some other device owner, and you have no idea who is involved in the communication. So, this has been prepared in order to overcome that difficulty. The document that we see eight down is the Bates number ending ***** , so we can see that that is a conversation between Steve Jones, whose number ends 986, and Mr Careless, who is the device owner. If we go to <SUR00007377-0001>, this is the document we saw a moment ago, my Lord sees at the top "Participants", the number ending 986 is Mr Jones, the device owner is Mr Careless. So, when we read down, the first message is from Mr Jones, the second message saying "Okay, cool", is from Mr Careless. On page 2, we have quoted this in our opening submissions to show sort of excitement by Mr Careless about these high commissions. It relates to the prospect of getting a large investment from ***** , whose daughter ***** was in hospital. Just over halfway down the page, the device owner, Mr Careless, says:

"Oh, by the way, if JRM pulls off that 1m Friday then I'll be buying a 70k car from the comms the week after."

Then he adds:

"Operation Fuck You Everyone Who Didn't Believe." And Mr Jones likes the sound of that and he says: "Sounds like a plan!"

We see, again and again, the tremendous sense of excitement on the part of Mr Careless about the large amounts of money coming into Surge's bank account. There is another document that casts light on his state of mind at <SUR00011155-0001>. My Lord can see it is an email that Mr Careless sent to himself on 15 March 2016 with the subject "Pitch 2". The attachment is "Document 2.docx". That's <SUR00011156-0001>. It seems to be a script for a speech that Mr Careless is planning to give to employees. We see that from the sort of notes to self that run throughout it:

"Start with breaking news. EB robbery." Don't know what that means:

"Before I begin to discuss your plans for the rest of this month, let's take 5 minutes to have an overall chat. Let's keep that light hearted.

"What is the meaning of life?"

"The meaning of life is the meaning you give it. "Fundamentally, most people want happiness as defined by them. To get that they want success, it is just that success is defined differently by each individual person.

"Let me tell you mine. I am going to build a £1 billion ... investment company.

"I will accomplish that if I start today with zero, on my own. Nothing will stop me. If one of or all of you leave it won't stop me. If there is a property crash, it won't stop me. I will achieve my goal. That is not an average goal. To achieve my goal, I need to ensure that I am not average. It also means I need to surround myself with people who are also not average. "Let me briefly explain average. No-one here sees themselves as average. But simple maths means some of us must be. We can't all be

above average, can we? As the main star in your own film as life you see yourself as above average, the hero in your own movie. I mean who wants to be mediocre, run of the mill? We all want more success as that breeds happiness. Most people get around being average by hanging out with people of the same peer group, social status, financial standing. Hanging out with people with more than you if you have a small mind-set will make you feel average and you wouldn't want to feel that."

Then there seems to be a note to self:

"Street kids story here.

"I am not going to be average and if you come with me you won't be either. Let me tell you why. Because if you are I will cut you loose. You will go on your own journey. This goes for anyone in this room. Do not get comfortable around me. There is no-one here I will not remove from my mission if I feel they either don't have the fight anymore or are becoming comfortable. "The hungry hunter fights best. This is for most people. It is why the rich are never satisfied no matter how much they have but the poor tend to just accept their lot. Are you a predator or a prey? Be advised if you are in this room and you are with me, you are in my pack and you are a fucking predator. But if you are weak or slow me down, I will cut you loose. "Remember that. It is important.

"However, guys, if you trust my judgment, believe in my big goals and move at the pace I set, I will provide you with a strong purpose, a meaning. This will lead to ongoing happiness. A product of this ... you will also get rich.

"Let's quickly talk about happiness.

"Happiness is fleeting. It comes and it goes, sometimes it is momentarily. But to cross its path more than most one should create purpose. That is a universal rule of life.

"Purpose will create happiness. The bigger your purpose, the more fulfilled you will feel. The smaller things in life, the gossip, the arguments, the what's for dinner, your broken fridge, your toothache, having to move house will become no big deal. You will float past these things as you know you are destined for something greater.

"Don't sweat the small stuff.

"I want anyone here to think big. Like me. I think big because I know it provides big goals and huge purpose which creates meaning and happiness. "That means setting big goals.

"You know mine.

"The problem is very few people ... make the sacrifices required to become successful." Then over the page:

"I have fought alongside four people, shoulder by shoulder who now have over £100m. They all had big goals that they didn't let small things get in the way of. The internet not working, find a new guy and he wasn't up to it they sacked him and moved on, not enough leads, they find more. Conversion is bad, change up the process.

"Life is too short to be little.

"With me I will harness our collective purpose and I will direct it towards success.

"Your mind-set to be successful on this journey with me is this:

"1. You need to believe you can succeed. This is fundamental.

"2. Believe in the power of belief, it is more important than mere intelligence. Being smart is nothing without belief.

"3. Never [use] excuses as shields. It was the leads, my back hurts, the trains are fucked. Find a way to get your job done.

"4. Turn problems into opportunity's. This requires number 6.

"5. Have a bias for action. A good plan executed violently today always trumps a perfect plan planned [for] tomorrow. Winners do today what losers chat about.

"6. Lose the fear and build confidence. Fear of what? Not taking a risk is your only fear. Being mediocre."

Then he says:

"I expect enthusiasm for this mission from everyone. We are building a £1 billion ... fund and that means three things:

"1. We have a big goal.

"2. We hire only the best people ...

"3. We fight for each other and we find a way to hit the goals I set."

Then he sets out orders for the month. We don't need to look at the detail. Over on the next page [page 3], we see how he concludes:

"We need to begin to move quicker or our growth will stall. Everything is there for the taking, my orders are issued, it is time to execute."

So, as I say, my Lord, one gets a clear sense of the single-minded determination of one man to make money and to prioritise that objective above anything else to ensure that no obstacles stand in his way. My Lord, I see the time. I wonder if that would be a convenient moment for the shorthand writer's break?

MR JUSTICE MILES: Yes. We will take five minutes. Thank you.

(11.44 am)

(A short break)

(11.50 am)

MR JUSTICE MILES: Mr Robins, I have got an appointment over lunchtime, which may slightly overrun. So, what I was going to suggest is, if we go on until 1.10 pm on this session, and then we will start again at about 2.10 pm this afternoon. Is that all right with the transcriber and everyone else? So if you carry on until about 1.10 pm.

MR ROBINS: Absolutely. My Lord, we were looking at Mr Careless's state of mind and his determination to make a large amount of money. We see more of the same at <MDR00040644>. This is 13 May 2016. At the bottom of the page, Mr Careless says:

"Team.

"In my view, the only risk in life is not taking a risk.

"No-one became successful by waiting.

"What you want from life is there for the taking but you have to get up and go and get it. You have to make it happen.

"Everyone who is reading this email I believe in. I believe you have what it takes to be successful or I would not have allowed you to stay on this team. "This is a winning team.

"Our business is growing at a pace rarely seen and we are on the cusp of creating significant value in a very big industry.

"Don't be average. Avoid being average at all costs. If you are average, you will be better working somewhere else and I will find you out and you will leave. If you are not 100 per cent committed, or you are coasting, I will remove you. To be clear, if you are with me, you are not in a job; you are in an opportunity. I can assure you that opportunities like this occur very rarely. Don't squander it. Be so good that I can't do without you and that you stand out. "Remember that talk is cheap. Winners show their worth by their actions. I can see who is good and who is great.

"This team is becoming stronger, more skilled and more motivated. I can see the growth mind-set emerging and people are becoming biased towards being action oriented. These are the traits of great teams. With a team like this, anything is possible. "Have a good day today and make it count." This is typical of the sort of motivational email that Mr Careless sends to his sales people to encourage them to work hard.

But, at the same time, it's obvious that the success of Surge is really due to the extremely high level of commissions paid by LCF, and one sees that a few days later, on 16 May, at <SUR00021045-0001>. This is an email, we see, about a quarter of the way down the page, from John Russell-Murphy to Mr Careless, and Mr Russell-Murphy says:

"Morning Paul.

"Thanks for the update, my main focus as always will be to push LCF, this is our cash cow and I won't stop until the 4 million target is hit."

He says he thinks the £4 million target is very achievable. Mr Careless responds at the top of the page:

"I'm with you."

So there's a sense, we see it in other documents as well, that LCF is the cash cow. We see again Mr Careless's excitement in a text message at <SUR00026965-0001>. As the directory we saw confirms, the number ending 986 is Mr Jones, the device owner is Mr Careless. On the next page [page 2], Mr Careless says:

"Just had a 23k in."

Mr Jones says:

"GCEN now £227.2k. I haven't even had a chance to get a glass of wine yet!"

Mr Careless says:

"Not inc JRMs?"

Mr Jones says:

"Correct."

Mr Careless says:

"Woah.

"56k comms.

"One fucking day."

Mr Jones says:

"Not too shabby, eh?", and puts in an emoji. Mr Careless says:

"Dude we are making a fucking fortune", and the emoji is, I think, a fist.

"Mr Jones replies:

"Hell yeah", with a fist emoji.

Mr Careless says:

"I don't see any company in this town making anything close to our growth this last 6 months.

"#fuckyeah.

"#£500m.

"#couldn't do it without you."

Mr Jones replies:

"That is very true -- all of it", and adds that he's looking forward to the car.

Mr Careless adds:

"I always said to you that if you trust me, eventually I'll get is where we need to be. You believed.

"Whenever you drive that car, always remember belief can change anything."

So, it's really the 25 per cent commission that is behind this. As my Lord has seen, it is Mr Russell-Murphy who agreed that with LCF. That's referred to at <SUR00035780-0001>. It is an exchange of text messages, and the number ending 3244 is -- let me just go back and check it -- Kerry Graham, as she then was. If you go to the telephone directory at <A1/12>, this is <SUR00035780-0001>, which is about halfway down the page. Yes, ending 3244 is Kerry Venn, Kerry Graham as she was then. The device owner is Paul Careless. If we go back to <SUR00035780-0001>, my Lord sees, on the top of the page, Ms Venn's number and Mr Careless as the device owner. On the second page, page 2, Ms Venn says:

"Have you spoken to JRM about it yet?"

Mr Careless says:

"I'm leaving for EB c10 am."

I don't know if that's a reference to Mr Barker.

MR JUSTICE MILES: It might be "Eastbourne", I should think.

MR ROBINS: Oh, "Eastbourne". Ms Venn says: "I believe you are opening a can of worms ... direction needs to come from you as leader." She says:

"If my deal is changing, I would request some heads up so no surprises. I.e. If the starting point is PC: 45% JRM: 45% KG: 10% and we all dilute to let new shareholders in, then there is no surprise to me and up for dilution so everyone gets looked after. If it's different to what we've always discussed please just let me know ahead of time. Is that ok?"

Mr Careless says he hates keeping people out of the loop. They continue their discussion. About three-quarters of the way down the page, Ms Venn says: "Good luck with JRM. Let me know how that goes." And Mr Careless says:

"I disagree with you. Without JRM we wouldn't be here today. He increased comms to 25 per cent. It's the main factor in our current success. Always better to have a smaller slice of a bigger pie." Mr Careless recognises the 25 per cent is the main factor in Surge's current success.

At <MDR00056897>, we see an email from Mr Careless to various members of staff, Mr Russell-Murphy and Ms Graham are there in the cc field. He says: "Morning.

"Having seen Jo's email to the AMs yesterday, I am confident August will beat July's numbers. I am also confident that with a proper coupon operation September and October will be good months as we get new bonds from existing clients. However, despite a strong month so far, we need to absolutely guarantee September's numbers are an increase. Month on month growth is an absolute topline figure that we must work on growing above everything else."

He explains how he hopes to achieve that objective. But, again, the emphasis is on increasing the amount of bond sales and, therefore, commissions: "Month on month is an absolute topline figure that we must work on growing above everything else." That's the priority.

There is some further discussion of

Mr Russell-Murphy's position at <SUR00056072-0001>, this is now in November 2016. We need to go to page 3 -- that might be right. Well, we can see at the bottom of page 2, top of page 3, Mr Russell-Murphy sends an invoice as instructed by Paul. Mr Jones replies on the left to Mr Careless:

"This is a joke, isn't it?"

And Mr Careless replies:

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

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

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

"I did tell him it'd be paid Friday due to pay day." Above that, Mr Jones says:

"Can't help but be angry about it every time. It is so unfair. He does absolutely nothing to earn a penny of it. He has had the £700,000 already so nothing to chip off really."

Mr Careless replies:

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

On the previous page, we see Mr Jones says: "I'm sorry, I can't help it. I'm only human. I hate to see him just pull our trousers down and take what he doesn't deserve whenever he wants. Your £700,000 is a loan, he isn't owed that. At the rate it is going the company won't make a profit to pay a dividend from anyway. Stay strong and don't give in to him every time. You own 90 per cent, remember that." On the left, Mr Careless says:

"He owns the same as me. Technically 90 per cent yes but he owns half. Stop fighting it. You just annoy yourself and me, it's pointless. If anyone should be hurt it's me. It's the deal we struck. I don't renege on deals. I decide if it's a loan or a dividend." Mr Jones says:

"I hear what you are saying and respect your decision. It can't be a dividend, as the company won't make enough profit this year to pay a dividend at that level, it has to be a loan. I really don't enjoy feeling the way I do about JRM. If he actually closed the occasional deal, I would feel different. As for renegeing on deals, as you say the only constant is change. I will send the payment tomorrow once I have bank payment headroom and won't say anymore on the matter."

Mr Careless replies, "Deal".

My Lord can see from that that Mr Russell-Murphy's entitlement, in return for securing the 25 per cent deal, was to receive equal payment with Mr Careless. Mr Careless refers to the need for them to be equal. Mr Jones doesn't like it, but that, says Mr Careless, is the deal he struck.

We see Surge's financial position from the subsequent accounts, <MDR00224028>. This is for the year ending 31 January 2017. On page 6, my Lord can see the profit figure has increased very substantially from the previous year. It is now over £2.4 million. On page 7, the net assets are over £1.5 million. I think we should also, before turning to the next topic, have a look at <SUR00062966-0001>, which is an email dated 31 January 2017. That's the day of the end of the financial period that we just saw in the accounts. Mr Careless says:

"Team.

"A note to the entire Surge team to say well done to every single one of you.

"Today has been our best day on record. "January has been our best month on record. "As a group, we broke £1 million in sales in one day.

"Great business is simply about great people. "Roll on February."

We see:

"PS: The day isn't even over yet ...

"PPS: I expect to break this record several times in the next 30 days."

Mr Russell-Murphy replies:

"Great figures. The company is going from strength to strength and we are getting rich buddy!" And then <SUR00065206-0001>. Mr Careless emails various people to say:

"Team.

"I have just been informed we hit our third £1 million in a single day between bonds. "We have a new office, new lead sources, new AMs lined up, new tech lined up.

"It's going to get much bigger this year. Momentum is building."

And then <MDR00081987>. I think it is on the next page, or the page after. We see Mr Phillips, on the right-hand side, sends an update. Mr Careless says: "Feeling better?"

Mr Phillips says:

"A little. If it's okay I'm going to work from home~..."

"£7 million hit for the month, amazing Paul ..." Mr Careless says:

"If you stay at home, ensure you communicate with the team and they are fully aware of what is expected of them. I only found out that you were at home late last night. You need to acknowledge it is your responsibility and that I hold you accountable to ensure calls are not missed during opening hours. No excuses will be tolerated on this moving forward. I am building a £1 billion business and I expect absolute professionalism. I pay the best. I expect the best. £7 million was expected in March, it was the target I set. We hit our goals not by accident but by planning and execution. Next month we hit £8 million." On the previous page, Mr Phillips says he feels a little better. If it is okay, he is going to work from home. Have we seen that one? Yes, we have. On the left-hand side, Mr Phillips says he's had clear communication with the teams throughout the day and Mr Careless replies:

"I'm going to take that as an acknowledgment of your responsibility moving forward. You need to understand my determination to succeed will not allow me to be slowed down."

He says he will discuss a bonus plan with Mr Phillips on Tuesday. So, again, we see the determination on the part of Mr Careless to succeed, as he puts it. His determination to succeed will not allow him to be slowed down.

My Lord, the next topic relates to a company called RPDigital. It seems to have been named after Mr Careless's friend Mr Ronak Patel, but Mr Jones became a director of that company and got control of the bank accounts. We see that from <SUR00129473-0001>, this is on 15 September 2015. Mr Jones reports to Mr Careless that he's dealt with various things. The first is: "Liaise with Ronak to ensure I have control of RPDigitalServices' bank account -- have tried several times to do this online, however Barclays' website keeps displaying error message. Spoke to bank and they are sending out a paper mandate to be completed. "I will also ask to be added as director of RPD." He adds "Done", so that's been done. We see, in due course, the first of those items is also completed and Mr Jones has control of the RPDigital bank statement. The sums which are spent on Google ad words, as they are called, are paid by RPDigital. That increases the prominence of LCF's website in Google search results and puts adverts for LCF at the top of the page when various key words are searched.

Those sums are paid by RPDigital and Surge provides the money to RPDigital to pay those sums. We see that from the RPDigital bank statements. For example, <SUR00009475-0001>. This is from the RPDigital bank account with Barclays. Covering the period from 5 December 2015 to 4 January 2016.

My Lord can see that money out is a series of payments of £500 each to Google. On the second page, we see that money comes in from Surge Financial and there's one payment from InfoConnections.

The payments out, as well as payments to Google, and there's a payment to Microsoft Bing, include a payment to Mr Careless of £1,000 for consultancy, another payment to Mr Careless for consultancy £5,000 and another payment the next day to Mr Careless, £1,000 for consultancy, and then a lot of payments to Google, and then, on the next page [page 3], we see more of the same, payments to Google, a payment of £1,100 to Mr Careless for consultancy and then that's all funded by £12,000 from Surge Financial.

Then more payments to Google, and there's a payment of £10,000 to Mr Careless for consultancy. That's all funded by money that comes in from InfoConnections and Surge Financial.

Then the next day, 14 December, £10,000 to Mr Careless for consultancy and a lot of payments of £500 each to Google. Maybe let's look at the next page to see if it's more of the same. Yes, more payments to Google, £1,000 to Mr Careless for consultancy. Payments come back in. The first is £6,000 from Surge, but then there's a rejection of the £10,000 to Mr Careless for consultancy with the narrative "insufficient funds to make this/other payments". So, the general picture that we see is that Surge has to provide RPDigital with a float to ensure that it has enough in its bank account to cover the payments going out to Mr Careless and to Google and to Microsoft Bing. We see the same again at <SUR00009477-0001>. This is the next month. The payment to Google is now in the region of £3,000 or £4,000 a day. We see the payments to Google of £500 each, £6,000 comes in from Surge. The next day, more payments to Google. Over the page, more payments to Google and just below the middle of the page a series of payments to Mr Careless with the reference "Consultancy", another £6,000 comes in from Surge and then more payments are made to Google.

Let's go forward to page 6. We see the same pattern. Payments, now £1,000 each, to Google; about a quarter of the way down, payments to Mr Careless with the reference "Consultancy" £1,000, £2,500; more money in from Surge; more payments out to Google. We see a development of that, again, a few months later, at <SUR00047209-0001>. As well as payments to Mr Careless, there are now payments to Mr Jones and also to a company called Aston Beckworth, which is owned by Mr Careless and Ms Venn. <SUR00047209-0001>. This is now the period 4 June to 4 July 2016. My Lord sees the various sums to Google. Then over on the next page, in the second half of the page, there is £5,000 to Mr Careless with the reference "Consultancy", £5,000 to Ronak Patel with the reference "Consultancy", then more sums to Google. The next page, please. This is all Google funded by Surge. Over on the next page, please. More to Google. The next page [page 5]. We have got, in the middle of the page, after the various payments to Google and one payment to Microsoft Bing, a payment to the company that I mentioned, Aston Beckworth. That's funded by two payments of £12,000 from Surge. Then more payments to Google. At the bottom, another payment to Aston Beckworth. We see the pattern continue. It shifts to be payments principally to Aston Beckworth rather than to Mr Careless personally, as far as we can see, but those do continue, as do payments to Mr Jones. Let's look at <SUR00070674-0001>. We are now into 2017. 4 March to 4 April. Lots of payments to Google. Then on the second page, there's a payment just over half the way down the page, £18,000 to Aston Beckworth, £60,000 comes in from Surge. Then I think there might be another on page 7, after lots and lots of payments to Google. Yes, £12,000 to Aston Beckworth. We get an explanation of how the RPDigital bank account was operated in an email from Steve Jones at <SUR00080516-0001>. It is an email from Steve Jones to Ashleigh Newman-Jones and, my Lord, we have said in our opening written submissions that Ashleigh Newman-Jones is Steve Jones's son. I've, I'm afraid, no idea where I got that notion from. I don't see anything to contradict it, but I can't immediately find the source of that information either. But I'm not sure it is particularly relevant. We can look into it. He says to Ashleigh Newman-Jones with the subject "While I am away":

"Daily -- need to keep an eye on RPDigital bank account. There is circa £25,000 per day going out of the account so I don't like to let the balance drop below £40,000. Top it up with £50,000 (+ VAT) invoices from Surge as and when needed. Invoices to be kept in sequential order, see reference on last invoice paid from Surge Bank account and continue from there (template attached).

"Top-up funds to Aston Beckworth when drops below £10,000, funds from RPDigital, £10 or £15,000 plus VAT, again ensure correct invoice number used (from last payment reference) invoice template

attached." Then he gives the bank log-in details and the PIN. And then explains about invoicing Blackmore bonds. As I say, Surge was used just to provide top-up funds to RPDigital to ensure the account stayed in credit and RPDigital was then used to pay top-up funds to Aston Beckworth, to ensure that that account also remained in credit.

We see that in operation at <SUR00036741-0001>, where Ashleigh Newman-Jones emails Steve Jones at the top of the page to say:

"Printed off all the invoices.

"I had to send Paul another £30,000 from RPD yesterday for his car so I topped RPD up with £30,000 from Surge. I assume that's all I needed to do. "Hope you are having a great holiday, it looks lovely."

So that covers the position in respect of RPDigital. It is used to make the payments to Google but it's also used as a means of paying out additional sums to Mr Careless and others.

The next topic to address is the lack of any written agreement between LCF and Surge.

MR JUSTICE MILES: Has anyone added up how much was paid to Google?

MR ROBINS: There is some evidence about that. There is a bit of uncertainty in the evidence. We can dig out for your Lordship -- I think it is Ashleigh Newman-Jones calculates a figure which he provides to Mr Careless. I think it is, from memory, in the region of £18,000 [sic].

Mr Careless then provides information to -- I think it is a PR person who is helping Surge deal with the fallout of LCF's collapse and Mr Careless has increased the number to something in the region of £26 million. But we can dig out the --

MR JUSTICE MILES: You said £18,000. Did you mean £18 million?

MR ROBINS: Did I say £18,000? I'm sorry. I think the first figure given is £18 million, but the figure then passed on, I think I might have said, from Mr Careless to the PR person is £26 million. But we can dig out the documents and provide your Lordship with the details about that.

The relevance, ultimately, is, of course, a very substantial part of money from new bondholders is being spent on attracting further new bondholders at levels of expenditure which are obviously entirely unsustainable, given LCF's business model or the way it described its business model to the public.

The next topic, as I say, is the lack of any written document. This includes Mr Thomson's forgery of an agreement bearing Ms Venn's signature to deceive PricewaterhouseCoopers. So it is an important topic. We start at <EB0006648>. It is an email that we have seen before. At the bottom of the page, Kerry Graham emails Mr Thomson to say that she hopes he is pleased with the website and the brochure, and she says:

"The key pages that customers respond to well and can influence buying are:

"1) Details of an experienced team add credibility, especially if the team is of a reasonable size which helps to create the perception of gravitas and longevity which are reassuring in terms of 'will my money be safe'~...

"2) Customer case studies/testimonials. Reading about how Mr X -- from a real company that they can see on the internet -- was able to benefit from finance that the bank refused and it enabled him to purchase stock/take advantage of opportunities that resulted in him increasing his turnover by 25

per cent, et cetera ... Good success stories really help to sell the bond because investors can see the actual need and results."

Then she says:

"We need to put an introducer agreement in place between Surge Financial Limited and London Capital & Finance Limited, do you have a standard agreement we can review?"

She chases Mr Thomson about that in the early part of the following month. <D1-0000787>. She says: "Good speaking to you today. As discussed, I will now forward you the emails I sent last week, some of which have been covered but please do have a read because we still need items such as the Buss Murton letter and an introducer agreement."

Mr Thomson then sends her a draft agreement. The email is <D1-0000790>. He says:

"Hi Kerry.

"Thanks for your emails."

This is on the same day, 3 August 2015: "I have attached a draft introducer agreement for your info. Let me know what you think." The draft agreement is <D1-0000789>. It is based on the agreement that was put in place between SAFE and Mr Russell-Murphy. It says at the top:

"This agreement is made on the [blank] day of [blank] 2015."

The parties are LCF and "Surge". While we are on that, I ask my Lord to note it is London Capital & Finance Limited. It is still a limited company at this point. It is defined as "the Principal", with a capital P.

The recitals say:

"The Principal wishes to issue the Loan Notes [capital L, capital N] to potential lenders and the distributor [that's Surge] wishes to introduce potential lenders to the principal. The parties intend that none of the transactions will comprise activities which are regulated under the Act."

Then on the next page, we see the term "Loan Notes" defined:

"The Loan Notes to be issued by the principals to the lenders."

On page 3, in clause 4, "Services":

"The Services [capital S] to be provided by the distributor under this agreement are to introduce to the principal individual lenders who wish to lend money to the principal upon the issue of the loan notes." There's a schedule on page 12 which sets out the amounts payable for the services. It is: "Such fees and charges as may be agreed from time to time between the parties."

It is that appendix that seems to be problematic from Ms Graham's perspective. It doesn't specify the commission of 25 per cent. She explains that to Mr Careless at <SUR00001883-0001>. She says at the top of the page, towards the end of the email: "Re the contract with LCF, the body of the contract is fine but Andy is writing an appendix to it which confirms our commission at 25 per cent and I should have that today."

Sure enough, on the same day, Mr Thomson sends a further draft to Ms Graham. The email is <MDR00016800>. He says:

"And now with the document attached!"

The attachment is <MDR00016803>. It is in the form that we have seen. What has changed is at page 12, where appendix A now says:

"A commission of 25 per cent of funds raised is payable to the distributor when funds are cleared into the principal's bank account."

But the rest of the agreement is the same. As my Lord has seen, it refers to LCF Limited, it refers to "Loan Notes", we can see the "Services", if we go back to page 3, which are defined in very brief terms as being to introduce to the principal individual lenders who wish to lend money to the principal upon the issue of the loan notes.

Three days later, Ms Graham sends Mr Thomson a signed version of that contract. It is <MDR00016952> for the covering email. She says:

"Hi Andy.

"I attached the signed contract, when you sign would you please scan and send me a copy."

If we look at the attachment, <MDR00016953>, we can see she's filled in the details for Surge and on page 11, she has signed it. We see her signature in the middle of the page. It is in the form we have seen. If we go back to page 1, my Lord can see London Capital & Finance Limited. In the recital, there's the reference to "Loan Notes". On the next page, there's the reference to "Loan Notes". On page 3, in clause 4, it's the very short description of "Services". And on page 12, schedule 1, the 25 per cent payable to the distributor when funds are cleared into the principal's bank account.

Ms Graham, as she then was, signed it but Mr Thomson didn't sign it. There is a lot of evidence about that. For example, <SUR00002141-0001>. Steve Jones, on 10 September 2015, asks Kerry Graham with the subject "LCF contract":

"Do you have a copy of the Surge agreement with LCF?"

She replies:

"Attached.

"NB: Andy has not returned a copy to me with his signature as yet. I have chased."

We see her chasing subsequently at <MDR00017384>. She says:

"Hi Andy.

"Have you had a chance to sign this yet please?" That's on 15 September 2015. Then, about a month later, <MDR00018729>, 14 October, she chases him again: "Hi Andy.

"I forgot to mention that we need a copy of the completed distributor agreement with your signature. Please can you bring with you tomorrow." So, it's still not been signed. We see that again at <SUR00006275-0001>, where, on the same day, 14 October 2015 -- <SUR00002675-0001>, Ms Graham emails Mr Careless and Mr Russell-Murphy with the subject "Agenda for tomorrow" and she says:

"Attached is an agenda for our 2 pm with Spencer and Andy. Please let me know if I need to add anything to it.

"It is for internal use only, I will not be sending to them -- there are contentious items on it, such as the fact that Andy doesn't want to pay us for printing and he still hasn't signed the distributor

agreement." The agenda attached is <SUR00002676-0001>. It is an agenda for a meeting on the next day, 15 October. The meeting with Spencer Golding and Andrew Thomson. Item number 6, on the left, is "Andrew signature on Introducer Agreement":

"I requested he bring a hard copy today as this is now very overdue and I sent to him originally on 28 August."

But Mr Thomson still doesn't sign it. That causes problems for Mr Thomson himself almost a year later, when PwC are conducting an audit of LCF's accounts. We see the email from PwC at <MDR00059484>. PwC, in the bottom half of the page, Jennifer Hale of PwC in particular, asks for various things. She says: "Secondly, in order for us to conclude on the appropriate accounting treatment in relation to the deferred income, we would appreciate if you could send across the contract in relation to Surge Financial. The terms in this contract will be key to enabling us to determine how the cost of funds income should be accounted for. Given this is a material balance, IAS1 requires disclosure of the accounting policy in the accounts."

Emma, at the top of the page, of LCF's accountants Oliver Clive & Co replies:

"I will liaise with Andy regarding these." Mr Thomson's reply is <MDR00059741> at page 2. We can see he emails on the same day, he emails Jennifer Hale at PwC, copying people at Oliver Clive & Co and he says:

"I have tried calling Jennifer and Jessica numerous times today and cannot get a reply. I have also had no response to my emails, which is very disappointing. I will attend your offices with the original loan documents for you to view and also the original agreement with Surge Financial, I have meetings with my solicitors Lewis Silkin between 11 and 2, but can attend either before or after these times. If I do not hear from anyone I will attend your offices after 2 pm." Jessica from PwC responds at <MDR00059770>. She says, in the second paragraph of her email on 28 September:

"I can meet you at 9 am at our office in More London tomorrow."

So, this is the 28th. My Lord can see the time, it is the evening. It is almost 8.55 pm. At 9 am the next day, Mr Thomson is going to be attending PwC's office in More London to hand over, among other things, the signed contract with Surge Financial.

But, as my Lord has seen, he hasn't signed the version that Kerry signed, and what becomes apparent is that he doesn't want to sign that document because he considers it to be out of date. He doesn't think it reflects the reality of the position. He wants to make various changes to it.

We see that at <MDR00059585>. It is an email from Mr Thomson. My Lord can see it is earlier in the day on the 28th. This is 11.39 am. It is to ***** with the subject "LCAF surge agreement.doc". That's also the name of the attachment. He doesn't put any text in the email, other than to provide a link to a Google file where the agreement can be downloaded. The revised agreement that he's prepared is <MDR00059587>. My Lord can see, although he has prepared this on 28 September 2016, it still says at the top, "This agreement is made the [blank] day of [blank] 2015". That hasn't changed. But other things have changed. Now in the "Parties" section the first party is London Capital & Finance Plc. It's since become a public limited company. And there is a new definition that we see on the next page of a new term, "Corporate Bond", which is:

"The corporate bonds to be issued by the principal to the investors."

The definition of "Loan Note" seems to have gone, it's been replaced by "Corporate Bond". Then, on page 3, the description of the "Services" in clause 4 has been expanded. It is now:

"To introduce to the principal individual investors who wish to invest funds into the principal's corporate bond offerings.

"Provide marketing services as required. "To create and maintain the principal's website and online marketing activities.

"To develop and maintain a cloud-based client management portal including application procedures and individual investor accounts."

On page 6, there's a clause, clause 7, headed "Liability", which comes up in the discussion subsequently, so I point it out to your Lordship at this point.

So, Mr Thomson has sent that to Ms Graham. She forwards it to Mr Careless at <SUR00135646-0001>. She explains to Mr Careless:

"Andy has asked me to sign a contract between LCF and Surge (attached).

"He wants this signed today because his auditors need it.

"I promised to review today and if all is well to sign it. I haven't read it yet, I have some urgent things to do first, I might not look at until after 4 pm. I will read it later in the afternoon and come back to you with my comments.

"Please also review for your own reassurance. This is potentially a very sensitive issue and we should look at how liability will fall before signing. We need to make sure we are not unduly exposed if LCF are investigated or if they go bust."

Mr Careless asks her to share the draft agreement with Mr Jones. We see that at <SUR00135648-0001>. Ms Graham forwards it to Mr Partridge and Mr Jones to say:

"Paul has asked me to forward this to you for your opinions please."

Kerry subsequently seems to decide that it's something that should be looked at by a solicitor. We see that at <MDR00059706>. She replies to Mr Thomson, copying Mr Careless and Mr Russell-Murphy: "Hi Andy.

"Sorry I know you really need this signed ASAP for your audit but I do have to run it by our solicitor. I will find out how quickly it can be turned around and get back to you."

Mr Thomson doesn't seem to be particularly content with Ms Graham's response, so he has a go at seeing if he can persuade Mr Careless to sign the agreement. That's at <MDR00059715>. He says:

"Hi Paul.

"As discussed please find attached the agreement that was agreed but not signed last year, it's fairly basic but covers the bases. I have tweeted [I think he means tweaked] one section to add the provision of the online support you give us and the dashboard Ashleigh created."

That seems to be a reference to the services clause. He attaches the draft agreement. We don't need to look at it again because my Lord saw it a moment ago. Kerry emails Mr Careless at <MDR00059717>. By this point, it is apparent that she has looked at the document. She says:

"Hi Paul.

"I know you won't have had a chance to read the contract yet so just to give you a heads up, nothing too onerous but nevertheless it would be prudent to have our solicitor review. I won't sign until I have that confirmation. Andy needs this ASAP so I will get it fast tracked. Let's hope I can get it approved by tomorrow."

Mr Careless says, "That's fine. I'll let him know". Mr Careless then seems to have second thoughts, because, at <MDR00059720>, he asks Ms Graham, in the middle of the page:

"Can we just sign this? It's to help him." In other words, he understands that it is something Mr Thomson needs to provide to PwC. Mr Careless wonders whether they can just sign it to help him. Ms Graham replies:

"Sorry, I don't mean to be difficult. I would help him if I could, but I believe the more important issue here is to have this reviewed by a solicitor." Mr Careless says, "Yes, that's fine. As I said, I'll let him know and we can do tomorrow". Mr Thomson, the next day, seems to be keen to pick a fight with PwC. That's at <MDR00059776>. This is very early in the morning. I think we need to see, at the top of the page, where he says:

"I believe you have misunderstood my position from our last meeting when I said I was going back to my hotel to download the various documents requested and would provide these the following morning. At no time did I say that I was going to provide original documentation nor did anyone at PwC request originals. Indeed, when I received the day 1 audit deliverables request there was no mention of providing original documentation and no-one has since asked, up until now, for sight original documentation.

"If original documentation had been requested it would of course have been made available", et cetera. He finishes, and my Lord will see the time of this email, it is 6 am, saying:

"I appreciate all at PwC are trying to get the audit finished and to aid that I will be at your offices with the documents requested at 9 am this morning." James from PwC replies at 7.36 am at <MDR00059780>: "Apologies if we have been talk at slightly cross-purposes and therefore for the subsequent misunderstanding. If you can bring the originals to the office that would be fantastic. I gather Jess is going to meet you at 9 am."

As I say, this is 7.36. The difficulty, of course, for Mr Thomson is that his new version of the agreement hasn't been signed on behalf of Surge. Ms Graham wants to have it reviewed first by a solicitor. It then becomes apparent that obviously Mr Thomson has had to look slightly silly because, having told PwC that he would bring the signed contract at 9 am, he has to turn up and tell them that he's forgotten it. We see that from subsequent documents. There's a communication the next day, <D7D9-0006795>. Mr Thomson sends a WhatsApp message to Ms Graham which she screenshots and sends to, I think, Mr Careless. We can see, at the top of the page, in the screenshotted message, Mr Thomson has said:

"I really needed it yesterday morning, not having it has created additional work and has prompted PwC looking into us in more detail. We have nothing to hide but this will add more time to the production of ...". And Kerry comments:

"Now he's being a twat. Don't worry I'm dealing with ..."

And then we see Mr Thomson's subsequent message: "You have completely missed the point of why I needed it, this was the contract we agreed last year, I thought it would be a simple request to simply sign it. I needed Surge's support to get the audit concluded and it didn't happen and has had

knock-on issues. As you are wanting to go down the solicitor route, I will forward your revisions to Lewis Silkin who will no doubt advise me that LCF needs a far more robust contract to protect its position especially as the FCA are looking at ..."

And she replies:

"I'm not signing a contract that a solicitor hasn't reviewed. Let's get it right first time." That's on 30 September. Mr Thomson has another go at trying to persuade Mr Careless, <SUR00135762-0001>. On the bottom of the page, we see Mr Thomson's email to Mr Careless:

"Hi Paul.

"I tried to call earlier to talk you through the position with PwC following my meeting with them yesterday but I couldn't reach you.

"Just for your info I've attached two documents, the LCAF distribution agreement that was agreed last year with Kerry and the LCAF Surge agreement is the same document with a few minor changes to reflect the actual position and that we offer bonds not loan notes. As you can see they are practically identical, but Kerry has insisted on seeking legal input and wants to change these further. As she had agreed the doc last year, I felt it would have been an easy ask to just sign it so I could evidence it to PwC, but unfortunately I was wrong and PwC have now requested further info on Surge and its continuity plans as it is a material supplier of LCF. This will unfortunately have knock-on effects for the audit and has also created the same request for other suppliers and site visit. If Kerry had just signed the agreement that she had agreed to last year this could have been easily avoided. I've emailed Steve (copied you in) an info request, can I ask if you could chase him to send it over sooner rather than later so I can try to move the audit on.

"On a separate note, when PwC visit (Monday) if we don't have an agreement in place they will put a qualification in the audit regarding the robustness of LCF as a going concern as it does not have an agreement in place with a business critical supplier ..." Over on the next page, he asks:

"Are you able to get this resolved or are we going to have to go down the solicitor route as Kerry has already started down this path?"

On the left-hand side, we can see that Mr Careless forwards it to the group of people recorded in the top left: Mr Russell-Murphy and Mr Jones, and he says: "All he has to do is call me."

Sorry, and to Kerry. It is Kerry who responds: "All he has to do is call me."

"I will explain why I want the clauses he added in removed and why.

"I do want further revision re clause 5. Nothing unreasonable.

"He's really making a meal of this. A quick call would resolve/at least put him in the loop. "Also I'm shocked that he would send a contract where the liability re FCA is a big exposure and expect me not to get a solicitor to review?!? Sending Wednesday afternoon and getting a response Friday morning is good. He should be thanking us for the fast turnaround. He shouldn't be criticising the decision not to sign when he hasn't even asked why we won't sign. "We have good reasons and I would love to tell him about them if he would answer my calls and not just cancel them and send me abusive text messages." Mark Partridge has also been kept in the loop. We see his comment at <SUR00135766-0001>. He comments on Mr Thomson's email in the middle of the page, he emails Mr Careless and comments on Mr Thomson's email: "He just talks out of his arse."

It is something, my Lord, we see time and time again: the in-house view of Mr Thomson at Surge is that Mr Thomson is a liar, and this is just one of a number of examples that prove the point. Mr Partridge says: "He just talks out of his arse. The original agreement is fine the other one is fundamentally different.

"If he wants to pay VAT on top of the commission he can sign the new one.

"Or just re-sign the original agreement if it is so close."

His reference to "VAT" we might see in some of the subsequent documents is a concern that, by changing the description of "Services" from being merely the making of introductions, VAT will be payable on the 25 per cent commission, and so Mr Partridge is saying, "If he wants to pay VAT on top of the commission, he can sign a new one".

Mr Careless forwards Mr Partridge's email to Ms Graham, Mr Russell-Murphy and Mr Jones. So they can all see what Mark Partridge thinks of Andy Thomson. That is 30 September. A couple of days later, on 2 October, <MDR00060092> Kerry Graham emails Mr Thomson, copying Mr Careless and Mr Russell-Murphy, with the subject "Signed contract", and she says: "Hi Andy.

"I attach the amended contract for you to review." We will see she's made some changes:

"All changes are done as tracked changes so you will be able to easily identify the requested variations. "Recognising that this is time critical, I also attached a signed version so you have this in place to use at your meeting on Monday (assuming you are happy to accept the changes made).

"I am sure this raises questions which is why I have been keen to speak on the phone to clarify, please do call me when you have time to discuss. The significant changes have been made for the benefit of both companies."

The attachment is <MDR00060093>. We might need to open it in native format to see the tracked changes. Can we have a go? Thank you. Is this a PDF? I'm sorry, my Lord, we are not going to be able to see the tracked changes, for some reason, but I can point them out, if we go back to the version in the trial bundle. My Lord can see first the date or year, 2015, at the top hasn't changed. That's the same.

On page 1, parties, "(2) Surge Financial Limited", is now the intermediary rather than the distributor. On page 2, the definition of "Services" is: "The services specified in clause 5 below to be provided by the intermediary for which the principal has accepted responsibility in this agreement." And then on the next page, we see the description of "Services". We are back to a very short description: "Introduce to the principal individual investors who wish to invest funds into the principal's corporate bond offerings."

So that's been changed back.

Then on page 5 at the bottom, "Obligations of the principal". That's new:

"... the principal undertakes and agrees ..." On the next page, 8, "Liability" -- it is now 8. The numbering has changed as a result of the insertion of additional merely material. Liability has been cut down. Appendix A remains the same. But they are material changes that have been made, not purely presentational.

That's sent by Ms Venn to Mr Thomson and he forwards it to Alex Lee at Buss Murton, <MDR00060232>. This is the 3rd. The subject is, "Hi, please can you call me ASAP re the attached".

The next day, the 4th, <MDR00060431>, Mr Thomson chases Mr Lee: "Alex, how are you getting on with the Surge agreement? I'm being pushed by PwC for it." Then <MDR00060610>, the next day, the 5th, at the bottom of page 1, my Lord sees Jessica Miller of PwC emailing Mr Thomson:

"Hope you are well. Would it be possible for you to arrange for a scan of the Surge Financial contract to be emailed to me today/tomorrow, this was the one document that you didn't have when we met last week." As I said, it's something Mr Thomson said he would bring with him at 9 am, but obviously he couldn't because it hadn't been signed yet on behalf of Surge. Mr Thomson replies at the top of the page: "Hi Jess.

"I completely forgot! I'm out of the office at the moment but I'll try to have a copy scanned over, if not I can do it first thing tomorrow morning." Obviously he hasn't forgotten; he's been chasing Alex Lee about it.

At <MDR00060631>, Mr Lee replies to Mr Thomson. They have had a meeting. He says:

"Further to our meeting today, please find attached the Surge agreement. I have accepted the changes that we don't find problematic, but have left some in that are problematic. Mainly, it just makes it easier to read."

The attachment is <MDR00060632>. The changes are shown in tracked changes in this version. If we could just look through each page at a time, we can see what has changed. There is not much on that page. It is the next page, I think. Not much there. What's the next page, please? He's made some changes to clause 5, "Obligations of the intermediary". He's made some comments in the margin.

Then, on the next page, that's a new clause, clause 6. All of that is brand new. "Insurance": "The intermediary has and shall maintain professional indemnity insurance with reputable insurers lawfully carrying on business in the United Kingdom, in an amount each year of not less than 5 million pounds for any one occurrence or series of occurrences arising out of one event for a period of twelve (12) years after the last date upon which the intermediary carries out the services ...", et cetera.

Is there anything on the next page? It is quite a long clause dealing with insurance. I think that's about it.

Let's just flick through the rest. And the next, please. There are some changes to the "Obligations of the principal" clause, and he's made some changes to the "Liability" clause.

Mr Thomson forwards it to Kerry, <MDR00060633>. He says:

"I've just received this, I haven't opened the doc yet as am in the car but will have a look when I get home. Alex does in his email pose a couple of questions I think we need to address.

"The immediate issue is I have been able to put off PwC until now but they are expecting a doc first thing tomorrow, they have completed the accounts but won't release until they have a scan of the agreement." And Kerry replies, <MDR00060649>. She says that she has read and made comments:

"Your solicitor makes helpful revisions; I am sure we can work this out quickly."

One issue she has, however, relates to the insurance clause. She says:

"We don't currently have the PI insurance at that level. I will look into it immediately. A 12-year policy might not be commercially viable. I hope it is and I will find out ASAP.

"Re the question raised by Alex concerning liability. Possibly these sections need rewriting from scratch as might be easier than amending ..." She makes some further comments. Mr Thomson is just acting as a post box. He forwards Kerry's email to Alex Lee, <MDR00060666>:

"Can we talk through the below first thing?" Alex Lee replies, <MDR00060722>:

"Thanks for your email. I have taken a look at the proposed amendments from Kerry and my thoughts follow ..."

He sets out his thoughts. Mr Thomson forwards that to Kerry, <MDR00060723>:

"I sent your revised doc to my solicitor and he has come back with the below. I'm on a train at the moment but can talk later this afternoon if you are free." A few minutes later he emails PwC, <MDR00060725>. He says:

"Sorry not to have sent the Surge doc over some point the fan last night and I had to run off." I think there are some words missing:

"I'm on my way back now and will get it sorted later today."

PwC reply, <MDR00060730>. They say:

"That would be great if we can get it today." Alex Lee then provides Mr Thomson with a clean version of the markup, that's at <MDR00060815>: "Sorry that took longer than I anticipated. Attached is the clean version of what I sent over yesterday."

That's the attachment at <MDR00060816>. If we go through to page -- let's have a look at page 4. Page 5, I think. It has the insurance clause in 6, still relating to £5 million for 12 years. Kerry is still struggling with that concept. She says at <MDR00060823>:

"Did you get any more information re if the PI cover has to be for 12 years after all?"

Mr Thomson forwards the clean version to her and at <MDR00060851> -- this is on the 6th, at 6.50 in the evening -- she says:

"Thank you. I'll review and come back to you. Good news on PI 6 years."

So Mr Thomson has commented:

"I have been messaging him over the 12 years and he has confirmed a lesser period that he believes would be okay is the term of the contract plus 6 years." So she's happy with that and she says she'll review it.

The very next day, Mr Thomson emails Jessica Miller at PwC, <MDR00060881>. He says:

"Hi Jess.

"I finally got back to the office this morning. (it's been an entertaining week!!!) and have scanned in the agreement below."

The document attached is <MDR00060883>. My Lord can see the date has been filled in at the top, 3 August 2015.

If we look at page 6, my Lord can see clause 6.1 has the insurance wording about insurance "for a period of 12 years after the last date upon which the intermediary carries out the services", so it's the version that Mr Lee had drafted previously which Kerry, as we have seen, hadn't agreed.

On page 12, however, we see that it carries Mr Thomson's signature and what purports to be Ms Venn's signature. It has obviously been backdated. We saw on the first page the date that's been added to it, 3 August 2015, yet it contains amendments made by Alex Lee over the previous few days, in early October 2016. So it's clearly been backdated. As we will see after the short adjournment, as far as Kerry Graham is aware, she hasn't signed anything; what Mr Thomson has done is to take her signature off the contract that she signed previously and apply it to this one to deceive PwC.

MR JUSTICE MILES: When did the company become a Plc?

MR ROBINS: We are looking at schedule 1. 11 November 2015, my Lord.

MR JUSTICE MILES: So, we will come back at 2.10 pm. It may be a couple of minutes after that, but I will try to get back by then.

(1.11 pm)

(The short adjournment)

(2.10 pm)

MR ROBINS: My Lord, before the short adjournment, we saw Mr Lee's amended agreement on 5 October 2016. He'd added a new clause 6 about insurance with a reference to 12 years. We saw that Ms Venn had been uncomfortable with that suggestion. On the next day, the 6th, Mr Thomson has communicated a possible halfway house with the requirement of insurance for six years. She seemed more amenable to that suggestion but said that she would need to review the agreement. My Lord then saw on the very next day, the 7th, the email that Mr Thomson sent to Jessica Miller at PwC at <MDR00060881>. My Lord will see it's timed at 8.31 am. It might be said that I haven't yet eliminated the possibility of Ms Graham going to see Mr Thomson late in the evening on the 6th, or very early in the morning on the 7th, to tell him that 12 years in the insurance clause was, in fact, acceptable to her, so let me eliminate that possibility now.

We can do so by looking at <SUR00051295-0001>. This is now three weeks later, on 6 October.

MR JUSTICE MILES: 26 October.

MR ROBINS: The 26th, I'm sorry. Mr Thomson says, about two-thirds of the way down the page, this is an email to Kerry:

"On a separate note I haven't heard anything from you on the proposed agreement I sent over a couple of weeks ago? Do you have any questions or are you happy to agree it?"

So he's proceeding on the basis that, so far as she's aware, it hasn't been agreed, it hasn't been signed by her. She replies just above:

"Re the contract, this has been parked for a while to allow our accountant to investigate the VAT issue. I will chase for an update. Also we are having to get a similar contract in place re Blackmore and are keen to see how our new solicitors approach this issue." Mr Thomson replies:

"Appreciate you need to speak to your advisers but it's been weeks now and I haven't heard anything and we don't have any agreement in place. I was put in an extremely difficult position with PwC over it which had the potential to damage everything, this needs resolving sooner rather than later can you please chase your advisers and advise of the urgency."

Eventually, about eight months later, at <MDR00092487>, Ms Graham, at the bottom of the page, emails Mr Thomson to say -- this is 30 June 2017: "Dear Andy.

"Some good news, long overdue but I do now have a services agreement for your review and signature. "I have been conscious that we were not able to get this in place before your audit last year and have now made sure this is ready well in time of your next audit."

He says at the top:

"Hi Kerry.

"Thank you for sending an agreement over. I note that it is a completely new agreement so I will have to send it to our solicitors at Lewis Silkin to look through."

It is indeed a new agreement. It has been drafted by Macfarlanes. It is <MDR00092336>. My Lord will see immediately from the formatting it is a new agreement. It doesn't look like anything we have seen before. It's got the name "Macfarlanes" at the bottom. Over on the next page, we see the contents page. There are 18 clauses. And then there are three schedules: fees, services and customer's marks. If we look, for example, at page 5 internal, so page 7 of the PDF, we can see "Service provision" in 3: "During the term, the service provider shall provide the services to the customer."

There are "Customer's obligations" and

"Confirmations and general obligations". I think the term "Services" is defined at page 3, let's have a look at that, maybe page 4. Maybe it is page 5. It is the services set out in schedule 2. So, that's the schedule we need to look at. It is towards the end of the document [page 18]. Schedule 2, "Services". My Lord can see this is very extensive compared to any version of the description of services that we have seen previously. It mentions a website, it mentions at the bottom "Provision of information". Over on the next page [page 19], it mentions "Application": "The service provider shall design and create an application form ..."

On the next page [page 20], "On-going support" in 7. At 8, it's called "Re-broking". In 8.1: "The customer hereby grants the service provider the exclusive right to market, advertise and promote bonds to investors during the term."

As my Lord will see, that's a provision that Lewis Silkin have considerable difficulty with. But this is the draft prepared by Macfarlanes. It's sent, as I say, to Mr Thomson, who sends it on to Graham Reid at Lewis Silkin. We see that at <MDR00092489>. This is on the same day -- no, sorry, four days later: "Hi Graham.

"I need to talk through the attached, can you give it the once over and give me a buzz when you're free." Mr Graham says:

"Andy.

"Thanks for this. I'll take a look and call you shortly."

Mr Reid sets out his views in writing later at <MDR00092873> where he says:

"Andy.

"Many thanks for sending this through.

"I've now had an opportunity to review having regard to how you operate your business and what you are seeking to achieve. In summary, this is not an agreement you can sign not least as you would be encouraging and acquiescing in Surge Financial Limited ('Surge') (a party not regulated by the FCA) to carry out FCA regulated activities (a criminal activity)." He says that the agreement doesn't address the points that Mr Thomson requires. Down the page, at (d): "Schedule 2 -- this shows a complete misunderstanding of the operations of FCA regulated activities."

So his view is it is not an agreement that can be signed because it is an agreement by which Surge would be breaking the law by agreeing to conduct regulated activities without regulation.

Mr Thomson forwards that email to Kerry Graham at <MDR00092875>:

"Hope you're well, I've received the below from Lewis Silkin, can we discuss tomorrow." And she replies at <MDR00098885>. At the bottom of the page, she says:

"To save you waiting for the post and to give you an electronic copy, please see the services part of the contract which we discussed today, attached here. "The specific request being: would Lewis Silkin review the pages attached and do a line by line commentary to highlight any clauses that could compromise your regulation, stating the specific name of the regulation which is compromised eg COBSXX. "Once I have this I can see where your deal breakers are and work on a revised text that satisfies the needs of both parties."

Mr Thomson just forwards that to Mr Reid. My Lord can see the sticking point is around schedule 2. On the right-hand side, we can see another email from Ms Graham to Mr Thomson a few weeks earlier where she says in the middle, after referring to schedule 2, she says the sticking point is going to be around the services ie schedule 2:

"I assume you have scaled this back for regulatory reasons?"

At <SUR00080533-0001>, Mr Russell-Murphy offers his view. He says:

"Thanks Kerry.

"I should of responded earlier but I was travelling. I think we should be harder with Andy on the points raised. They need us, we can flourish without them. The contract should be in our favour.

"Again, Paul and I can discuss this with Spencer on Tuesday and get him to squeeze Andy if required. Andy needs to rethink his business position. We can't let him dictate to us under the banner of Lewis Silkin." Mr Careless replies, "Okay". But Kerry has a different view. She says, at <SUR00140352-0001>: "Hi John.

"Don't worry, compromises will be fair to us. Nothing committed yet. Apart from the two year and three month thing but Paul wanted to accept that for goodwill.

"Just being nice to get the services review done now which is the most efficient and cost-effective way to get this through. I do understand that there might be a genuine concern re regulation and we have a genuine concern re VAT exemption and the review will show us what we are dealing with. Alternative is if you can get Spencer to make him accept the services section as it is but honestly I don't think that's fair to Andy if there could be a regulatory problem for him. Or we can get Macfarlanes to review the services for regulatory issues but I would be loathed to pay for that when this is his proposed amendment to ours."

Mr Russell-Murphy says:

"Ok understand.

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

Ms Graham, as she was at the time, replies at <SUR00140357-0001> to say, "Yes", she's prepared to attend a meeting with SG to discuss this. Meanwhile, we see some more light shed on the internal view at Lewis Silkin at <MDR00092873>, where, on 29 August, Graham Reid emails his colleague, I think this must be the next page -- have I got a wrong reference? I think I may have -- I think I have the wrong reference. It is <MDR00089817>. Sorry, I misspoke, <MDR00098917>:

"Owen.

"Might need your input -- we've discussed before and our view was that much of this was not something that the service provider should be doing not least as they are not regulated. I'm speaking with Andy shortly." Then <MDR00098957>. Kerry, at the top of the page, emails Andy to say:

"I am conscious that Paul has requested we sign the contract before you meet on Friday. Can you confirm if you have received a reply from Lewis Silkin yet so that I can get it turned around at my end?"

Mr Thomson says he's been waiting for Lewis Silkin because Graham has been on holiday. We don't need to look at that. But, for the transcript, it's <MDR00098967>.

Mr Reid's substantive response is <MDR00099003>, where he says:

"Andy.

"Many thanks for sending this through.

Unfortunately it is not a question of reviewing the document and saying on a line by line basis why this may or may not impact your regulation -- in very simple terms if you are involved in any regulated activity (certainly of which you are aware) that can only be carried on by a regulated person you are potentially in breach of your regulated status if that is not carried on by a regulated person. As drafted the document indicates that the service provider anticipates carrying out regulated activities while not regulated (a criminal offence) -- for example, clause 8.1."

That's clause 8.1 in schedule 2, which my Lord saw: "The customer hereby grants the service provider the exclusive right to market, advertise and promote bonds to investors during the term."

He says:

"I'd suggest that we speak with their lawyers in order to amend the document in a way that is compliant for all parties -- this is a complex area of law which in many circumstances (frustrating though it may be) only allows things to be done in certain ways." My Lord, that is the impasse which is ultimately never bridged. There is never any signed contract between Surge Financial Limited and LCF. Interestingly, and we may come to this in due course, Surge appoints a compliance specialist called Thistle to review their activities. Thistle's conclusion is also that Surge is carrying out certain unregulated activities and thereby committing a criminal offence but, as I say, that's not a matter that we need to get into now.

Instead, having dealt with the lack of any written agreement, I propose to deal with another topic. It is a fairly broad topic. To describe it compendiously, the questions are essentially: what did Mr Careless and those around him think about LCF, Mr Thomson, Mr Golding and others; what did Mr

Careless and those around him know; what suspicions did they have; what enquiries did they make; and, to the extent they made any enquiries, were they real enquiries that were designed and intended to get to the truth of the matter or was it a question of going through the motions and ticking boxes to create the impression that the right questions had been asked? That's the topic we need to turn to now. My Lord has already seen some of the relevant documents from the very beginning. We looked at one, I think, earlier today, <SUR00001422-0001>. It is not an email we looked at today. We have seen it on another occasion. 16 July 2015, very near the beginning of Surge's involvement. Ms Graham is asking Mr Russell-Murphy for information, including, in 2, she says she's trying to build a picture of the success/selling points of the business and always likes to lead with facts and figures. She wanted to know how many loans to date, how many defaults, type of loan, ie for what purpose, average term, interest rate, size of companies borrowing. And, at 5, case studies and testimonials:

"A paragraph or two with a success story, ie the company was in great need, the bank wouldn't lend, the process with SAFE was very easy, it enabled us to buy more stock/expand our premises and now we have gone from strength to strength, in fact we have increased our turnover by 25 per cent in the nine months since the loan ... Statement of Mr D Smith MD of ..." One can understand why, from a sales perspective, Ms Graham would want this information for sales purposes. As she explains in the email, she wants this for marketing. That's the subject of the email. What we see in due course is that Mr Thomson is not willing to provide the sort of information that is repeatedly sought from him. He is not willing to provide case studies or testimonials, he is not prepared to reveal anything about the borrowing companies, he is not prepared for information about the borrowing companies to be communicated to the public. So, that's 16 July 2015.

That's not the email we saw today. I think the email we saw earlier today is <EB0006648>. Where, a couple of weeks later, on 29 July 2015, top of the next page, at (2), now in an email to Mr Thomson, Ms Graham is saying she wants:

"Customer case studies/testimonials. Reading about how Mr X -- from a real company that they can see on the internet -- was able to benefit from finance that the bank refused and it enabled him to purchase stock/take advantage of opportunities that resulted in him increasing his turnover by 25 per cent, etc ... Good success stories really help to sell the bond because investors can see the actual need and results." So she's asking Mr Thomson for this information, explaining that this will help Surge employees to sell the bond. One would expect an honest businessman in the position of Mr Thomson to be extremely keen to provide the information to enable the bonds to be sold. As I mentioned, it is really quite extraordinary what lengths Mr Thomson goes to to adamantly refuse to provide the information that is sought. A lack of information about LCF does seem to be a concern among LCF's salespeople, Surge's employees, at an early stage. This is, as I said, 29 July. If we go forward a couple of months to 23 September 2015, at <SUR00002372-0001>, we can see an email from *****. He was a salesperson working for The Investment Experts at the time. He emails it to Mr Russell-Murphy and Mr Careless. He copies Ms Graham. He says: "Dear John.

"I had a call from a client investing in LCF this morning which has made me begin to question the integrity of this investment.

"The client carried out a few checks as he was worried about investing money with organisations he had not heard of and had limited information about. "The number on LCF website was rang and answered by a woman who answered 'Good morning', she then was asked if this was London Capital & Finance and she said yes. "The long and the short of it is I reassured the investor I would not have

any part in a scam that was taking people's hard earned money. I also explained we were all professional organisations and would not risk our reputation by being involved with anything underhand. He did mention also that we were a new company and that made him uneasy. After our call he agreed to invest as he said he had spoken with me many times and trusted me.

"I then called the LCF number from the website and had a similar response from the lady that answered. When I asked her if this was LCF she seemed confused but answered yes. When I asked her if that was a business centre or LCF offices she said do you want a call centre? When I asked who she was employed by she gave a person's name not a company name.

"I feel totally uneasy about this and the potential issues our company could be faced with if more potential investors call this number.

"John, can I ask you what due diligence you have carried out on LCF? Clearly, we as an organisation should have set procedures in place for checking providers and any organisation we sell for or act as an intermediary for. Ultimately, if we are telling potential clients we carry extensive due diligence, surely we should not only carry that out but have full supporting documentation to substantiate our findings? "In addition, as an organisation we should carry out all of these activities at the front end before we commence marketing and collecting money for investors. "Of course I appreciate this may all have been done and it is a case that I was not privy to such information.

"I would ask that you provide a response as a matter of urgency as I have a number of large deals in the pipeline from people I have built relationships with and have a duty of care towards. Also I am extremely loyal to our company and would not like us to be jeopardising our extreme efforts to build a professional, successful organisation."

My Lord, as far as we can see, no-one has disclosed any response to this email.

My Lord, I mentioned earlier Mr Thomson's refusal to provide the case studies. We see that again at <EB0006648>, where Kerry Graham, at the bottom of the page, says:

"Dear Andy.

"I hope you are pleased with the website and brochure?"

On the right, this is the email we saw, she has asked for customer case studies and testimonials. On the left, she forwards it to Spencer to say: "As discussed, I have been waiting for the case studies for some time."

We can see that's right, her email below is dated 29 July. She is now emailing Spencer on 13 October: "I had a look back through my emails and can see I first requested this on 29 July."

At the top, we can see Mr Russell-Murphy forwards that to Mr Barker. So, there is still no real-life examples, no information, about LCF's borrowers. Another theme that comes out of the documents is the rather robust news expressed by Mr Careless's trusted friend and advisor, Mark Partridge. My Lord has seen already his comments about the commission: "As you say, this commission is insane. On a flat rate, the fund would have to grow by 55 per cent in 2 years to pay your commission and interest. "Who are LCF, is this the aim stock?"

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

That was on 24 July 2015. We don't need to go to it again because my Lord has seen it but, for the transcript, that was <SUR00129198-0001>. We see further examples of Mr Partridge's views in a text

message. Before we go to the message, let's go to the telephone directory at <A1/12/1>. My Lord can see the second entry is <SUR00129710-0001>, which is an exchange between Steve Jones on his telephone number ending 986 and Mr Careless on a telephone number ending 289.

The text exchange is at <SUR00129710-0001>. My Lord can see the exchanges are on 27 October. At the bottom of page 2, my Lord can see that Mr Careless says that he's having a pint with Mark. That's at 4.14 pm on the 27th. I think it is on page 4, after quite a lot of discussion, about a third of the way down the page [page 3], Mr Careless says "Spencer is excited". Then there is some discussion about the money, and I think it must be the next page [page 4], in the middle of the page, on the right-hand side, Mr Careless reports to Mr Jones:

"Mark thinks Spencer is Maddoff."

So, that's another example of the robust, forthright views of Mr Partridge, the trusted friend and advisor. He said the commission is insane and unsustainable. Now he's saying Spencer is Maddoff.

It continues with Mr Careless asking Mr Jones: "Seen John's email? Brave or made up? Or right?" And Mr Jones replies, four from the end: "JRM is optimistic."

The email from Mr Russell-Murphy to which Mr Careless refers is <SUR00129707-0001>. It is an email from Mr Russell-Murphy to Mr Careless, but it is copied to Mr Jones and Ms Graham. It is also copied to Mr Barker. He is the final email address in the cc field. It says in the final line:

"Deals expected to complete this month -- total £959,000."

So, having communicated Mark Partridge's view that Spencer is Maddoff, they then discuss John's email saying that they're expecting the best part of £1 million of deals to complete and Mr Jones records that JRM is optimistic.

There is also, at the outset, a repeated concern expressed about the interest rates offered to investors by LCF, which was so far out of line with anything else available in the market as to be truly noteworthy, and that's a topic that, understandably, reared its head when the website Best Savings Rate --

MR JUSTICE MILES: Can we just go back to those text messages?

MR ROBINS: <SUR00129710-0001>. We were looking at page 4. I don't know if there is something else.

MR JUSTICE MILES: I just wanted to quickly look at it. Okay. Then there was the next point.

MR ROBINS: The interest rates were too good to be true, for want of a better term. That's a point that raised its head, for obvious reasons, when the site BSR, Best Savings Rate, was being constructed. We can see what Ms Graham, as she then was, said about that at <SUR00129471-0001>, where she explains on 23 September 2015 in an email to Mr Holdaway, Mr Newman-Jones, Mr Careless and Mr Jones, the subject "Content for BSR":

"Attached is the completed document.

"NB:

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

"2. The rate is 2.7 per cent."

Well, we know it was actually offering 3.9 per cent but she says the rate is 2.7 per cent:

"3. The minimum balance is £2,000.

"Why?

"1. We currently sell the 2-year bond for 8.5 per cent the average 2-year bond in the comparison table offers 2 per cent. I was faced with a dilemma: I could not put 8.5 per cent next to 2 per cent and remain credible. I could not offer a 2-year option close to 2 per cent because any client going to the LCF website would see that it is being marketed at 8.5 per cent. Therefore we will only offer the 2-year bond via an assisted sale ..."

That's on the telephone with a salesperson: "... for 8.5 per cent (business as usual) we will only offer a 1-year bond (2.7 per cent) via the handsfree online sale.

"2 ..."

That's the second paragraph:

"... I have proposed a rate of 2.7 per cent to LCF because it is higher than -- but still in line with -- the competition. 8.5 per cent would stand out like a sore thumb next to 2 per cent.

"3. Whilst there promotional materials state a minimum deposit of £5,000, their new IM for the section 21 states £2,000. I chose to go with £2,000 as it's more open/competitive."

So her view, frankly expressed, is that LCF's rate of 8.5 per cent is not credible. They couldn't put it on their website next to 2 per cent and remain credible. So she was proposing that it be excluded and that they include LCF with only a much lower rate to be in line with competition.

We can see the attachment to which she refers at <SUR00129472-0001>. On the first page, it says: "Best Savings Rates.

"1 year fixed savings bonds".

She has a suggestion that "Under the 'security' section for LCF it says 'ADPS'" and "when you click on it, this could pop up":

"Asset backed deposit protection scheme ... "London Capital & Finance provide asset backed lending to small and medium enterprise companies. A stringent due diligence process is followed whereby loans issued are less than 65 per cent of the value of the security taken", et cetera.

Then:

"The security is managed by an independent, FCA registered, Security Trustee ..."

Over on the next page, we find the table setting out the various --

MR JUSTICE MILES: Was the security trustee registered with the FCA?

MR ROBINS: I think it is meant to be a reference to Mr Sedgwick's company Global Security Trustees. But obviously --

MR JUSTICE MILES: Well, that was my question.

MR ROBINS: Yes, it was not a regulated company. So, we can see on this page, these are all one-year products. She proposes to include LCF, in the middle of the page, with a rate of 2.7 per cent so that it doesn't stand out like a sore thumb. She said 8.5 per cent would stand out like a sore thumb.

On the next page, we see some more one-year products. At the bottom, a two-year fixed savings bond. Those are over on the next page. My Lord can see that the competitors are offering 2.25 per cent, 2.2 per cent, 2.28 per cent, 2.35 per cent, 1.8 per cent, 2.05 per cent, and, over on the next page, 1.1 per cent, 1.2 per cent, 2.2 per cent, 2.6 per cent. One can understand why she might say, "I could not put 8.5 per cent next to 2 per cent and remain credible". It would, as she said, stand out like a sore thumb. LCF's interest rate was not credible. It was obviously too good to be true.

It was something that she was concerned could impede the conversion of leads. It could actually put prospective bondholders off, and she expresses that view at <SUR00003547-0001>. This is where, on 25 November 2015, Mr Holdaway has provided Mr Newman-Jones with a list for the three-year page and my Lord can see the suggested -- well, the three-year rate for LCF is 8 per cent. Then the other companies listed have 4.4 per cent, 2.5 per cent, 2.44 per cent, 2.4 per cent, 2.3 per cent. I'm not sure if there are any over on the next page, but let's have a look. 2.75 per cent and 3 per cent. On the left, Ms Graham comments to Mr Holdaway and Mr Careless, copying Mr Newman-Jones, Mr Jones and Manuel Espinoza: "LCF pays a significantly higher interest rate by comparison to these. Could be a positive and could be a negative. Will be interesting to see." What she seems to be saying is, it's so obviously too good to be true, so obviously incredible, and something that stands out like a sore thumb, to use her previous language, it could actually put people off, it could be a negative. So she wants to see. My Lord saw previously the website The Investment Experts where members of the public could submit enquiries which it said would be answered confidentially within a short period of time.

Very swiftly, members of the public in fairly significant numbers are asking whether LCF, in light of the rates on offer, is too good to be true, and we see that, for example, at <SUR00004092-0001>. On 7 December 2015, someone called ***** F***** has submitted an inquiry, it's emailed to Mr Careless, Ms Graham, Mr Jones, Mr Newman-Jones, Mr Holdaway, Mr Russell-Murphy, Mr McCreesh of Blackmore. ***** F***** asks:

"How safe is your money in an investment bond such as those offered by London Capital & Finance? They are offering 8 per cent per annum on a 3-year fixed rate bond. Are these figures too good to be true?" Which is obviously a pertinent question. Mr Careless responds:

"Very interesting. Whose is this chap? Was his LCF through BSR, then came in?"

Mr Careless also sends it to Mark Partridge, that's <SUR00004095-0001>. Presumably, he wants Mr Partridge to know that members of the public are asking whether LCF's figures are too good to be true.

There are numerous others. I could spend a lot of time going through them. But let's just look at a few examples. <SUR00004450-0001>. This is an enquiry from a Mr T*****:

"Hello London Capital & Finance are doing a 3-year bond with an 8 per cent interest rate, does this seem too good to be true? Is this a reputable company with financial equity in the event of going bust, as I wish to invest a large sum. Will my money be safe?" Then <SUR00005114-0001>. This is 7 January 2016, ***** G***** says:

"I am thinking of investing £10,000 with LCF in a protected bond. The interest for one year is 3.9 per cent and 6.5 per cent for two years. This seems very high compared with other rates on offer. How safe is my investment?"

It seems that she has read about this on BSR and has entered her details there as well because Mr Careless responds to his colleagues at <SUR00005117-0001>: "Bouncing off from BSR.

"Brilliant!"

But numerous members of the public are asking the obvious question: is this too good to be true? As I say, this is January. We need to rewind about a month to 8 December. We can see an email exchange between Mr Careless and Mr Partridge at <SUR00158416-0001>.

On page 3, we can see the conversation starts with Mr Careless forwarding to Mr Partridge the results that Mr Careless has obtained from an open-source psychometrics test in respect of what are described in the screenshot as the "dark triad traits". We can see those are narcissism, Machiavellianism and psychopathy. My Lord may be familiar with psychometrics tests. You have to answer questions like, "People see me as a natural leader". Mr Careless has scored 92 per cent on narcissism, 100 per cent on Machiavellianism and 57 per cent on psychopathy. He forwards that to Mr Partridge at the top with the subject "Sociopath". On the previous page, we see the results that Mr Partridge has obtained. He's got a much lower score for narcissism, and almost nothing for Machiavellianism and psychopathy. On the previous page, we see what Mr Careless says about that. He says:

"Interesting and I would have guessed about that for you.

"Running your own ship for so long will have an effect on your Machiavellianism. It's a necessary evil. "I couldn't get hold of Spencer last night but will do today. I have a plan to make the necessity of the DD [due diligence] seem more run-of-the-mill and less holly-shit-this-better-not-be-a-Ponzi. I'll basically say that as Spencer is looking to revise an offer to be involved exclusively with us in one way or another we want to run some DD to make the process easier down the line.

"Spencer doesn't like getting emails. I know, I know.

"But you will be getting an intro email to Andy Thomson later. I would start with a call with him to get an overview before you request the evidence you need.

"Lastly, I don't want Mehdi lawyering up." It seems to be a different topic. He's expressed the thought "holy shit this letter not be a Ponzi" and he says he wants the necessity of DD to seem more run of the mill. It is something we have seen him describe previously as "light touch DD". That's the next email two days later, at <SUR00130330-0001>. On the second page, we see on the 10th, if we go to page 2, Mr Careless says to Mr Partridge and Mr Russell-Murphy, copying Ms Graham, Mr Jones and Mr Russell-Murphy, with the subject "DD":

"JRM has been constructing and selling bonds for a long time and also has intimate knowledge of LCF and so if we can begin our DD journey with him and see what is required to satisfy ourselves that the underlying asset performs efficiently and we can be comfortable that our clients' coupon and our fees will be paid. "We need to conduct this DD with a light touch, they are, after all, our commercial partners. "Jo also had some questions that clients are asking about the bond which may be a great way to initiate the process through Andy.

"Rather than call it DD, we can call it an 'exercise in understanding' for the benefit of enhancing sales." Mr Partridge replies on the same day on the left-hand side:

"IMHO [in my humble opinion].

"If they have nothing to hide they shouldn't be concerned about DD.

"I am happy to grill JRM but in reality Paul I'd be surprised if we got anything meaningful that he has not told you already."

My Lord will note at this point that Mr Partridge has not clicked "Reply all". Mr Russell-Murphy is not a recipient of this email. Then he says: "The better news is that LCF have now had to be audited as they are a Plc.

"But for some reason they reported a single month period shortening their year end from March 2016 to April 2015???"

"The worse news is.

"All their loan book is lent to Thomson's company! This loan (or some of it not clear) was then shifted to International Resorts Group a company that Thomson used to be a director for.

"So it could be that the liabilities now have no assets to back them up.

"It may all be innocent but it is very convoluted." So, obviously this information is significant. It reveals to Mr Careless that the story being sold about being a lending bank for SMEs is not consistent with the reality. All the loan book is lent to Thomson's company.

My Lord can see what Mr Partridge is referring to. It is at <L1/6/1>. It is LCF's accounts for the period ended 30 April 2015. It says in manuscript "Now known as London Capital & Finance Plc". We need to go through to see notes 12 and 13. I'm afraid I don't know what page they are on. It is going to be after the balance sheet. 12 is "Events after the reporting date". It says:

"After the reporting date the loan with One Monday Limited was taken over on 31 July 2015 by International Resorts Group Plc. A new extended loan term has been proposed and a new agreement is being drafted."

And 13, "Related party transactions":

"Other transactions with related parties. "During the period the company entered into the following transactions with related parties ..." It sets out a table. Then below that, it says: "During the period the company advanced loans of £20,000 (year ended March '15 £513,500) to Sanctuary International PCC Limited who are the parent company of One Monday Limited. A company connected by common directorship -- MA Thomson. One Monday Limited drew down these amounts.

"There was total interest receivable during the period from Sanctuary International PCC Limited of £14,072 ... relating to loans drawn down by One Monday Limited.

"Included in debtors at the period end was £1,251,396 ... due from Sanctuary International PCC Limited."

So, it's saying that, of the debtors' figure in the balance sheet, that sum of £1.251 million relates to a loan that was advanced to Sanctuary International PCC Limited.

The balance sheet is on page 10, and my Lord can see, in the top of the page, the current assets include debtors of £1.252 million. So, there's a slight variance. It's not quite, as Mr Partridge put it, "All their loan book is lent to Thomson's company", it is almost all of their loan book. I haven't done the calculation, but it is going to be something like 99.99 per cent. As my Lord saw a moment ago, Mr Partridge drew that to Mr Careless's attention on 10 December 2015.

My Lord saw the reference to "light touch DD" and how Mr Careless wanted to describe it as an exercise in understanding for the benefit of enhancing sales. We see them using that sort of language on the same day at <SUR00004241-0001>. In the middle of the page, Mr Careless emails Mr Thomson, who is the LCAF email address, copied to Mr Partridge and Mr Russell-Murphy with the subject "LCF understanding" and says: "Hi Andy.

"We want to better understand how LCF operates to assist in both our sales and also from a commercial prospect. As it is way above my pay grade and JRM is snowed under I have asked Mark Partridge, our accountant, to liaise directly with you. We anticipate at least £50 million into LCF bonds over the next 12 months and it would be helpful for us to ensure we know how the underlying assets work in more detail. "Can I leave Mark in your capable hands to provide him with those details please."

He's copied in Mark Partridge. Mark responds three days later, <SUR00130384-0001> to say -- about a quarter of the way down the page, he emails Mr Careless to say: "Missed this on Thursday."

And Mr Careless replies to Mr Partridge: "Give him a nudge then first thing tomorrow for me please buddy."

No-one has disclosed any communication from Mr Partridge to Mr Thomson during the subsequent week. We haven't been able to see any questions from Mr Partridge to Mr Thomson or any response from Mr Thomson to Mr Partridge at this point, although obviously we will see some further communications in due course.

Before that, I need to deal with the problem that was posed for Surge's sales operation by the lack of any real information about LCF's borrowers. Obviously, the salespeople are trying to sell LCF's bonds to members of the public, telling them about LCF being a lending bank for SMEs and scouring the SME sector, and people ask the fairly obvious question, "Can you give me the names of a few of the borrowers? I'd like to understand what sort of companies you'd be lending my money to". But Surge's salespeople haven't been given that information. Mr Thomson has failed or refused to provide it, and so the answer has to be given to members of the public, "I'm sorry, no, we can't tell you that". We see an example from the middle of December 2015 at <SUR00130462-0001>. This is during the period when Ms Graham is acting as one of the salespeople speaking to members of the public by telephone.

On the next page [page 2], we see Ms Graham's email to Mr B*****, 8 December, to say:

"Dear *****.

"I write further to our conversation today. This email is a little lengthy, but I know you are keen to understand the security that is in place and therefore I have written a description here to help inform you. I attach a brochure ...

"Regulated products such as ISAs, etc, are covered by the Financial Services Compensation Scheme. Whilst this is very good, the regulated products that the FSCS cover are currently offering very low

rates of interest. It is also important to note that the FSCS does not cover poor performance of an investment. It covers you for bad advice and also if the investment company goes out of business.

"Low interest rates over the past 7 years have led to the rise of the alternative investment markets. These types of investment offer a real alternative to the low rates. There are many good investments on the market but many bad ones too. It is very important to place an emphasis on fund security whilst considering these types of investments because they are not covered by the FSCS. The two questions that any investor must ask themselves are (1) how secure are my funds? And (2) when do I get my money back?"

"London Capital & Finance Plc is a financial institution that lends finance to commercial businesses, all monies lent are organised on a secured basis and LC&F has an experienced team to assess all applications. The LC&F bond offers the chance for investors to take advantage of this growing market in a safe and secure way."

She sets out the benefits which include asset-backed, administered by Buss Murton law, experienced board of directors:

"100 per cent of your capital is invested with no administration or setup fees."

Under "Capital Security" she says:

"All funds are handled by Buss Murton law LLP ... "All funds in the bond are asset backed. The assets are land and property. In addition to that, borrowers of funds from LC&F have to provide their own security. LC&F will only lend a borrower a maximum of 75 per cent against an asset.", and so on.

On the left, we can see the end of response from Mr B*****. We need to go back a page to see the beginning of his email. He says:

"Kerry, many thanks for your message below ... [your] brochure. I have been discussing the offer with a daughter-in-law who used to be in private equity. "I note that your current bond (at 8.5 per cent) has a total value of £3 million and has been on offer since September 2013. Am I correct in thinking that you were reluctant to tell me how many borrowers you have on your books? Depending on the number depends the risk (if you have 10 borrowers and one goes bust that, could be serious; if you have a hundred and one goes under it is unlikely to be serious). So I am keen to understand the extent of your customer list. If you cannot tell me the precise number can you tell me how much you have lent in total and what is the average sum per contract? I can then get an idea of exposure to risk." She replies above that:

"Dear *****.

"I hope you found the investment memorandum to be interesting? However, the information that you were hoping to receive regarding the number of borrowing companies is not forthcoming. I apologise but the company feel that this is commercially sensitive information and are not willing to disclose. I understand that this information was key to your evaluation of the opportunity hence I will now leave the ball in your court."

He replies:

"What about telling me how much in total you have lent and what is the average sum per contract?" Ms Graham tells Mr Russell-Murphy that ***** is still pushing for more:

"Any ideas about how to respond to this one?" So, as I say, a rather extraordinary situation where LCF salespeople, who are employees of Surge, including Ms Graham, are trying to sell these bonds to members of the public but don't know the most basic information about LCF's loan book because Mr Thomson has refused to provide it.

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

MR JUSTICE MILES: Five minutes, thank you. (3.11 pm)

(A short break)

(3.18 pm)

MR ROBINS: Before the shorthand writer's break, I was showing your Lordship that, by 16 December 2015, in circumstances where LCF had been trading for the best part of three years and where Surge has been selling LCF bonds for a number of months, Mr Thomson has still not provided any information about LCF's borrower book. The only thing that Mr Careless knows about it is what Mr Partridge has told him: all their loan book is lent to Thomson's company.

The first time we see Mr Thomson providing information is at <SUR00005410-0001>. On the same day, the 16th. <SUR00004510-0001>. That's what I should have said. Apologies if I said something else. On the next page, we see, prompted by the questions from a bondholder called Mr H*****, on the right-hand side, in the middle, Ms Graham emails Mr Thomson to say: "Hi Andy.

"How would you like us to answer this question: 'what is the size of funds under management currently?' "Another question regularly asked is: 'How many borrowing companies are there at this time and what is the average loan size please?'"

Mr Thomson replies on the left:

"Hi Kerry.

"The first is easy to answer.

"To date the company has circa £5 million under management (everyone has to start from somewhere and this is why we are offering market leading rates as we are relatively young) and have just secured regulatory approval for a further £125 million.

"The second is a little more complicated as we put together larger funding lines which are cash flow dependent, ie we have secured an immediate placing for the funds we raise thus ensuring the funds are used from day 1. Doing this eliminates the coupon risk (the risk that we may not be able to service the bond if we haven't managed to find sufficient lending opportunities) for the investor. Currently we have in place funding lines for an additional £10 million split over five companies. We have pipeline for much more but it's not worth progressing these until the funding increases as we already have a home for the level of funds coming through.

"I hope the above assists your understanding but certainly the second should not be communicated as it is sensitive info. When we are certain of the funding we will increase the volume and quantum of loans in order to reduce the risk to the investors. I'm happy to talk through in more detail if you think it would help." Ms Graham forwards that to Mr Careless and Mr Partridge, saying:

"See Andy's comments regarding the £10 million over five borrowing companies. I'm interested to know if all five are ultimately under the same/connected ownership." That is, as she says, an interest

question; one might say an obvious question, certainly an important question. It is significant that neither she nor Mr Careless nor Mr Partridge think is appropriate to ask Mr Thomson. Instead, there is continued recognition among the Surge personnel that questions about LCF's lending book are an extremely sensitive topic and that members of the public should be steered away from asking such questions. We see that, for example, a few days later at <MDR00025395>, where, on 22 December 2015, Ms Graham emails Mr Thomson to say:

"Generally, I have been trying to steer customers away from questions about our lending book. However, one particular chap is very persistent and wants me to answer the following question, can you please suggest a reply that you are comfortable with:

"What about telling me how much in total you have lent and what is the average sum per contract?" Mr Thomson replies to say:

"Sorry it's taken all day to get to this, let me have a think and I'll email you something in the morning."

He doesn't send her anything. We can see that from <MDR00025747>, where, on 4 January, the next year, Ms Graham emails him to say:

"I hope you had a lovely break. Any answer on this email please?"

So the position remains that there's no real information. There's a suspicion the five borrowers may be connected. But a recognition of the sensitivity. Another topic that becomes relevant at around the same time relates to the suggestion that LCF will be bolstered by the addition of security to its balance sheet to overcome what are described as objections from members of the public and to increase conversions. We can pick that up at -- I think let's start with <MDR00025611>. I'm not sure what it is, I'm afraid, but I've written it down here, so it's relevant. This is an email from Mr Careless on 28 December 2015. He puts down his thoughts on "our plan moving ahead into the new year and a little beyond". He says:

"We had a great end to 2015, breaking £1 million into LCF in just 18 days (including two weekends!), which, as John rightly pointed out to me, is a fantastic milestone in its own right.

"There are three components to make our business work to a scale the size of a Wellesley size business (£200 million + turnover/£50 million EBITDA), valued at well north of £500 million. We are not trying to emulate them per se but we do share the same customers, folks looking for better return on their savings. There is no difference between us and Wellesley apart from they've a five-year head start. We will be at their size in under half that time as our route to the summit is quicker and our people are better."

We says:

"We require three elements to scale to that size: "1. The lead machine.

"2. The sales machine.

"3. The products."

After that, he says:

"There is a fourth element ... it is the most important ingredient by far. It's the team. "Why do teams succeed and fail? The answer is simple. A team succeeds and fails because of its people and the clarity of their collective purpose. Mostly, we have the right people in place, there are some who may

not make it all the way on this journey and there will be others who will be there who we haven't met yet. I expect the best from everyone who fights with me. I will not settle for less. We have given leeway, in January that stops. We won't be carrying people who don't perform in January. I want us to win and that means accepting only the best people on board. As a team I expect us to embrace the changes that will transpire and use them to forge our self-confidence. Nothing will stop us.

"Enough of that. Onto the battle plan for January." Over on the next page, he sets out various points in relation to BSR, TIE and pensions, and a lot of bullet points. Over on the next page [page 4], we see what he says. Right at the end of the email, it is a very long email, he says:

"There will be an all hands meeting in Eastbourne at 11 am on Monday ... Please ensure everyone is there." Then, at the end, the PPS is:

"JRM -- can you text me and let me know about the lunch with Spencer tomorrow please."

Mr Partridge reads that, clearly very carefully, all the way to the end, because he says, at <SUR00004668-0001>:

"So. Interesting. The speed you are moving at, the roadmap by Jan 31st is the drop dead date, earlier is preferable.

"DD is obviously very important here in my eyes anyway."

Then he asks some questions about Wellesley and Blackmore. Then it says:

"So you are seeing Spencer tomorrow. Do you want me there or is it a three wise monkeys meeting? I would not be offended by the way but at some time we do have to address this issue."

Three wise monkeys presumably being see no evil, speak no evil, hear no evil.

As it turns out, it's not going to be a three wise monkeys' meeting. Mr Careless responds at <SUR00004672-0001>, and Mr Careless says: "Christmas was okay, always bores me if truth be told, I like the cut and thrust, not hanging out at home."

He then mentions Wellesley. And then this needs a bit of unpacking. We will see what he's talking about from the subsequent emails:

"He [we will see is a reference to Spencer Golding] has offered £30 million in security, first charge, et cetera. Let's take that this month, for starters cover us while we get to grips with the underlying asset and how it performs."

Then, at the final line, he says:

"Spencer, I am not sure. If he is a no go, maybe we should grab a beer in the afternoon?"

But then there's a subsequent email at

<SUR00004685-0001>, where, at the bottom of the page, Mr Careless emails Mr Russell-Murphy, Mr Partridge, Ms Graham, Mr Jones and Jo Baldock and says: "Guys.

"As you know I have been looking in detail at Wellesley.

"They are less than five years old and turn over £200 million since being on TV in late 2013 when their turnover tripled. They offer 7 per cent in a world of 2 per cent and sell the same story as LCF, capturing the vacuum left by banks by lending to cash-starved, asset-rich SMEs."

The language of selling a story is obviously interesting. He gives a link to an article on the Telegraph website and he says:

"JRM and I are meeting with Spencer on Tuesday mid-morning in Crowborough. I intend to bring Mark and use this article as a discussion point that if we had the recently referred to security in place, LCF would be in a far stronger place than Wellesley. If you scroll right down and read the comments you'll see the obvious concerns we need to address, *****' in particular nails it. Having £30 million on the balance sheet would defeat that argument and conversions would increase."

So, as my Lord sees from the last two emails, Mr Golding has offered £30 million in security. He has offered to put £30 million on LCF's balance sheet. It's said by Mr Careless that that would defeat an argument that members of the public might raise and that conversions would increase. He says:

"Lastly, I want to remind you all that BSR is our platform, we own that entirely and that can fill any bond we choose."

Above that, Mr Jones has read the article in the Telegraph. He says:

"Interesting and timely article.

"I am sure they will be sniffing around LCF in no time at all."

Mr Careless replies to him:

"No they won't.

"Wellesley got spotted because it went above the parapet by advertising on TV.

"They'll stay under the radar for a while yet." "They" seems to be a reference to LCF. He's saying they won't be sniffing around LCF. LCF will stay under the radar for a while yet. Your Lordship might think that an odd comment to make about a company that Surge was responsible for promoting to members of the public. Mark Partridge responds on the next day at <SUR00130548-0001>. On page 2, at the bottom of page 2, Mr Partridge says:

"Certainly gives comfort to the proposition." I think he's talking about the idea of putting £30 million on the balance sheet:

"Still big concern is one type £30 million asset backing this. Wellesley implies a spread of risk as per original thought with Spencer.

"Couldn't see ***** comment."

So Mr Careless sends him the comment and the comment is set out on the right:

"Such sloppy and irresponsible journalism. If you bothered to look properly at the savings bond offering, you would see that they can basically do whatever they want with the money. The funds invested in the savings bond will be used to expand its business and lending capabilities, ie they can use the money for television adverts and raising even more money to do basically whatever they like with it.

"How does the FCA allow this stuff? These guys dangerously masquerade around as peer-to-peer lenders but all they are in reality is an unregulated fund that offers terrible returns -- particularly when you consider that they have only been lending (other people's money) for a few months ... next scandal waiting to happen."

That's the comment which Mr Careless said nails it. He thinks that having £30 million on the balance sheet would defeat the argument and that conversions would increase.

My Lord saw that Mr Partridge had said a big concern was one type £30 million asset backing this. We see what type of asset is being envisaged at <MDR00025708>, where Mr Russell-Murphy emails Mr Thomson -- this is now 2 January 2016 -- the subject is "New bond". He says: "Dear Andy.

"I hope you had a good Christmas and happy new year to you!

"Katie sent an email saying you are no longer accepting applications into the old bond, I will notify the sales force and finalise the applications that are in progress.

"With regards to the new bond, how are you progressing with the 30-million land asset being placed into the company? I am organising training with the sales staff on Monday and wanted to let them know about this, do I have your permission?"

So, my Lord can see that the one type of asset, in Mark Partridge's words, is what's described as a land asset, a £30 million land asset, that Mr Golding has apparently offered in security and said will be placed onto the balance sheet. That's the 30 million on the balance sheet that will defeat the argument of ***** to increase conversions.

As my Lord saw from the previous emails, Mr Careless had said to Mr Partridge, about the 30 million in security, "Let's take that this month. For starters, cover us while we get to grips with the underlying asset and how it performs."

Reading between the lines, it seems that Mr Golding has offered to put £30 million on the balance sheet, presumably as an alternative to answering any questions in the nature of due diligence.

We see another reference to the 30 million security at <SUR00004894-0001>. This is now 6 January. Kerry emails Mr Careless to say:

"I am concerned that the targets might not be achieved without the £30 million security because the terms of the new bond are not as enticing and I foresee a little dip in sales now we have closed series 2. Do we have a timeline for the enhanced security?" So, it's not been put in place yet. In the meantime, we have some more robust, frank views from Mr Partridge. We start with <SUR00158417-0001>, where, on the 7th, the next day, he emails Mr Careless with the subject "Look what I'm playing". There's an attachment, a Jpeg, a photo. He says:

"For DD purposes ..."

Due diligence purposes. He's playing something, a game. Let's have a look at it. <SUR00158418-0001>. It's a board game called "Ponzi scheme". Mr Careless replies, at <SUR00158420-0001>, "Ha ha ha ha ha", which one can only assume is an example of using dark humour to deal with things that make you feel uncomfortable. Mr Partridge, as Mr Careless explains in his witness statement, is a frank individual who expresses himself robustly. He's not afraid to say it as he sees it. We see more of that at <SUR00130885-0001>. I mentioned the in-house view, or at least the Mark Partridge view, we will see in other documents it is the in-house view, that Mr Thomson is a liar, he is not to be trusted.

At the next page, we see that Mr Thomson -- well, it is right at the bottom of the page, 13 January, has emailed Mr Russell-Murphy. If we go over to the next page we see what he says. He says:

"Hi John.

"Further to our conversation, I can confirm that all interest paid for the bonds is subject to withholding tax at 20 per cent. If an investor believes they should be receiving interest gross this needs to be addressed via their tax return."

This is the point, my Lord, about withholding tax, whether LCF could pay 100 per cent of the interest owing to investors and leave the investors to account to HMRC in respect of any tax due, or whether LCF had an obligation under the tax legislation to withhold 20 per cent. Mr Thomson is saying that the bond is subject to withholding tax at 20 per cent. Mr Partridge receives that. On the previous page, we see, first of all, Mr Russell-Murphy sends it to various collective email addresses and, on the previous page, it's forwarded to Mark Partridge. Mr Russell-Murphy says:

"Just to clarify, our bonds will be subject to 20 per cent withholding tax."

Mr Partridge's response on the bottom left is: "No fcking shit Sherlock."

Then he adds:

"Sorry, a bit rude but really! What happened to BDO and Lewis Silkin's advice?"

Mr Careless doesn't seem to have been in the loop on this, because he says:

"What is wrong with this advice? Is it just vanilla/obvious?"

Mr Partridge explains to Mr Careless, copying Mr Jones:

"It is completely the opposite of what was stated last week when utilising your capital allowance was all the rage -- allegedly backed by BDO and Lewis Silkin. Despite my scepticism.

"That's why emails go out giving completely the wrong advice. Because people want to say the things punters want to hear rather than reality. That's the sort of thing that ends up shutting the company down. Bullshit.

"You can't believe anything that comes out of Spencer's lot and so JRM's mouth.

"Diversify ASAP. And consider your sales management."

The comment "You can't believe anything that comes out of Spencer's lot's mouth" is self-explanatory. We know who "Spencer's lot" are. He says "and so JRM's mouth". In Mr Partridge's view, Mr Russell-Murphy is tainted by the same brush:

"You can't believe anything that comes out of Spencer's lot and so JRM's mouth."

He says, "Diversify ASAP" -- by which he seems to mean "Find new customers, don't rely on LCF. Diversify ASAP" -- "and consider your sales management". Well, the sales manager was Mr Russell-Murphy. Mr Partridge seems to be suggesting that Mr Careless should terminate his association with Mr Russell-Murphy.

MR JUSTICE MILES: It may be something which needs to be explored, but the point that seems to be being made in that email is actually to do, as far as I can see, with the bit about clients using their capital gains tax allowance rather than the withholding tax point.

MR ROBINS: Well, they are two sides of the same coin. What was being said was that clients could use their capital allowance so that LCF didn't have to withhold 20 per cent. I think that's what we see in the final paragraph of Mr Russell-Murphy's email. Or is that a separate point? Maybe I have misunderstood. But it may be a separate point. But it doesn't detract --

MR JUSTICE MILES: I would have thought the 20 per cent is a tax on interest.

MR ROBINS: Yes.

MR JUSTICE MILES: And that the bit at the end, where he says, "Andy has also confirmed that their legal and accountancy advisors" --

MR ROBINS: I think my Lord is right.

MR JUSTICE MILES: They have stated they can't use the capital gains allowance on maturity, and then --

MR ROBINS: Yes.

MR JUSTICE MILES: Anyway, we can all read the email. But it looks as though the bit that Mark Partridge is struck by is something about utilising the capital allowance.

MR ROBINS: I think, on reading it now, my Lord is right because the word "also". That doesn't detract from the point that Mark Partridge is making about it. He says it's completely the opposite of what was stated last week.

MR JUSTICE MILES: That's the bit he seems to be struck by.

MR ROBINS: I think that's right. He says: "That's the sort of thing that ends up shutting down the company. Bullshit."

The bit I was highlighting, I think remains valid although the focus may be slightly different, is the wording "You can't believe anything that comes out of Spencer's lots and so JRM's mouth. Diversify ASAP and consider your sales management."

My Lord has seen a picture building of the views expressed by Mr Partridge, and they are all of a piece. Another topic that rears its head at this point relates to the absence of a lending page on LCF's website, which, as we will see in due course, was a consistent concern amongst prospective bondholders who asked essentially, "How can you be lending to the SME sector when you don't have any lending page on your website, there is no way for prospective borrowers to lodge enquiries about loans, there's no information about the application process, we can't see how it is that an SME that would be looking to borrow from LCF could actually make a suitable inquiry". The response to that is something that we see being addressed at this point. In short, employees of Surge begin to put together a lending page, and we will see, when the subject raises its head subsequently, it is essentially a sales tool. It's designed to increase credibility by making it seem to members of the public that there is an obvious channel for prospective borrowers to apply. That's something that comes out more clearly in due course, but we need to pick it up initially at this point with <MDR00027127>. We can see from the second page that Ryan Holdaway asks Manuel Espinoza, copying Mr Careless with the subject "Lending page":

"Hi Manuel.

"Please can you send Paul a screenshot of the lending page you designed?"

And Mr Espinoza replies:

"Hi Paul.

"As Ryan requested please find enclosed the LCF businesses lending page screen."

So this is not something produced by Mr Thomson or anyone else at LCF, it is produced by Manuel Espinoza. Mr Holdaway sends it to Mr Russell-Murphy, saying: "Attached is the proposed design for the LCF landing page."

I think it should be "lending page" consistent with the subject of the email:

"Please could you let myself and Manuel if you're happy ..."

It should say "know if you are happy":

"... with this or if you have any changes you would like to make.

"If happy we will send it to Andrew for his opinion."

On the left, we see Mr Russell-Murphy's comments. He has a couple of pages. He says:

"The tab to click through to the lending page would look better if it said -- 'business loan' and had 'apply now' underneath.

"Once the page is open I don't think you need the line -- apply for a business loan with London Capital & Finance -- this should be removed.

"The opening paragraph should also state -- we offer secured loans up to 75 per cent LTV of your property and business assets, all loans are subject to status and our approval process.

"I think we also need to include the standard risk warning that is quoted by all mortgage lenders -- your home is at risk, et cetera."

And Mr Holdaway says:

"Thanks for your feedback, John. All great suggestions. We shall update these tomorrow and pass back again for a quick once over before sending to Andrew, if you don't mind."

And Mr Russell-Murphy says, "Yes, that's fine." I mentioned what we see subsequently -- it is not something apparent from these emails, but my Lord will see it in due course, is that this isn't about attracting borrowers, it is a sales tool. The description of LCF's business will be more credible to members of the public if there is a lending page on the website.

We should also look, while we are here, at <MDR00026970>. It is a document from the same day, just to put what we are seeing into a wider context. Mr Careless emails sales@londoncapitalfinance.co.uk, Ms Graham and tech at infoconnections.co.uk and copies Mr Partridge with the subject "Learnings and improvements" and he says:

"Team.

"Firstly, let me share some data from week one: "We started after the Christmas break on Monday 4th but sales actually started on Tuesday 5th. "From Tuesday 5th to yesterday (13th) at 5 pm we had closed into GCEN £417,000 (that number is £40,000 higher after 5 pm but they didn't clear when I ran my stats). "1. 7 working days = £417,000.

"2. 29 deals.

"3. Average deal size -- £14,000.

"4. Average deals per working day = 4.

"It means our current run rate on 22 working days is £1.2 million into LCF from BSR. However, it is worth noting that is from a standing start with a very new team. That number will improve as we get better at lead production, conversion, account managing and this email's purpose is to get big improvements done quickly."

He sets out his views on metrics, that he's going to put in place benchmarks to focus on improving number of leads and cost of deals:

"However, metrics will be focused on number of deals per working day. Our target with our current resources is 6, we are currently at 4. Average deal size is currently sat at £14,000. Our next target to achieve is £20,000.

"What we focus on will improve. I understand at coupon day there will be a double down effect but right here right now I am only interested in first sales and how to improve them.

"Our immediate target is 6 deals at £20,000 per working day = £120,000 X 22 days = £2.6 million. "To achieve this, we need the following to happen." 1 is:

"We need testimonials on LCF. Increase trust and fidelity of the product.

"2. We need the lending page on LCF going live and with it we need to add what a normal company we would lend to looks like ie £10 million turnover, looking for £500,000 over six months; company has £4 million in company assets for protection of our loan. "3. We need the new BSR look and feel launched. "4. We need more people on the About US of LCF with great photos, more like 10 + people, not 3." My Lord can see the reference to the lending page is something that begins to crop up in a to-do list in relation to improvements that can be made to marketing along with testimonials and more people on the "About Us" page.

He continues:

"5. All LCF account managers will have impeccable LinkedIn profiles approved by me.

"6. The LCF online provenance is to be gripped. Controlling its own SERP ..."

Which I think is "search engine results page": "... is a priority.

"7. The chat box to be improved, with a photo of who they are talking to, bigger, bolder, as discussed.

"8. Security on the LCF balance sheet to combat the 'you are very new company' objection. Having £15 million in assets on the balance sheet is very strong. This then added to scripts and understanding by all AMs [account managers].

"These are big needle movers and need to all be in place within one week. I will issue orders to the people who need to make these happen straight after this email."

So these are needle movers in terms of marketing. My Lord sees that the security on the balance sheet is mentioned in the same context as the lending page. The figure that is being given has gone down from the £30 million that was mentioned in a series of emails towards the end of 2015 and very early 2016. The figure that is now mentioned in connection with security on the balance sheet is £15 million. So, as I say, that's gone down. We see some further light shed on the position relating to the security that's said to be placed on the balance sheet at <EB0012466> where Mr Careless emails Mr Barker, copying Mr Russell-Murphy and Mr Partridge with the subject "Update" and he says:

"I want to move forward with a number of things. "Firstly, our metrics are below in an email to the management and I have cut and pasted it at the bottom of this email."

The email we just saw:

"Two key statements to save you reading it entirely are our current Jan target (just BSR): 'our immediate target is 6 deals at £20k per working day ...', et cetera:

"And the key improvement I need you to help with: 'security on the LCF balance sheet to combat the 'you are very new company' objection. Having £15 million in assets on the balance sheet is very strong ...'" He says:

"I need to get the security on the balance sheet as fast as possible. I also need to understand what exactly it is, as the account managers will need to explain it to the clients it needs to be simple. It will defeat our main objection and increase conversions immediately; therefore, it being added quickly will help increase sales."

Then he goes on to mention wanting to "explore the opportunity laid out on Tuesday in our offices", and we will see what he is talking about. He says: "I have asked Mark who is cc'd to liaise with you directly to get the ball rolling. Mark is a shareholder, friend and a chartered accountant and I trust him implicitly. If you require us to sign some form of non-disclosure then that is fine. John and I are busy dealing with this growth and that is why Mark is conducting diligence on our behalf." What we will see in due course, my Lord, is that he's referring to the draft exclusivity agreement between London Group Plc and Mr Careless and Mr Russell-Murphy. We will see that in due course. It seems, at this point, that the opportunity has been laid out "on Tuesday in our offices". Mr Careless wants to explore it in more detail. That's why he's putting Mr Barker in touch with Mark, who, as I mentioned before, he describes as a friend, someone he trusted implicitly.

He says in the final line that he wants to work out exactly what the opportunity is.

Mr Barker, it seems, hasn't responded immediately because Mr Careless chases him on the 18th: "Hi Elten, what is the update on this, please? In particular, the security on the balance sheet." Mr Barker says:

"Sorry for not getting back to you, I went away Friday and Saturday. We are sitting with Andy and will get back to you with a response."

Four days later, <SUR00005975-0001>, we see, on the same day as the emails we were just looking at, just after Mr Careless's email to Mr Barker asking for the update in particular, security on the balance sheet, Mr Partridge replies to Mr Careless:

"As per the literature, LCF lend to 75 per cent of asset value.

"We should consider this.

"Per our conversation with LCF, 50 per cent of this asset is liquid. The rest is deferred 'consideration'." "Consideration" being in speech marks:

"We need to consider whether to stop placing funds at £7.5 million x 75 per cent = £5.625 million or £15 million x 75 per cent = £11.25 million." So, not only has the security that is going to be placed on the balance sheet reduced from £30 million to £15 million, it's now being said by someone that only 50 per cent of this asset, or £7.5 million, is liquid, and that the other half is deferred consideration. So Mr Partridge is wondering whether they should stop placing funds at 75 per cent of the liquid half or at 75 per cent of the entire £15 million, including the deferred consideration element as well as the liquid half. But my Lord can see that the promise from Mr Golding of putting £30 million on the

balance sheet to defeat objections has been considerably watered down in the matter of weeks. Not only has it halved in amount, but now only half of what remains is said to be liquid.

No-one has still really explained what it is. Then, a few days later, at <MDR00028356>, the subject is picked up right at the bottom of page 1, Mr Careless, on 21 January 2016, emails Mr Barker and Mr Thomson, copying Mr Russell-Murphy and Mr Partridge, as well as Ms Graham, he says:

"Hi Elten, hi Andy.

"John and I are keen to progress matters. "As of yesterday, we have £1.2 million pledged into LCF from the first 20 days of the month, £2 million by the end of the month is a genuine possibility. What would help us significantly is removing the objection about the company being young and having an empty balance sheet. The sooner the security is added the better. Can I ask you to let me know what the security will be precisely and when it will be added by in a way in which members of the public can see and our team can quote it."

There is no response to that. We see four days later, on the left, Mr Careless sends a further email on the 25th to Mr Barker and Mr Thomson. He says: "I am just following up on my email from Thursday to you both."

He then says in bold text:

"Can I get a response this morning by email regarding the security which is being added to the company please."

He explains:

"We are growing very quickly and the quality of the balance sheet needs to be shored up to provide comfort for the clients. It remains the largest, most singular objection and hold backs the conversions considerably. It requires your urgent attention." He sets out details in relation to sales. He says in the penultimate paragraph:

"With a running a flywheel (we started Jan 4th from a standing start), a strong and secure balance sheet and the changes we are making this week (there are 52 of them) I realistically expect that in February we will achieve £4-5 million.

"At this pace we really need your support with our growth and that means the balance sheet shoring up, comms paying as fast as possible and keeping up the communication, email is fine."

Mr Thomson replies at <MDR00028358>. We can see, in the middle of the page, he says:

"Thanks for your email. Unfortunately, I didn't receive your email of Thursday."

He says he's "travelling this morning and would like to talk through a couple of bits as well as what you have raised in your email". And Mr Careless says: "Morning, Andy.

"Can you do me an email reply to include Kerry, Andy and Mark please with your points so they can action them.

"I am out of office today, back tomorrow." So, Mr Careless is unable, or perhaps unwilling, to speak to Mr Thomson by telephone. He wants Mr Thomson to respond in writing.

In Mr Careless's absence, Mr Thomson decides to speak to Kerry Graham instead. We can see her report of that conversation at <SUR00131168-0001>. This is an important email. She emails Mr

Careless, Mr Russell-Murphy, Mr Partridge and Mr Jones with the subject "Update on due diligence from Andy". She says: "Hi.

"I have just spoken with Andrew Thomson, we discussed some quite sensitive information which he initially didn't want to be communicated by email but has given me permission to relay this information assuming your commitment not to mention the details outside of this small group. Please don't even mention to the sales team yet until we decide how best to communicate the key changes we have been asked to introduce.

"He has not replied to Mark's request for DD because he did not receive the emails.

"There is no £30 million security. There is a transaction taking place with \$30 million (yes, dollars) to the benefit of LC&F and inter-related companies. However, the only 'asset' which they are able to use for the purposes of enhancing LC&F is a loan note for £15 million (yes, sterling) in favour of LC&F. They have had it confirmed by their accountants that the loan note can be positioned in the balance sheet so that the assets of the company are boosted. The balance sheet currently shows assets of £6 million, therefore an extra £15 million will take it to £21 million which is sizeable and therefore should assist sales but will not be as beneficial as the £30 million charge over property which was originally suggested. Andy says this was a miscommunication by Spencer and it was never an option."

Then, in the next paragraph, she says:

"The loan book:

"Since inception, LC&F (formerly SAFE) has lent £4.2 million.

"Currently there are 80 loans.

"The average loan size is £75,000.

"The largest loan ever was £220,000.

"Terms range from 3 months bridging finance to 2 years property development finance.

"Crucially, all 80 loans are to Spencer-related businesses ie they are funding their own operations. "I asked about the strategy for when they will open the opportunity to SMEs generally and he pushed the question back to me: 'when can you guarantee a consistent flow of funds? I turned down a £2 million loan last week because I didn't know if we would get £2 million in this month'.

"They have had no defaults since inception." Then, my Lord, the paragraphs we have seen previously, where Mr Thomson is reported as saying that Spencer doesn't own LCF and Ms Graham expresses considerable bafflement in the way she describes her reaction to that to the recipients of her email. On the next page, after the passage that we have seen before, which ends, "I don't know what to believe. Is this a little bit like if I said yes this is my business, nothing to do with Paul, check at Companies House. Companies House would just show me but we all know Paul is the visionary and I just create systems to action the practicalities."

She then says:

"Big issue:

"The FCA contacted Andy 10 days ago to say that they have received numerous complaints re TIE promoting LC&F. They have also been forwarded email communications from TIE staff. They have mystery shopped us. In the FCA's opinion, we are misselling. It is not okay to state that bondholders'

capital is 100 per cent safe, there are risks and we are no longer allowed to be so categorical in our statements. We have been operating in good faith but now Andy has alerted us to requested changes we can adapt as necessary.

"The FCA went on to state that the LC&F website constitutes a financial promotion in its own right and as it was not section 21 approved they could shut it down. He promptly got Sentient to approve it and avoided this. He is now very cautious about new content and would like everything to go through a vetting process with Sentient (via Andy) before release. This makes sense.

"Andy has had two hour long conversations with the FCA and is now implementing the necessary changes which will impact us. By close of business tomorrow, we will have a list of changes to make. The FCA will give us until 1 February to implement these changes. He said we will have to show the IM earlier in the process and make more of a feature of it.

"Andy will also write a list of statements that the sales team are using which need to be adjusted, it will take him a few days to complete this. It will be around how we communicate the 100 per cent safe/secured message."

My Lord can see there are two bombshells, if I can put it that way, in the email. First, that there is no £30 million security and that all 80 loans are to Spencer-related businesses, ie, they are funding their own operations; and, secondly, the FCA have told Mr Thomson that TIE, The Investment Experts, have been misselling. Two bombshells.

As far as we can see, Mr Careless responds only to the second. We don't really see any response at all to the first. It is quite curious. He reads it, there we are, ignores it. It's the second that grabs his attention, and he responds to his team at <MDR00028517> to say:

"Team ..."

This is the 25th, the same day:

"Something is coming our way. Leander asking specifically to be removed. Andy Thomson saying the FCA were concerned re TIE. The dots are forming a line and we have too much to lose to not take action. "Therefore:

"1. Pause all TIE advertising.

"2. Pull TIE down, no pages live, have a page saying, 'This site is currently offline' ...

"3. Johnny moves back to pensions in EB from tomorrow. I have told him, he is cool. Great guy. There are plenty of leads and they actually need him.

"4. Joe Beal didn't turn up today, JRM and I will discuss him tomorrow morning as well as Brad. "It could be a competition or anyone, even someone who recently left. Some people when they are not allowed to play in goal, try and pop the ball. Either way, for now it closes.

"Lastly. All connections, IP, Limited Companies or people connected with TIE need considering or removing from all our other sites. Consider it toxic. "Ashleigh and Ryan this is predominantly for you. "Report when completed. These actions may not stop what may come but it may help. It can always and easily relaunch. Nothing is forever."

So, as I say, my Lord, there seems to be no response to the bombshell that there is no £30 million security and that all 80 loans are to Spencer-related businesses, ie, they are funding their own operations; to the contrary, the general tenor of this email is that there are plenty of leads and they

are going to carry on selling LCF. The bombshell that is noted and responded to relates to the concern about TIE, which Mr Careless says should be considered toxic and taken down. A colleague removes -- that he has taken it down. That's <MDR00028519>. Same day. He says: "Hi all, I have taken down TIE and have set up info@TIE to be forwarded to tech@info.

"If you need anything else then please let me know." At <MDR00028535>, Mr Careless says that "Kerry is working on any cross-pollination issues which she will email around in the morning for resolution". Then the next day, at <D7D9-0004170>, Mr Careless updates his colleagues -- Ms Baldock, Mr Russell-Murphy, Mr Jones and Ms Graham, he copies the email to tech@infoconnections.co.uk, and he says: "Morning everyone.

"As you know I have brought TIE down. It is a pre-emptive move as I am expecting repercussions from the FCA regarding some of our dealings with clients. Where we go from here is not decided but to head off a potential issue of breaching the grey area of advice with at least one of our analysts is paramount. I understand there may be issues with current clients and although the site is down, there is an email address on the home page and all email addresses are open. "JRM -- let's talk this morning about Joe Beal and Brad and what happens to them.

"Kerry -- please let me know what cross-pollination is existing between TIE and other entities. Consider privacy policies, WHOis [which, I think, is the internet domain registration], company connections, director decisions, et cetera. Based on this report the tech troops will make certain changes to keep the spill contained.

"Joanne -- ensure the TIE phones have just voicemails.

"Then we wait and see what happens."

Then at <D7D9-0004175>, my Lord can see that Kerry Graham says:

"If anyone has TIE referenced on their LinkedIn, please amend."

It is to be scrubbed from the public record. Then, in view of the time, I can either break now or we can do another three documents. I'm in my Lord's hands.

MR JUSTICE MILES: I think we might break now, Mr Robins. So, we will resume at 10.30 am tomorrow. Thank you. (4.20 pm)

(The hearing was adjourned to Wednesday, 6 March 2024 at 10.30 am)

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