

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 11 - Wednesday, 6 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 asked me yesterday about the meaning of credit broking in the context of LCF's authorisation for credit broking. I said I didn't know and I would need to look it up.

In that context, I also mentioned to your Lordship that the FCA complained to LCF on a number of occasions about what it considered to be misuse of LCF's authorisation.

I have now had a chance to look at those things. The best place to find a summary of the position in respect of LCF's authorisation is the FCA's final notice, which we have in the trial bundle at <R1/19>, page 1. My Lord can see this is the final notice, dated 11 October 2023. The history of the authorisation starts on page 6. In paragraph 4.1, it says: "LCF was incorporated on 12 July 2012 and was initially regulated by the Office of Fair Trading in respect of consumer credit activities. On 1 April 2014, the regulation of consumer credit transferred from the Office of Fair Trading to the Authority [the FCA] and LCF was one of approximately 50,000 firms whose regulator changed to become the [FCA]. Following this change, LCF registered for interim permission with the [FCA] to carry on its existing consumer credit activities and it made an application for ... authorisation on 21 October 2015."

In 4.3:

"LCF became regulated by the [FCA] on 7 June 2016 as a limited permission credit broker and it is from that point that the financial promotion rules applied to LCF. "4.4. LCF's minibond business was not dependent on it being authorised by the [FCA]."

Then there is a separate point in the next paragraph about ISA manager status. Then, in 4.6, it says: "Whilst LCF's minibond business itself was designed to mostly fall outside of [FCA] regulation, LCF's financial promotions relating to the minibond business were caught by the [FCA's] financial promotion rules. "The central COBS financial promotion rule is the fair, clear and not misleading rule ... which states that communications or financial promotions must be 'fair, clear and not misleading'."

Then 4.8:

"Section 21 of [FSMA, which I mentioned yesterday] sets out that a person must not, in the course of business, communicate an invitation or inducement to engage in investment activity ... unless they are an authorised person, or the content of the communication is approved (for the purpose of section 21) by an authorised person.

"4.9. Issuing financial promotions is not itself a regulated activity under the Act.

"4.10. A financial promotion can be made in many formats such as an advert in a newspaper, a social media post or an Information Memorandum."

In 4.11:

"LCF's only business was commercial lending funded by minibonds issued in its own name which were targeted towards, and sold predominantly to, retail investors who then became bondholders."

It explains the position in relation to the bonds. So that's the history. That still doesn't tell us what credit broking is. For that, we need to look at the FCA handbook at <R1/20>, page 1. On page 10, my Lord will find, in chapter 2, at the bottom half of the page, the definition of credit broking:

"There are six activities that fall within credit broking. These are:

"(1) effecting an introduction of an individual who wishes to enter into a credit agreement to another person, with a view to that person entering as lender into a credit agreement by way of business;

"(2) effecting an introduction of an individual who wishes to enter into a consumer hire agreement ...

"(3) effecting an introduction of an individual who wishes to enter into a credit agreement or a consumer hire agreement to a person who carries on an activity in (1) or (2) by way of business;

"(4) presenting or offering an agreement which would (if entered into) be a credit agreement;

"(5) assisting an individual by undertaking preparatory work with a view to that person entering into a credit agreement;

"(6) entering into a credit agreement on behalf of a lender."

So nothing to do with the issuance of bonds. If we go back to the FCA final notice at <R1/19> page 18, my Lord will see a remark relating to the FCA's concerns about misuse of regulated status. In 4.43, it says:

"A significant number of LCF's financial promotions, and in particular LCF's website, where a prospective investor is likely to have looked early on in their journey to making an investment decision, made reference to LCF being authorised by the authority with prominently placed statements such as 'LC&F is authorised and regulated by the Financial Conduct Authority ...' ... Whilst more detailed aspects of LCF's financial promotions, such as the Information Memoranda, would sometimes state that the bonds being advised were not regulated or did not fall within the scope of credit broking activities, that was insufficient to overcome the 'halo effect' brought about by the way in which LCF presented its Authority authorised status which created an unjustified impression of integrity to prospective investors and which provided a false level of comfort to investors when no such comfort was merited." We do see in the documents, as I mentioned yesterday, the way in which LCF sought to rely on its authorisation and the complaints from the FCA in respect of that. If we start with <MDR00043904>, on page 3 my Lord will see that, in the middle of the page, Mr Russell-Murphy emails to say:

"Just checking to see if Andy gave you their new FCA number ..."

This is 8 June 2016:

"This needs to be updated on the website and all the marketing material."

Just above that, Ryan Holdaway asks:

"What is their new FCA status? Is it FCA registered? It will be a great message to put in the header banner."

And on the previous page, page 2, Mr Russell-Murphy, just over halfway down, says:

"Their status is regulated and authorised. "Their permission allows them to provide regulated products and services ie -- accepting deposits, providing credit to consumers, giving investment advice and arranging deals in investments."

Which seems to rather overstate the position. Mr Holdaway says:

"This sounds amazing!"

"Does this mean we can get rid of the questionnaire and the self-certification if we can provide advice?" Mr Careless says:

"No, the company is authorised, not the products." So he seems to have understood the position. On the previous page, at the bottom, Mr Russell-Murphy says: "That's correct Paul, it's just the company." And Mr Careless adds:

"But obviously milk it boys."

And Mr Holdaway says:

"Well, it's definitely something to whack in the header image with the other bullet points." And Mr Russell-Murphy, at the top of the page, says: "Definitely, let's get the FCA logo in a prominent place as well."

We soon see the FCA expressing dissatisfaction with this, first at <MDR00056510>. My Lord will see the covering email from the FCA to Kobus Huisamen and Mr Thomson, attaching a letter. The letter is at <MDR00056504>. My Lord can see it is dated 2 September 2016. It says:

"We have concerns about the following advertisement ...

"We enclose screenshots of the website." That's what they're referring to. They say: "We consider that the statement in bold at the top of the home page 'authorised and regulated by the FCA' is misleading in the context of the financial promotion; London Capital & Finance is not authorised and regulated by the FCA for the purposes of issuing the London Capital & Finance Plc bond. As stated elsewhere on the website, London Capital & Finance is regulated by the FCA for the purposes of consumer credit lending only. GEN 4.5.3 states, 'A firm must not indicate or imply that it is authorised by the FCA in respect of business for which it is not so authorised'. In our opinion the reference to an FCA regulated firm as a promotional bullet point relating to the bond may give consumers the possible indication their investment benefits from the protections of the regulatory regime, which is not the case and is therefore misleading."

So, that's the first complaint. There is another letter a few days later, six days later. I don't think we need to go to the covering email, but it is in very similar terms to the one we have just seen. But the letter is <MDR00057443>. The FCA, responding to Mr Huisamen, say:

"Thank you for your letter ... and for addressing our concerns regarding the ... website. "However, we still have some concerns.

"1. We note that you have amended the text in the box to say 'authorised and regulated by the FCA for the purpose of consumer credit lending' and have made it less prominent ... it is important to make it clear to consumers what London Capital & Finance is regulated for, but it is equally as important to be clear what they are not regulated for. In our opinion, it is still not clear to consumers that London Capital & Finance Plc is not regulated by the FCA for the purposes of the bond ..."

And so the correspondence continues. The FCA complaints aren't limited to this point. There are other issues that concern the FCA. We see that, for example, at <MDR00002518>, where the FCA say they don't agree that the statement "100 per cent track record in repaying investor capital" does not reflect performance and therefore the past performance requirements in COBS 4.6.2R do not apply. So they are concerned about the 100 per cent track record statement. They are also concerned, we see at <MDR00058717>, about the failure to highlight the risk of illiquidity, and they explain the position in respect of that.

But it is the misuse of the authorisation which crops up repeatedly as a concern for the FCA. We see that again in another letter. We are now into April 2017. This is <MDR00002515>. They say: "We have concerns about the following advertisement ..."

It is again the website. They enclose screenshots of the website. They say:

"Why are we writing to you?"

"We wrote to you and Sentient ... as the approver of your website several times in September 2016 regarding concerns about the London Capital & Finance website, such as the 'authorised and regulated' statement in the promotional box on the home page, the past performance trigger '100 per cent track record' and the absence of an illiquidity warning. The capital at risk warning that was contained in the second box on the home page ... is also no longer there. We are very disappointed to see that the changes made to the website to address these concerns are no longer in place. We have enclosed copies of our previous correspondence to remind you of our concerns."

One can see what they mean from the screenshot they enclose at <MDR00002516>. My Lord can see in the bullet points in the first box in bold text, the first bullet point is:

"Authorised and regulated by the Financial Conduct Authority."

So, having received a complaint from the FCA and having had to remove that statement from the website, within less than a year -- well, within just over half a year, it has been reinstated and the FCA have complained again. We see Mr Thomson's comments on this at <MDR00082738> where he emails Mr Huisamen to say: "Here we go again."

Well, perhaps rather unsurprising that the FCA would complain again if you are doing again the thing that they have complained about.

There is a further complaint from the FCA mentioned in <SUR00075979-0001>, where, at the bottom of the page, Mr Thomson emails Ryan Holdaway, copying Mr Russell-Murphy and Mr Careless with the subject "Newspaper advertisements":

"Hi Ryan.

"I hope you're well.

"We have been contacted by the FCA today as they have received a complaint about our newspaper advertisements. I've smoothed it over with the FCA but we need to remove the 2 lines that begin with 'Authorised and regulated by the Financial Conduct Authority ...'."

Mr Careless comments to Mr Russell-Murphy: "I knew that was a bad idea.

"Can of worms will be opened."

The advert in question is <MDR00089126>. My Lord can see, under the three black circles, it says: "Authorised & regulated by the Financial Conduct Authority for credit purposes."

That is apparently what the FCA object to in the context of an advert in respect of bonds. There are further complaints, for example, <MDR00090311>. This is a complaint about the statement 'as with any investments your capital may be at risk'. They say:

"With a minibond, a consumer's capital is at risk. However the risk warning on the press promotion states 'your capital may be at risk'."

As I said before, there are other things the FCA complain about but what we keep coming back to is the misuse of regulated status. We see that again at <MDR00002495>. This is now August 2017. The FCA send a letter:

"We have concerns about the following advertisements ..."

It is the website and a sponsored Google promotion. They say:

"Why are we writing to you?"

"1. We note your website contains the statement 'We are authorised and regulated by the Financial Conduct Authority'. As previously raised with you this statement is misleading ..."

The screenshot they enclose is <MDR00002498>. It is not particularly legible. I'm not sure I can see the words. I can't read the words. Can we look at the one below? It might be clearer there. I'm afraid I can't see on these what the FCA is objecting to because it is not legible. But I think we can take it from their letter that it is here somewhere.

I hope that answers my Lord's --

MR JUSTICE MILES: It says there in that box something about -- if you highlight that box again, on the right-hand side, "We are authorised by the FCA for" -- but it does say "for credit broking".

MR ROBINS: As my Lord has seen, the FCA say you shouldn't really refer to it at all in the context of the bonds because the credit broking is not relevant in that context. So, that, I hope, deals with my Lord's questions on that topic.

My Lord also asked how much was paid to Google by Surge or RPDigital and I said that there was some evidence about that, there was a bit of uncertainty in the evidence. I said we would dig it out. I said I thought that Ashleigh Newman-Jones calculated a figure which he provided to Mr Careless in the region of £18 million -- in fact, I said £18,000, but your Lordship corrected me. £18 million. I said Mr Careless then provides the information to a PR person, and Mr Careless has increased the number to something in the region of £26 million. I said, "I think the first figure given is 18 million but the figure then passed on to the PR person is 26 million but we can dig out the documents".

My Lord, I was close, but not 100 per cent correct. It wasn't Ashleigh Newman-Jones, it was Ryan Holdaway. It wasn't £18 million, it was £16.3 million. We can see the emails that I was referring to. First, <SUR00120893-0001>. This is after LCF's collapse, when Surge is dealing with a PR person, Chris Gilmour, to help manage the format. Ryan Holdaway is providing information. He says:

"Hi Chris.

"Apologies for you having to chase.

"On Google alone, we spent £13,683,020.18. This was a combination of direct marketing as well as through the comparison websites.

"Due to the way the comparison websites work (multiple clients on a single website) it's difficult to state exactly how much was specifically for London Capital & Finance."

So he's making the point that that's the amount spent but some of that might be attributable to Blackmore, for example.

At the top of the page, he says:

"Also, just to add, this is the spend to Google. We also had to pay 20 per cent VAT on top of this." So, if you add the VAT to the £13.6 million, you get £16.3 million.

Mr Careless then responds to this at

<SUR00120897-0001>, where he says:

"It's wrong.

"Don't go with that.

"We spent over 20m with Google."

He hasn't explained where that figure comes from. In contrast to Ryan Holdaway's very precise figure, this is a round number. But with VAT, that would be £24 million.

We suspect, although we don't have the ability at the moment to say one way or the other, that he might be including all the sums that went through the RPDigital account, including the monies that were paid out to him and to Steve Jones, Aston Beckworth and others. There is then another related exchange, <SUR00120962-0001>, where Chris Gilmour, the PR person, says to Mr Careless, in the second message: "How are our Google numbers looking?"

And Mr Careless says:

"We can't attribute just Google. £23m on marketing."

Chris Gilmour says:

"I thought it was £26m overall so £23m of that went to Google?"

And Mr Careless says:

"We can't split it accurately so it's 23m on marketing!"

Chris Gilmour says:

"What was the £26m figure I got last week?!" And Mr Careless says:

"Yes it's 26m on marketing."

So it seems to be a rather shifting figure. The reason we can't yet provide your Lordship with a definitive answer is because we don't yet have a full set of the RPDigital bank statements. We have got a lot of them, but there are some gaps. Our pending application, which was provided to your Lordship's clerk at the end of last week, which has been provided since to the defendants, seeks a variety of bank statements, including the missing RPDigital statements. As I mentioned last week, the relevant bank is content to provide those to my clients if your Lordship makes the order.

When we have a full set of the bank statements, we will be able to add up the payments to Google, which were all made through RPDigital, and we can provide your Lordship with a definitive answer. But, as I say, we are not currently in a position to do that.

MR JUSTICE MILES: What's the position with that application?

MR ROBINS: We have got a skeleton argument that I think is going to be sent over to your Lordship's clerk tomorrow. We have provided it to the defendants. We haven't had any response from them. So we will be asking your Lordship to deal with it on the papers at the first available opportunity.

MR JUSTICE MILES: It would be helpful to know whether there is any objection to such an order being made, but I'm not going to ask people to say that now. They can just perhaps give me an indication at a convenient moment. Perhaps if we say that, by the end of tomorrow, if there are any objections or comments, or whatever it may be, they should be raised by the close of business tomorrow, and then we will know where we stand.

MR ROBINS: Yes.

MR JUSTICE MILES: Is that satisfactory with everyone?

MR WARWICK: Yes, my Lord, indeed.

MR LEDGISTER: My Lord, yes.

MR JUSTICE MILES: Sorry, I should have asked you.

MS DWARKA: Yes.

MR ROBINS: My Lord, yesterday we saw quite lot of documentation. My Lord saw Mr Partridge told Mr Careless that the 25 per cent commission was insane and said, "I can't see how these figures are sustainable". He said, "Spencer is Madoff", and Mr Careless said, "holly shit, this better not be a Ponzi" but he said any DD must be conducted "with a light touch" and he expressed the hope that LCF would stay under the radar a while yet.

My Lord saw where we got to yesterday. Mr Partridge had still not yet actually obtained any due diligence information from Mr Thomson. Kerry Graham had said that LCF's rates were not credible, and numerous members of the public had expressed the same view. Mr Partridge had discovered that all their loan book is lent to Thomson's company, so it could be that the liabilities now have no assets to back them up, and he told Mr Careless about that.

Mr Thomson had said that LCF had in place funding lines for an additional £10 million split over five companies. Kerry had said she is interested to know if all five are ultimately under the same or connected ownership. But no-one has asked Mr Thomson that question, and, instead, Kerry had been trying to steer customers away from questions about "our lending book". Mr Partridge had told Mr Careless, "You can't believe anything that comes out of Spencer's lot and so JRM's mouth. Diversify ASAP and consider your sales management". He's also expressed the view that Mr Thomson just "talks out of his arse. Spencer had said he will put a £30 million land asset on the balance sheet but that hasn't materialised and the story has changed". Mr Thomson has told Kerry there is no £30 million security and that all 80 loans are to Spencer-related businesses. Kerry has commented that, "They are funding their own operations". But everyone at Surge has turned a blind eye to that bombshell. They have instead moved rapidly to shut down TIE and to scrub any cross-pollination from the record. So that's where we have got to. We are towards the end of January 2016. The next document is <SUR00158422-0001>, where Kerry Graham emails Mr Careless with the subject "Reminder" and she says:

"As discussed, the list ..."

So they have had a discussion, and she sets out the list of points they discussed. The third is: "3. Missing piece of the 'is it a Ponzi' jigsaw: we need access to the lending book, inclusive of details re the security in place, what percentage is property and at what gearing, if not property what is it and how was it valued? Is Mark following up, I put him back in contact with Andy on Andy's new email address." Obviously a pertinent question.

We see Mr Careless and Mr Partridge communicating a few days later at <SUR00131253-0001>. They are talking about a meeting with Pat. Mr Careless, towards the bottom of the page, said to Mr Partridge: "You want to come along?"

Mr Partridge says:

"Up to you. I'm happy to come along but I know sometimes you prefer not to have my 'inquisitive' influence there ...

"Only caveat is that I have to be back in Brighton by 4.45.

"What is the latest then with regard to Spencer (not the Phil version!)"

I should explain that Phil Spencer was, or is, a TV personality and there was a discussion of him being the public face of a Blackmore bond product, a property bond. So Mark Partridge is saying, "Not the Phil version" because a reference to Spencer is potentially ambiguous, it could be Phil Spencer or Spencer Golding, but he's talking about Spencer Golding: "What is the latest then with regard to Spencer ... am I continuing to request DD information? I guess that I am. You are loving everybody at the moment!" There is a further email between the two of them a couple of days later at <SUR00007413-0001>, where, at the top of the page, my Lord can see Mr Partridge says: "With regard to Andy coming over if he insists. Get him come on Friday afternoon and he can go through his security with both of us or just me.

"Otherwise we can do it by electronic means and I can go and see him next week to finish dd by inspection."

So, there has still been no DD information from Mr Thomson. It is still something that Mr Partridge is hoping to address in the future.

But the next topic to address is one that we have seen previously, and I think it is helpful to go back to it in context. We start with <D7D9-0004835>. My Lord has seen this before. Mr Hume-Kendall emails Mr Russell-Murphy with the subject "Surge introduction agreement" and says:

"Hi John.

"In the interests of time I am sending you this email direct from Robert.

"This is the third draft but there are changes we still need to make but at least it should get the ball rolling.

"There are quite a few pedantic items in the boilerplate but all that can be changed as can any element of the model we have created.

"I have not sent this to Paul in case there is anything that is a glaring error on my part then we can get it sorted out in advance.

"The reason for my caution is that Spence has had very bad flu and he has had zero input into this after our initial instruction.

"Will await your call at 2 pm as agreed with keen anticipation."

The attached agreement is <D7D9-0004836>. It is the draft participation agreement between London Group Plc, on the one hand, and John Russell-Murphy and Paul Careless, on the other.

On the next page, we have the contents. On the page after that, my Lord can see the parties. London Group Plc is defined as "London" and Mr Russell-Murphy and Mr Careless are defined as "Surge". So when we see "Surge" it is not the company Surge Financial Limited, it is the two individuals.

Mr Hume-Kendall and Mr Barker are also to be parties as shareholders. The recitals say:

"A. Surge has developed a method of access a large contact base are interested in investing in high quality opportunities."

Something seems to have gone wrong with the language there:

"B. From proceeds of the financial products London is currently obliged to pay an introductory commission of 25 per cent.

"C. London has agreed to pay to Surge the sums referred to in this agreement in consideration of Surge acting exclusively for London in introducing contacts as may be agreed between the parties.

"D. The shareholders together own 95 per cent of the issued share capital of London."

And "Financial Products" is defined to mean: "An investment opportunity bond or other financial instrument issued by LCF and others to a prospective client who is introduced by Surge."

"Introduction" is:

"The provision to LCF of the contact details of a prospective client who purchases a financial product." And 'introduce, introducers and introduced': "Shall be interpreted accordingly."

Over the page, "LCF" is LCF. "Prospective Client" is:

"A person who is interested in purchasing financial products."

And "Services" is:

"The service of introducing potential clients to purchase financial products."

And then in clause 2.1, it says:

"London appoints the Surge to identify prospective clients exclusively for LCF and others agreed with London and to make introductions of such persons on the terms of this agreement.

"The Surge shall:

"(a) act exclusively for London and use its best endeavours to make introductions of prospective clients agreed; and

"(b) report in writing to London from time to time on progress made with prospective clients." Then, on the next page, in clause 5.1, it says: "In consideration of the services provided under this agreement London shall pay to Surge the sum of £40,000 per month together with all approved costs and expenses which are agreed on a quarterly basis. "In addition the shareholders shall hold on trust for Surge the shares and will account to the trustee for Surge for all distributions of both income and capital received by them from the shares if and when the shares in London become quoted to transfer the shares to the Surge or as the Surge directs."

Then -- so the shares in London Group.

MR JUSTICE MILES: Sorry, how many shares is that?

MR ROBINS: 5.3 explains:

"The percentage of the shares shall be 10 per cent unless Surge fails to meet its obligations under clause 3.1 or if this agreement is terminated early ..." So it's 10 per cent. Mr Hume-Kendall and Mr Sedgwick, who's drafted this, acting on instructions from Mr Golding. It's then forwarded to Mr Russell-Murphy and it is a proposed deal by which Mr Careless and Mr Russell-Murphy will act exclusively for LCF or any others nominated by London Group Plc in return for the £40,000 a month and the prospect of 10 per cent of the shares in London Group. That seems to be why Mr Partridge suggests that the DD that he still hasn't done yet should be expanded to include London Group as well as LCF, and we see that at <SUR00131395-0001>. On the left-hand side of the page, the second email is Mark Partridge saying to Mr Careless:

"You never got back to me about DD on LCF. And London Group as well?"

And Mr Careless says:

"Yes I'll bell you in the morning."

We will see what comes of that in due course. But first we need to go back to the exclusivity negotiations, which are ongoing. We can see that at <D2D10-00014833>, where Mr Careless, in the middle of the page, emails Mr Hume-Kendall on 17 February 2016 to say:

"Thanks for the agreement and my apologies it has taken so long to reply.

"Would it be possible for John and I to meet with you and Spencer early next week to discuss it in person? "Any day that suits you and we will make ourselves available, ideally in Eastbourne but we could come to you if preferred."

And Mr Hume-Kendall says:

"Thanks -- we will make ourselves available. Let me know when suits."

We then see the next day, <SUR00009048-0001>, this is a document prepared by Mr Careless. It says "Draft only. Not binding. Exclusivity agreement between Surge Financial Limited", so now it is the company, that's "SF", "and the London Group Plc (LG) and London Capital & Finance Plc (LCF)". He says:

"Key points.

"1. SF will provide exclusive marketing to LG for a fixed fee of £40k per month.

"2. LCF will pay 25 per cent commissions for funds received by SF.

"3. LCF will pay for 10 per cent for commissions rebroked by SF.

"4. If SF reach £30m funds or more within 12 months of signing of agreement they will receive 10 per cent shareholding in LG.

"5. If SF reach £50m funds or more within 12 months of signing of agreement they will receive 20 per cent shareholding in LG.

"6. SF will pay for all marketing costs of LCF.

"7. PC has current contractual obligations to Blackmore Group and therefore any current or future arrangement with BG will remain outside of this agreement."

I think the covering email for this is going to be <SUR00009049-0001>. If it is not, I will just need to check that. Yes, there we are. We can see Mr Careless sends it to Mr Russell-Murphy, Kerry Graham and Steve Jones. He also sends it to Mark Partridge, and we see that at <SUR00009051-0001>. Within the next few days, he has revised it slightly. The further draft is <MDR00031443>. The new clauses are:

"7. 12 months' notice by both parties to terminate. "8. Best endeavour by SF to provide maximum funds into LCF."

My Lord can see, at <SUR00009378-0001>, Mr Careless sends it to Mr Russell-Murphy and Jo Baldock, saying in the subject box, "We will need a few copies of these tomorrow. Needs typo checking please."

So, presumably, there is going to be a meeting with Mr Hume-Kendall and Mr Golding on the 23rd to discuss it.

We see from subsequent documents that this remains an agenda item for quite a while but is never ultimately agreed. Instead of continuing with that part of the story, I think we need to go back now to Mark Partridge's requests for information. As my Lord has seen, he still hasn't actually done any due diligence of any kind. He hasn't got any information yet from Mr Thomson. If we go to <MDR00034201>, we can see on the next page, in the middle of the page, Mr Partridge, on 1 April 2016, says to Mr Thomson:

"Hope you are well.

"Before the Easter holidays you were going to provide me with the security documents held by LCF against the loans provided to date. I believe these are the documents that you provide Sentient who you said would verify the validity of the security in line with your marketing material. Do correct me if I'm wrong. "Could you provide these to me as a matter of urgency as it now 3 weeks since we met? "Also we would like to see a schedule of the loans made to date if that is all right."

Mr Thomson replies he is currently on holiday. He says:

"Apologies I haven't sent the docs over we've been waiting for a specific document from the court in the Dominican Republic that confirms the charges have been taken and will complete the DD pack I will be providing Sentient and yourself. I didn't want to send over an incomplete set of docs but if you would like to see the loan docs, accompanying valuations, corporate guarantee and debenture docs I would be happy to send these over when I'm back in the office next week.

"Things got a little hectic after we met and it slipped my mind to update you on the delay with the doc from the DR, sorry."

Mr Partridge replies at the top left:

"Yes please if you could send over the docs you currently have and the loans they pertain to that would be great.

"Kind regards and thanks for replying whilst you are relaxing!!"

But still nothing is sent over. We see a week later, at <MDR00034970>, Mr Thomson emails Mr Careless and the email is copied to Mr Russell-Murphy and Ms Graham. In the final paragraph, he says: "I'm working on the security and have instructed my solicitor to send Mark all the docs but we are still waiting for confirmation of the DR security. This is only secondary security as the UK security

gives us recourse to all the company assets (UK and abroad). I'm discussing with Sentient today going ahead without confirmation from the DR as we hold the UK security. I'll let you know this afternoon how I get on." Mark Partridge then comments at <MDR00035001>. This is at the bottom of the page on the same day: "Hi Andy.

"I have not heard from your solicitor yet! "Could you ask him to get in contact as a matter of urgency, please?"

Mr Thomson forwards that to Alex Lee at Buss Murton to say:

"Hope you're well.

"Please see the below email, can you contact Mark Partridge as we discussed, he's Surge's accountant and wants to review the security/loan docs we are holding." That is 8 April. Four days later, on 12 April, Mr Lee sends an email to Mark Partridge. We can see it at <MDR00035261>. He says:

"Dear Mark.

"Further to our conversation last night, on instructions from Andy Thomson, please find attached the following documents."

And there are three of them. The first is: "1. Facility agreement between London Capital & Finance Plc and ... Tourism Development Plc. "2. Corporate guarantee from London Group Plc. "3. Debenture supporting above facility agreement." So three documents. Only one of them is a facility agreement.

The first attachment is <MDR00035262>. This is the guarantee and indemnity from London Group Plc in favour of London Capital & Finance. My Lord can see from page 17 that it has been signed by Mr Hume-Kendall on behalf of London Group Plc.

The second document from Mr Lee is <MDR00035263>. This is a deed of debenture. It is not dated on the front page. But the company that he meant to refer to is, of course, Leisure & Tourism Developments Plc, not "Tourism Development Plc". On page 23, my Lord can see that it's been signed by Mr Thomson on behalf of LCF, but it hasn't been signed by anyone on behalf of Leisure & Tourism Developments Plc.

The third attachment is <MDR00035264>. This is the sole facility agreement attached to Mr Lee's email, dated 27 August 2015, between Leisure & Tourism Developments and LCF. We have seen it before. On page 3, my Lord will see a reference in the defined terms to "Cape Verde charge", "Cape Verde property" and over on the next page "Dominican Republic charge" and "Dominican Republic property". On page 23, my Lord will see that this has not been executed on behalf of the borrower. On page 24, we see it's been executed only by Mr Thomson. So, this is the grand total of what Mr Lee provides to Mr Partridge: a single facility agreement, a guarantee from London Group Plc, which features in the exclusivity negotiations, and a debenture.

This would obviously have raised more questions than it answered. What about what Mr Thomson had said regarding five companies when Kerry had wondered if they were all connected or under the same ownership? What about what he'd said regarding 80 loans to Spencer-related businesses? There is only one facility agreement here. And, as my Lord has seen, two of the documents are not even properly executed. At <SUR00015167-0001>, two days later, we can see that Mr Partridge, in the second email on the page, emails Mr Careless to say:

"When are we talking about the docs he sent over this week?"

And Mr Careless says:

"I'll call you shortly."

We don't see any record of what they discussed in disclosure, but we do see a work product from Mark Partridge produced at around this time. We see it later in the chronology. I mention it now so that, when we do see it, my Lord will relate it back to this point. The other issue that starts to become problematic at this point in time relates to the delay in the provision of LCF's audited accounts. We see that at <MDR00036428>. Scott Allen emails Mr Careless and Mr Russell-Murphy with the subject "LCF accounts". He says:

"Dear Paul.

"I have a client who went on GCEN late March for £120,000. All she wants before transferring funds is sight of the LCF accounts. Her name is *****". "Andy informed us on his last visit (about three weeks ago) that the accounts would be submitted late April and available early May. Today he tells us it is now June. This has put us all in a bit of a position as we have all told numerous clients that we will provide accounts early May. These are mainly the savvy/high net worth investors who understandably want to see the figures. Having looked at my 'activities' on GCEN, I have around 50 clients to send the accounts to, with roughly £3m of funds to invest.

"What do I say to *****? Is there any way we can have something credible to show these clients? We are in danger of losing credibility to a degree." That's something that becomes more of a problem in the future, as the delay continues to grow. But before seeing that, we need to deal with some discussion relating to Mr Sedgwick's company Global Security Trustees. We can pick that up at <MDR00038468> where, on the bottom of the page, we can see there is a chat transcript. Over on the next page, we see that the visitor says:

"Hello you have already emailed me some information. Can you provide me with details of Global Security Trustees Limited as I am unable to locate the company." George, a member of staff of Surge, says: "Hello you are through to George."

He asks, "What information would you like to receive on Global Security Trustees?" and the visitor asks: "Website address, are they registered with FCA, are they part of FCS?"

George says:

"Thank you. I will find this information out for you."

On the left-hand side of the page, we see that Jo Baldock forwards that to Mr Thomson, copying Mr Careless and Mr Russell-Murphy. Pall Careless then comments:

"I will chat with Andy on Thursday about setting up a good online trail of provenance to ensure when Googled it provides comfort."

Mr Thomson replies:

"Hi Paul.

"I tried to call you earlier this eve re this and another issue I wanted to chat through. Can we grab a couple of minutes when you're free."

Three days later, the GST issue rears its head again at <MDR00038884>, at page 2. My Lord will see that Jo Baldock emails Mr Thomson to say:

"We have had another call in today from a client wanting information on GST, as we were unable to give him any info we have advised him that a senior officer will give him a call.

"Please can you call him. His name is ***** ... "Please let me know once you have spoken with him and how you get on and what you said, as I said the other day it's embarrassing and unprofessional on our part when we don't have enough information." Mr Thomson replies on the left, copying Mr Careless and Mr Russell-Murphy:

"Thanks for your email.

"I believe I have on a number of occasions explained to not only yourself but also to the team that GST is a company set up by lawyers who have 120 years combined experience in this industry and have specifically set up GST to provide a vehicle to independently represent investor interests in the way that it is doing for LC&F's investors. It's as simple as that, there are no frills to what they do and if it all goes well their job is minimal, what the investor needs comfort on is that if it all goes wrong there is someone in the background who can co-ordinate picking up the pieces. So to say you don't have enough information to answer a simple question is just not correct.

"This is really simple stuff, is easily answerable (all of the answers to how and why the security trustee is involved is contained in the IM, do you not require all staff who engage with investors to first read the relevant literature?) and shouldn't require a 'senior person' to return the call of '*****'. Given the simple nature of the answer I won't be calling ***** as to have the CEO call to answer a simple question just wouldn't be right, unless that is if the investor was investing a significant sum, say £1 million. The better solution would be to take the information above, read the relevant background info re the role of the trustee and have the person who spoke with ***** call him back. "I appreciate that we have discussed the positioning and presence of GST when an investor looks into the company and I am addressing this, you did not highlight a lack of basic knowledge on the subject. "As you are aware I met with George to gauge how the team is interacting with our investors ..." et cetera. Then, at the end, he says:

"I appreciate this email is a little blunt but feel justified as the answer is really simple and the background information is readily available. Putting this into context you confirmed it had been brought up by 3 people out of the 50 calls and chats the office handled that day so 6 per cent of inbound traffic. I hope we can put this to rest now and move on as there are much larger issues at hand that need the attention." My Lord will note in the first main paragraph beginning, "I believe", the word "independently" in line three, that's something that Mark Partridge comments on subsequently.

At the top of the page, my Lord can see Mr Careless emails Jo Baldock in response to say, "Wow".

MR JUSTICE MILES: Was there ever a sort of debenture between LCF and the security trustee?

MR ROBINS: Yes.

MR JUSTICE MILES: So that sort of operated as a -- like a sort of subdebenture; is that right?

MR ROBINS: It was a debenture over LC's assets, a standard form debenture.

MR JUSTICE MILES: Oh, just a general --

MR ROBINS: So it would have --

MR JUSTICE MILES: -- charge over the assets.

MR ROBINS: A general -- I think it was standard form, fixed and floating charge, et cetera. We can look it up. We mentioned in our opening written submissions, perhaps unsurprisingly, it was backdated, but it was signed, it was registered at Companies House. My Lord has seen how --

MR JUSTICE MILES: But it is not a -- when I asked that question, what I had in mind is that you could have a submortgage, as it were. So, where a mortgage or a debenture was given to LCF by another company, then LCF could, as it were, assign the benefit of that mortgage or debenture to a security trustee, which is one mechanism that could be used, but you say it is not that sort of arrangement, it is just a general ordinary corporate debenture.

MR ROBINS: Yes, that is my understanding. Let's just bring it up. If I go to our opening written submissions -- what have I done? I have somehow just deleted them from my computer. How do I get them back? We will look at that.

MR JUSTICE MILES: Don't worry.

MR ROBINS: I have the reference somewhere, it is a standard debenture.

So, then Kerry emails Mr Careless at <SUR00019509-0001>. She comments:

"GST need a proper online presence. They play an important role yet anyone [doing] DD won't find much about them and they are not FCA regulated. "LCF being a new/small company should never have used GST. Should have used a market leader who is FCA registered.

"Jo is totally justified in asking for help until the online provenance exists and is sufficient." Mr Careless responds to Mr Thomson at <SUR00019510-0001>. My Lord can see that he emails Mr Thomson. What isn't apparent, for some reason, from this version of the email, but it is apparent from another version, is that he blind copies this email to Jo Baldock, Mr Russell-Murphy, Mr Partridge and Ms Graham, but that's bcc, so Mr Thomson won't see it, and I think that's why it doesn't appear here. But he says:

"Off record here Andy but I need to say this. "GST need a proper online presence. They play an important role yet anyone ..."

He says "going DD" as well, but surely it should be "doing DD":

"... won't find much about them and they are not FCA regulated.

"In an ideal world LCF being a new/small company should never have used GST. Should have used a market leader who is FCA registered. Yes, only 5 per cent of enquirers contact us about it but can you imagine the amount that don't?!"

"Jo is totally justified in asking for help until the online provenance exists and is sufficient. Which I am happy to set up gratis so the issue disappears." Kerry comments to Mr Careless, <SUR00019516-0001>. It might be that for some reason it is not in the trial bundle. We will look into it and get it added, if it is missing. She says:

"When I was doing AM work ..."

In other words, when she was selling the bonds -- ah, I think that's the same. <SUR00019516-0001>:
"When I was doing AM work, almost every enquiry asked me about FSCS. I quoted GST saying that we had elected to be part of this better scheme. That really worked, apart from when they Googled it. Had the firm been better, they might have then been satisfied after their Google search."

As I say, we will get that added to the trial bundle.

Because Mr Partridge has been blind copied to the email that we see on the screen, he is able to read it and he responds at <SUR00132807-0001>, on page 2. He emails Mr Thomson and he copies his email to Mr Careless and Mr Russell-Murphy. We can see that because, on the bottom left, they're included in the email chain. So it's to Mr Thomson but copied to Mr Careless and Mr Russell-Murphy. He says:

"Hi Andy.

"Hope you are well.

"Just seen the trail below.

"There is a statement that GST are independent. "Without casting aspersions or commenting on their magnitude, there are a number of connections between LCF and GST.

"Whilst doing our DD we did note that:

"GST, LCF and LG (and subsidiaries et cetera) share the same registered office.

"The sole director and shareholder of GST is also company secretary at LG and indeed most of LG's group." That's Mr Sedgwick:

"LG's group presumably owning the main UK asset as well as overseas assets upon which LCF is relying. "As I am sure you are very aware."

So, he's calling out Mr Thomson to say, "What are you talking about, saying that GST are independent? I know that they're not and I know that you know that too".

Mr Russell-Murphy comments to Mr Partridge on the bottom left, copying Mr Careless:

"Thanks for this Mark, this is very useful as Andy is being quite challenging at the moment. "Any other linked directorships, et cetera, would be useful."

Mr Partridge replies to Mr Russell-Murphy, copying Mr Careless, to say:

"The attached is the result of the DD done. Colours pick out connections. Not all companies may be relevant.

"We can discuss in detail next time we meet up." So, we can see that, as I've mentioned, Mr Partridge has undertaken some enquiries, following receipt of the three documents from Alex Lee, and we can see what he has identified in the attached spreadsheet. It's <SUR00132808-0001>. We need to open it in native form. If we can go to "File" at the top, in the menu bar, and then to the right-hand side, my Lord can see that this was created on 15 April 2016, which is just a few days after Alex Lee's email to Mark Partridge attaching the three documents: the L&TD facility; the debenture; and the London Group guarantee. So it does seem to have been prepared by him a few days after Alex Lee provided that information.

If we go back to look at the spreadsheet itself, we can see that what he's essentially done is to look up information on the Companies House website in relation to the companies that were parties to the documents attached to Alex Lee's email, so London Group Plc first, with the blue heading; Leisure & Tourism Developments Plc, with the yellow heading; London Trading & Development Group Limited, with the dark blue heading, and we will look at the others in due course. But he's noted down the company number, the registered address, which is pretty much the same for all of them.

He's noted down the officers, we see, in column A, Robert Sedgwick, Elten Barker, Simon Hume-Kendall and again, in column F, there's Mr Sedgwick, Mr Hume-Kendall. He's noted down in rows 16 to 20 information that he's been able to find from Companies House about shareholders. He's summarised the position relating to the capital. And he's recorded what information he can find on Companies House about the accounts and charges.

If we scroll across, we can see that the number of companies he's looked at is quite extensive. Most of them are not highlighted. If we could just take it a bit slower, my Lord can see that there's Lakeview Country Club (Cornwall) Limited, Leisure & Tourism Limited, which is Michael Peacock's company through which the monthly interest for the Sanctuary investors is paid, CV Resorts Limited, which had entered into the contract with Paradise Beach SA, CV Hotels Limited, then a company called London Efficient Energy Limited. I don't think we know anything about that. International Resorts Group Plc, LV Resorts Limited. Next page. Lakeview Resort Property Limited, Lakeview Lodges Limited. London Capital & Finance Plc. He notes, for example, in column BL that Mr Hume-Kendall used to be a director of Waterside Villages Plc. Lakeview Country Club Limited. London Support Group Limited. International Resorts Partnership LLP. Lakeview UK Investments Plc, Lakeview Investments (UK) Limited, GST. Then he's got GCS, which is related to GCEN.

He's said not all companies may be relevant. He seems to have sought to identify all companies connected with these individuals, presumably to work out the various connections between them. But there are no unconnected third party companies here, apart from GCS, which is connected with GCEN. These are all, save for that exception, connected companies. That's what he's done and that's what he's describing as the DD. He provides that to Mr Russell-Murphy, and I think it was Mr Careless as well. Let's just check.

<SUR00132807-0001>. Yes, he sent it to Mr Russell-Murphy, copies it to Mr Careless and says: "Not all companies may be relevant."

But it seems, from the fact that he is looking at all these connected companies, that he is investigating the suggestion that they are funding their own operations. He's looking at companies that have a connection with the same small group of individuals, even though he's only been given one facility agreement. But that's the extent of the due diligence that he carries out.

Obviously, he hasn't received the valuations which Mr Thomson promised. Those haven't been provided to Mr Careless or Mr Russell-Murphy or Ms Graham either. It's simply the three documents that my Lord has seen and the information that he's found on Companies House website.

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

MR JUSTICE MILES: Yes. We will take five minutes. (11.47 am)

(A short break)

(11.54 am)

MR ROBINS: My Lord, I will deal briefly with the GST debenture point now to save me having to come back to it tomorrow morning.

If we could look, please, at <A2/1/43>, this is in our opening written submissions, which is taking a long time to load. In paragraph C5.12, we explain, in the second half of the paragraph, that LCF executed debentures in favour of GST which were filed with Companies House on 13 January 2016. The debentures in favour of GST were backdated by Mr Sedgwick, who told Mr Thomson that he had

done this. That footnote 354 refers to three documents. The first is <MDR00026940>, which is the covering email. Mr Sedgwick emailing Mr Thomson on 13 January 2016. He says: "I have lodged the debentures with Companies House for registration and attach copies of each for you. I have dated the first 29 December and the second 30 December."

The first to which he refers is <MDR00026941>. My Lord can see, as he said, it's dated 29 December 2015. On page 7, my Lord can see that the covenant to pay in clause 2 is to discharge the secured liabilities.

Then clause 3 has the standard wording for legal mortgage, fixed charge, assignment, and then, over the next page, floating charge.

If we go back to page 5, we can see the secured liabilities are the liabilities owed by the borrower, which is LCF, to the bondholders and/or the security trustee. So that's the first debenture. The second is --

MR JUSTICE MILES: I'm reading this very quickly for the first time, but it looked to me as though there was an assignment of anything called a relevant agreement.

MR ROBINS: Back on page 7?

MR JUSTICE MILES: Yes.

MR ROBINS: Go back to page 7.

MR JUSTICE MILES: So there was an assignment under --

MR ROBINS: On the next page, 3.3, let's see what's assigned. Insurance policy.

MR JUSTICE MILES: (b) --

MR ROBINS: "Relevant agreement". Let's look at the definition of that. That will be page 3 or 4. No, page 5: ah, yes.

MR JUSTICE MILES: So, there's an agreement pursuant to which a security interest is granted in favour of the borrower.

MR ROBINS: That's defined.

MR JUSTICE MILES: That's defined as mortgages, charges and things. So it does look as though there's an express assignment of security which has been given -- any security which has been given to LCF.

MR ROBINS: Yes. If that was my Lord's question, that seems to be the answer to it. I don't know why there are two debentures. Shall we look at the second one?

MR JUSTICE MILES: Secured liabilities. Yes, okay.

MR ROBINS: There is a second debenture, as Mr Sedgwick mentioned, <MDR00026942>. If we could look at page 7 of this one, and page 8, it looks very similar. We can look and see if there are any differences. There must be something. We saw on the front page a reference to a priority agreement with GCEN. It may be that that has something to do with it. But, at the moment, I am afraid I don't know why there are two. But those are the documents.

To go back to where we were, we were looking at the position in the middle of May 2016. On 13 May, we see <SUR00132905-0001>. At the bottom of page 1, we can see an email from Jo Baldock to

Mr Thomson, copied to Mr Russell-Murphy, Mr Careless and Ms Graham, with the subject "Common questions". She says:

"Good morning Andy.

"Further to our meeting on Tuesday I have now spoken with the account managers and we have compiled a list of frequently asked questions.

"As agreed you will give us your support by providing what you see as the correct answers to the following."

The questions have a number of subheadings: "GST.

"Who are they?

"What do they do for the client now and in the event of LCF failing?

"Why is there no online presence or literature? "Lending.

"How many clients have we lent to?

"Who do we lend to, what sector?

"Average loan size?

"Why is there no mention of how to make a lending application, there is no face to this side of the business or contact number, et cetera. "Assets.

"What are the assets held and underlying security? "What is their value?

"Where can I find this information.

"Bonds.

"Numbers of investors? A weekly update would be useful ...

"...

"Previous bonds -- total invested and repaid? "Security.

"What happens in event of default of LCF? "Who gets paid first?

"How long does it take?

"What's the process?

"How much would I get back?

"FCA Reg.

"Why does it say LCF Ltd and not Plc?

"Why is address different on FCA reg?

"FSCS.

"Why don't you use FSCS.

"GCEN are covered by the FSCS so why is my money not covered as I am sending it there?

"Accounts.

"When will the updated accounts be published and do we have any draft figures we can provide?"

She says:

"Thanks in advance for your assistance with this and I look forward to hearing from you."

Back on page 1, we can see that Mr Careless, towards the bottom of the first page, about two-thirds of the way down, forwards the email to Mr Partridge on the same day and he replies to Mr Careless: "I'd like to see the answers!!!"

That is, as I say, the 13th. Five days later, on the 18th, at <MDR00041314>, at the bottom of page 1, we can see Mr Thomson has emailed Ms Graham and Mr Russell-Murphy on 18 May. He's copied the email to Jo Baldock with the subject "Answers" and he says: "Hi.

"I've put together some answers to the account managers questions, I believe the majority of the questions can also be covered/reinforced when I go through what the company does and how it does it. Have the managers read through the IM yet and do they have any further questions on the back of this?" The answers that he's prepared which he attaches to either this or a subsequent email, I'm not sure which, is <MDR00041257>. My Lord can see he's put these answers in blue:

"GST.

Who are they?"

He said:

"Global Security Trustees has been set up by a group of experienced solicitors, each with in excess of 30 years practice history, to provide security trustee services to corporate bond providers.

"In 2015, a gap in the market was identified for a security trustee in the corporate bond industry where one of GST's principals was advising on a new bond issue. Prior to GST offering its services the only options for a new bond offering was either no trustee, a trustee facility that was only offered as part of a wider and more complex funding structure ... and trustee facilities offered by a large corporate at significant cost."

Then:

"What do they do for the client now and in the event of LCF failing?"

He's provided a lengthy answer referring to a charge. He says that GST would step in immediately to ensure investor interests are protected. Then:

"Why is there no online presence or literature?" Mr Thomson says:

"Due to the size of the gap in the marketplace for a service of this type GST do not need to advertise a significant volume of introductions from financial industry professionals."

Then under "Lending.

"How many clients have we lent to?"

He says:

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

Then:

"Who do we lend to, what sector?"

He says, "LCF lends to all sectors".

On average loan size, he says:

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

Under the question, "Why is there no mention of how to make a lending application, there is no face to this side of the business", he says:

"LCF uses a network of professional introducers to source lending opportunities and as such does not need to advertise."

Then under "Assets":

"What are the assets held and underlying security?" He says:

"The assets LCF currently hold as security is a mixture of property, land, contractual obligations, shares, warrants and corporate guarantees from listed companies."

"What is their value?". He says:

"The current value (borrowing directors confirmed updated valuations as at the end of April 2016) of the assets pledged as security against LCF's loan book is circa £62 million (£14 million floating charge contractual value, £17.5 million property and £34.5 million development land). The security taken against these assets is a mixture of corporate guarantees and fixed and floating charges." "Where can I find this information?" He says: "This is not published information at this time but will be published in the next set of audited accounts." Then he provides information about the bonds, the current bond book is £10.7 million; previous bonds, £3.75 million raised, of which circa £700,000 has been repaid. Then he answers the other questions. Shall we see the third page to see if he says anything about FSCS. I don't think there is anything further there. But, as my Lord has seen, in response to the question, "How many clients have we lent to?", he says LCF has made 121 loans and he talks about the borrowing directors confirmed updated valuations being £62 million.

Mr Careless forwards that to Mr Partridge, <SUR00021720-0001>. Mr Partridge responds: "Just the usual bs I'm afraid."

And Mr Careless, at <MDR00041316>, says "Grrr", which seems to be an expression of anger or disappointment, dissatisfaction.

One can see why he would have felt that. Mr Thomson has said previously that there are five companies, then he said there are 80 loans to Spencer-related businesses, and then he's provided a single loan agreement via Alex Lee, now he's saying 121 loans. What on earth is going on? One can readily understand why Mr Partridge says, "It's just the usual BS". Then we turn to another topic. I am going to cover it compendiously at this point, my Lord, because it starts at this point in the chronology. If we cover it now, my Lord will know it's something that's going on in the background, as it were, over the subsequent months when we come to look at those.

It is a topic that begins on 14 June 2017 with <SUR00026165-0001>, where Mr Thomson emails Mr Careless with the subject "Media GPS invoice" attaching Media GPS' invoice number 0001.doc x. He says: "Hi Paul.

"Hope [you're] well and the Gold proposition is moving along, if there's any input you need from me just let me know.

"I haven't had anything from Kerry re Pat's bond so I don't know how it's progressing, I'll chase to see if they need any input.

"As agreed I've raised an invoice for professional fees for May, if you need any more detail on it just let me know."

My Lord can see from the covering email that Mr Thomson doesn't know what the position is relating to the Gold proposition. He hasn't had anything from Kerry re Pat's bond, so he's not in the loop relating to that. He mentions he's attached an invoice. The invoice is at <SUR00026166-0001>. It's an invoice from Media GPS. It's dated, for some reason, 6.12.2016, although the email we were just looking at is dated 14/6/17. It is to Surge Financial Limited and under "Description" it says "Professional Services". The total is a very specific figure of £8,909.48, and he provides the Media GPS bank details at the bottom.

If we go back to the covering email, one point I should probably mention, <SUR00026165-0001>, my Lord will see it's been sent by Mr Thomson not from his normal LCF email address, but from a rather anonymous looking Gmail account, *****. The invoice my Lord saw is in that very specific sum, £8,909.48. He described it as an invoice for professional fees. But we know exactly how it was calculated. We can see that from <SUR00029112-0001>. This is a spreadsheet showing LCF's receipts on a monthly basis from January 2016 to June 2016. My Lord can see the headings include "Cleared to GCEN", "GCEN funds", "Cleared LCAF bond account (less GCEN cost)", there's "BM Funds" and then there's "Gross Received Funds", "Gross Conversion", "Available Funds to Lend" and "Net Conversion". The gross received funds figure for May 2016 is £1,781,895.50. If you were to get your calculator out and type in that number, 1,781,895.50, and multiply it by 0.005, then one would get the figure of \$8,909.48. You'd need to round it up. It would be 47.75 pence, but, rounded up, 48p. So, there can be no doubt about it, Mr Thomson was asking Surge to pay a sum equal to 0.5 per cent of the new bondholder monies received by LCF in May 2016 to his company, Media GPS. That's what the invoice covers. It's described as "professional fees", but it's mathematically revealed to be something different. It is half a per cent of the new bondholder monies received by LCF in the previous month.

We have scoured the documents to see if we can find any reference to a suggestion that half a per cent of something should be paid to Mr Thomson, and the only thing that we have found -- it does seem to fit on the timing -- is an exchange involving Pat McCreesh of Blackmore. He was, as my Lord knows, one of the two people running Blackmore Estates. Surge sold Blackmore bonds to members of the public, but Blackmore was never as successful as LCF; Surge raised only a fraction of the sums that it raised for LCF when selling Blackmore bonds, and so Blackmore Estates, which was carrying out various building projects, was underfunded. Mr McCreesh wanted to find additional sources of finance so that Blackmore could continue with the various construction projects that it was undertaking.

Mr McCreesh thought that perhaps LCF could make a loan to Blackmore, and we see an email about that at <SUR00022478-0001>. At the top of page 1, Mr McCreesh of Blackmore sends an email to Mr Thomson, blind copied to Mr Careless, and he says:

"Hi Andy.

"Hope you're well.

"Following on from the earlier email, to elaborate on the various points."

Under the heading in the middle of the page, "Projects to fund", he says:

"We have a number of projects that we are looking to fund immediately, there are so many high profit opportunities at present and we don't really want to be turning them away when we can all benefit. These projects are very simply developing UK property, however as we own every layer in the chain and can source below value sites, it means the margins are high. What I propose is the following:

"2-year loan note.

"£1 million a month over June/July/August. "Purely for UK property development, we have sites ready to move on.

"6.5 per cent per annum interest.

"Security of first charge on assets.

"RICS valuations so great to have as assets on book. "0.5 per cent comm to you."

So he seems to be envisaging that Mr Thomson would receive a 0.5 per cent commission of sums that were provided to Blackmore. Mr Careless forwards that to Kerry Graham, Steve Jones and John Russell-Murphy at <SUR00022496-0001>, and Kerry comments at the top of the page:

"6.5 per cent per annum on two year money? We pay 6.5 per cent interest so there is absolutely no profit in it for LC&F. He will definitely be looking for a back-end deal and possibly high 'in' and 'out' fees. This will affect already tight margins." She is, of course, absolutely right: given the very high interest rates that LCF pays, including the rate that it pays on a two-year bond, there is no way that LCF could have contemplated lending money to Blackmore at 6.5 per cent per annum. So, this goes nowhere. But it does seem that Mr Thomson likes the idea of 0.5 per cent commission payable to himself because just three weeks later, less than three weeks later, he sends the first Media GPS invoice to Surge, to Mr Careless, asking for payment of a sum equal to half a per cent of the new bondholder monies received by LCF in the previous month. So, not 0.5 per cent of sums loaned to Blackmore, but 0.5 of all new bondholder monies received by LCF in the previous month.

One might have thought --

MR JUSTICE MILES: Was that paid?

MR ROBINS: Yes, absolutely.

MR JUSTICE MILES: Were there other invoices?

MR ROBINS: Absolutely. We will deal with those now. Whilst one might have thought that someone in Mr Careless's position, knowing that Mr Thomson is one of the two people running LCF, the other being Spencer, and having had Mr Partridge tell him it is a Ponzi scheme, and having said, "Spencer is Madoff", to receive this email asking for 0.5 per cent of new bondholder monies in the previous month, surely someone in that position would have thought, "Hang on, maybe it is a Ponzi scheme, maybe Spencer is Madoff. Why on earth should we be paying half a per cent of new bondholder funds to one of the two guys behind this outfit?" But If we go to <A2/1/266>, my Lord can see we set

out the facts relating to the payments in our opening written submissions, which always take a while to load. In paragraph N2.1, we refer to the email that my Lord has seen. In N2.2, we mention the invoice. In N2.3, we explain how it was calculated, half of one per cent, and we make that point express in N2.4. In N2.5, Mr Careless forwarded the invoice to Steve Jones. N2.6, on the same day, Surge paid £8,909.48 to Media GPS, and we have provided a footnote that takes you to the bank statements to confirm. Then, over the page, N2.7, we explain that the following month, 4 July 2016, Mr Thomson provided Mr Careless with an invoice number 2 from Media GPS to Surge for "professional services" in the sum of £13,100, and, in an email, Mr Thomson explained: "I've attached the Media GPS invoice for June and have based it on the funds through the account and not on the cleared figure from the deals spreadsheet as this better reflects the actual position."

He then sent a further email to Mr Careless to confirm:

"I based it on cash through the account for the month, so it mirrors what we pay in comms for the prior month, this way I'm invoicing for what has actually been paid for the prior month and will only raise an invoice at the beginning of each month. From an accounting point it should work better for your books as it balances against the comms you received the prior month."

What he seems to be saying is, if Surge are paying him 0.5 per cent of LCF receipts in the prior month and LCF is paying to Surge 25 per cent of those receipts, then this money to him is effectively coming out of Surge's comms for that prior month. Mathematically, the sum he would be asking them to pay to Media GPS would be 2 per cent of Surge's comms.

Just in case Mr Careless was in any doubt as to how the figures on these invoices were being calculated, we explain in N2.9 that Mr Thomson sent a subsequent email to Mr Careless to say:

"I'll submit one at the beginning of each month to capture what was paid the previous month, so after this one the next will be in the first week in August and then monthly thereafter."

N2.10, Mr Careless sent the invoice to Steve Jones for payment. N2.11, Surge paid £13,100 to Media GPS. And Steve sent a text message to Mr Careless saying, "Andy's invoice has been paid". Then we note in N2.12, from the Media GPS bank statements, Media GPS then paid £13,000 to Mr Thomson. So the money just washes through the Media GPS account.

N2.13, the next month, 8 August 2016, Mr Thomson provided Mr Careless with an invoice number 3 from Media GPS to Surge for "professional services" in the sum of £18,109. Mr Careless forwarded it to Steve Jones.

N2.14, Surge paid £18,109 to Media GPS. Mr Careless told Mr Thomson that payment had been made and then Media GPS paid £18,000 to Mr Thomson.

Then the next page, please. N2.15, the next month, 5 September 2016, Mr Thomson provided Mr Careless with invoice number 4, £21,078. That goes to Steve. Surge pays it. Then Media GPS pays almost all of the money to Mr Thomson.

Then N2.16. October. Mr Thomson provides Mr Careless with invoice number 5, £17,521. That goes to Steve. That is paid and then Media GPS pays most of the money to Mr Thomson.

N2.17, November, invoice number 6, £21,011. Sent to Steve. Paid, and most of the money is paid by Media GPS to Mr Thomson.

Have we just done N2.17? I have lost track. N2.18, the next month, December, invoice number 7, £23,494. Mr Careless sent it to Steve, "Check and pay, please". Surge pays it and Media GPS pays most of the money to Mr Thomson.

Then N2.19, 9 January 2017. Mr Thomson provides Mr Careless with invoice number 8, £12,778. It goes to Steve and is paid.

N2.20 has the position in February when we mention invoice number 9 is in the sum of £29,719. It is worth looking at the underlying documents there. The first is <SUR00063736-0001>. This is the covering email. Mr Thomson, from his mercator1510@gmail.com account, emails Mr Careless to say:

"Hi Paul.

"Hope you're well.

"Record collections month last month with £5.9m cash coming through the bank, fantastic start to the year." 0.5 per cent of that would be £29,500. Let's look at the invoice to see if it's in that ballpark. It's <SUR00063737-0001>. There we are, £29,719. So, it's still 0.5 per cent of new bondholder monies in the previous month.

If we go back to <A2/1/268>, my Lord can see, at the bottom of the page, N2.21, we mention the covering email. Then, over the page, we explain that Mr Careless forwarded that to Steve Jones for payment and Steve remarks, "We are mad paying him".

N2.22 that sum is paid and Media GPS pays a slightly larger sum, £30,000, in total, to Mr Thomson. N2.23, now March, 6 March 2017, Mr Thomson provides Mr Careless with invoice number 10, £30,789. That goes to Steve. Surge pays it and Media GPS pays, again, a little in excess of the amount, a total of £31,000 to Mr Thomson.

In N2.24, we mention that on 3 April 2015, Mr Thomson provided Mr Careless with invoice number 10 in typescript but later marked 11 in manuscript. This is £35,930. We say that the covering email again confirmed that Mr Thomson was requiring Surge to pay half a per cent of LCF's receipts from bondholders to Media GPS. Let's have a look at the underlying documents. <SUR00070309-0001>. Mr Thomson's ***** account. He says:

"Hi Paul.

"Hope you're well.

"March was a record month seeing £7,186,000 go through the account, a stunning performance." Well, half a per cent of that would be £35,930. Let's have a look at the invoice. <SUR00070310-0001>. Bang on, £35,930. So it's still half a per cent of new bondholder monies.

If we go back to <A2/1/269>, we were in N2.24. We explain, in the penultimate line, Mr Careless had sent the email and the attachment to Steve. Two days later, Surge paid £35,930 to Media GPS which paid a total of £36,000 to Mr Thomson.

Then N2.25, 8 May 2017, Mr Thomson provided an invoice in the sum of £26,736. That was sent to Steve and then paid by Surge.

N2.26. On 7 June 2017, Mr Thomson provided Mr Careless with an invoice in the sum of £28,349. That goes to Steve and is paid.

Over on the next page, N2.27, 10 July, there's an invoice in the sum of £25,288. Mr Careless sends it to Steve, who asks "Pay immediately I presume?" And Mr Careless replies in the affirmative. Surge pays that to Media GPS and then Media GPS pays most of the money to Mr Thomson.

N2.28, 1 August 2017, Mr Thomson provides Mr Careless with an invoice in the sum of --

MR JUSTICE MILES: These are the same points, aren't they?

MR ROBINS: Yes. It is probably worth again just looking at the underlying documents. It's the last one. It's <SUR00080418-0001>. The email says:

"Hi Paul.

"Hope you're well, great month last month, with the June deals that completed in July the collection through the account smashed through the £9m mark!!! A fantastic result."

Half a per cent of that would be around -- well, in excess of £45,000. I say "in excess of" because he says "it smashed through the £9 million mark". The invoice is <SUR00080419-0001>. My Lord can see it's £48,668. Then, if we just go back briefly to <A2/1/270>, I just ask my Lord to note the rest of N2.29 to the end of the page.

MR JUSTICE MILES: The last one that was paid was the September one?

MR ROBINS: Was the version sent, yes, in September in respect of August. The invoice sent in October in respect of September was not paid. So, the final one that's not paid is -- the covering email is <SUR00084335-0001>. We can see it is 9 October but it is described as the invoice for September. The invoice is <SUR00084336-0001>. My Lord can see it is professional services to 30 September.

So the period in which, or for which, Surge is paying half a per cent of new bondholder monies to Mr Thomson is 1 May 2016 to 31 August 2017 inclusive. That's -- the new bondholder monies it receives in that period are what are covered by this arrangement and a sum equal to half a per cent of all that money goes to Mr Thomson through Surge.

As I said, it's a part of the story that really starts in the middle of June 2016 and runs to October 2017. We need to go back to the beginning of that period. We were looking at the summer of 2016, the beginning of that period. There is a document <MDR00047328>, where we see Jo Baldock, on 1 July 2016, emailing sales@lcaf.co.uk. That's the Surge sales team. With the subject "Important -- security". She says: "Hi All.

"John has spoken with Andy this morning who has confirmed that the following figures are accurate and correct as of today:

"Security held -- £35m. Loan book £15 million. "Please ensure these are the only figures you are telling clients with immediate effect." Well, hang on a moment. Two weeks earlier, we saw -- no, it is a month and a half earlier, I should say. We saw Mr Thomson's reply to the questions from the account managers, where he said, "The current value borrowing directors confirmed updated valuation of the assets pledged as security against LCF's loan book is £62 million". So how on earth has it now fallen by almost half to £35 million? It's flatly inconsistent with what he said only a short time earlier. Again, it's another example of how he is completely incapable of providing any sort of consistent information in respect of LCF's business, which is obviously a huge red flag.

I said we would come back to the delay in LCF's accounts. We can pick that up at <MDR00046580>, where, at the bottom of the page, Scott Allen of Surge emails Mr Thomson on 27 June 2016 to say:

"Mr ****, who you spoke to recently, just called and asked when the accounts would be available. I did say that they were due shortly, but I could not give a date. He asked if there was a draft available. He is keen to invest but mentioned that he would like to do so sooner rather than later. This could/should be a significant sum, as you know.

"If I recall you said that a draft is not available? Please let me know. If nothing is imminent then I will need something to tell him."

Mr Thomson replies:

"I have just got back from Malta and am due to speak to the accountants & auditor later today. I'll update you when I have heard."

At <SUR00134155-0001> at page 5, my Lord will see that Scott Allen updates Mr **** to say: "Just a brief courtesy email to let you know that I expect to be emailing you our accounts later this week."

That's presumably what Mr Thomson has told him to say.

Then <MDR00050083>. On page 5, we see Mr **** chasing this up. It should be the final page. The previous page [page 3]. To say:

"Hi Scott.

"It's 2 weeks now. Any update?"

On the previous page, we see that Scott Allen forwards this to Mr Russell-Murphy, copying Jo Baldock, to say:

"Hi John.

"See below.

"This is the guy from the wealthy company in the City. He is the finance director. He has the potential to be a seven figure investor.

"Do we have any accounts yet? Paul said he was viewing them last Friday with Andy?"

John Russell-Murphy forwards that to Mr Thomson saying:

"Andy, please see the thread of emails below. "Mr **** who is the finance director for ***** is chasing for our latest set of accounts. He was discussing making a large investment with us but wants to check our latest financials before doing so. "Based on what you had previously told us we emailed him and said the accounts would be available last month. We would like to go back to him today with a revised timescale.

"Please can you let us know what the latest situation is?"

On the previous page [page 1], at the bottom, Mr Thomson says:

"Hi John.

"The position with the accounts is that we are having to wait for guidance from HMRC re a technical point on how to represent the balance sheet. PwC and our accountants are chasing HMRC on a

regular basis but I cannot give you a timescale. As soon as the accounts are finalised I will let you know."

Just above that, in the bottom half of the page, Mr Russell-Murphy takes issue with what Mr Thomson has said. He says:

"Guidance on a technical point should come from PwC, the HMRC accept the accounts anyway you present???" Mr Thomson replies at the top of the page: "John.

"With respect I don't want to go through the detail you [it should say 'with you'], you will just have to accept the position as is and that I am doing what is right for my company."

Mr Careless tells Mr Thomson that that's a good reply. I think there is still a previous page. Can we go back a bit further? In which case we need to go to find it. It is going to be <MDR00050090>. Mr Russell-Murphy replies to Mr Thomson: "Andy, that's fine, you don't need to go through the details with me, after all it is your company. "The problem I have is back in April you addressed the account management team and said the accounts would be finalised at the end of April and would be available shortly thereafter. The AMs passed this information on to investors, who enquired about the bond. "You then said in May the accounts were being finalised and would be available that month. You then said the accounts would be available in June and so on. "I have to manage the AM's expectations, they are the ones on the front-line dealing with clients on a daily basis. Why don't you share with me the real position, that way we can set realistic timescales and deal with AMs and clients accordingly." Mr Russell-Murphy seems to think Mr Thomson's explanation is not genuine. He wants to know the real position.

Then, if we go to <MDR00050122>, we see on the next page that Mr Careless has sent the email chain to Mr Partridge. Mr -- oh, hang on. We need to go first of all -- it is slightly different. We need to go to <SUR00032247-0001>. That's the one where Mr Careless has sent it to Mr Partridge and Mr Partridge responds to Mr Careless, on the left, to say:

"This is almost certainly crap. HMRC do not give opinion unless there is uncertainty with regard to the law ie tax law.

"This would appear to be accounting treatment and so not likely to get an opinion. And anyway HMRC are interested in the P&L, rarely are they interested in the balance sheet unless someone is hiding profits there -- that isn't something you would ask HMRC's opinion on ... "PwC would know this -- I am not so sure what PwC have to do with this anyway."

So Mr Careless says that Mr Thomson's explanation is almost certainly crap and Mr Careless forwards that to Mr Russell-Murphy at the top of the page. Then if we go back to <MDR00050122>, we can see that Mr Careless forwards Mark's email to Mr Thomson, but he'd edited it.

MR JUSTICE MILES: This is a different one.

MR ROBINS: He's edited it. Whereas Mr Partridge said, "This is almost certainly crap" --

MR JUSTICE MILES: Sorry, can we put the two next to each other?

MR ROBINS: This one and the other one is <SUR00032247-0001>. So Mr Partridge said, "This is almost certainly crap" and Mr Careless edited that to say:

"I know you won't want to hear this but this is almost certainly untrue."

Mr Careless has also added a new last line: "I am concerned. These accounts are long overdue and the excuse holds no water can we talk in the morning please?"

So he's edited Mr Partridge's email and he sends it to Mr Thomson to say:

"Morning Andy.

"See below. For your eyes only.

"I can't see Mark today as I am with Mike in London at meetings but I'd very much like to appease him, it would help me if you could give me a steer on when we could get the accounts please."

So not only, as I said before, is the in-house view at Surge that Mr Thomson is a liar; Mr Careless has no hesitation in telling Mr Thomson that they know he's a liar, that they have caught him out lying, and that he's going to have to come up with a better explanation because they're not buying this one.

Then, at this point in the chronology, we see something else. I can deal with it briefly, just to provide the context. If we can go to <A2/1/72>. We have seen this before in our opening written submissions. Paragraph E9.2. On 22 July 2016, LCF paid £246,500 to L&TD, which paid £51,250 to Mr Golding, £33,750 to Mrs Hume-Kendall and £7,500 to Mr Barker and £7,500 to Mr Thomson, each with the reference "Share Payment".

On the same day, at <SUR00032895-0001>, at the bottom of the page, Katy Eaves of LCF emails Jo Baldock, copying Steve Jones, to say -- subject "Invoices paid": "We have hit our limit on our bank account to send payments, hence why they are being paid tomorrow. "The following invoices will be paid tomorrow." And there is quite a long list. Just above that, Mr Jones forwards it to Mr Careless to say: "Ha, love that!"

I think he loves it because the amount of commission being paid is so large that LCF has hit the limit. Mr Careless asks:

"What's their limit?"

And Mr Jones replies:

"No idea! Would include payments to Spencer, et cetera, as well, not just our comms." For our part, we can't see what he could be talking about, other than the payments set out in E9.2 of our opening written submissions. There are no other payments to "Spencer, et cetera", on that day. He's talking about payments that have been made on that day, 22 July. That's the day on which the bank payment limits have been made.

Then we come back to the accounts delay again at <EB0028616>, where Mr Russell-Murphy emails Mr Barker with the subject "LCF requirements", on 5 September 2016, to say:

"Dear Elten.

"Further to my call last week, the following actions need to be implemented as soon as possible to help with sales and conversion."

Interesting that he's going to Spencer's right-hand man rather than to Mr Thomson. The first point is: "LCF accounts -- the accounts are long overdue, this is highlighted every week by potential new investors, this needs to be actioned ASAP. We also have an ever-increasing amount of investors not

willing to make a decision until the accounts are published. We are [keeping] going back to these people and extending the timeframe which doesn't look good."

He also mentions coupon payments and says that the process is clunky. Then finally:

"LCF board -- the board of directors needs to be strengthened, we portray the company as a large and successful financial institution and when you look at the directors at Companies House it doesn't reflect the image we are setting. I suggest we add at least 2 new directors.

"Let me know if you can assist in any way." I think there is probably time for one more document, if your Lordship is content with that, before the short adjournment. <MDR00224141>. We are back on the absence of any written agreement between LCF and Surge. At the bottom left, on 3 November, Kerry Graham emails Mark Partridge and Paul Careless to say: "Andy is chasing me to complete the contract." Mark Partridge replies, at the top of the page, to say:

"Hi Kerry."

In the second line:

"This really isn't something that can be rushed as it is crucial and arcane.

"LCF will have to retrofit once we are happy with the treatment.

"By the way, LCF accounts have been filed so he cannot use the auditor requirement on us." So, Mr Partridge tells Mr Careless and Ms Graham that the LCF accounts have been filed. He says that in this email on 4 November 2016. That must have come as something of a surprise to them because, as my Lord saw yesterday, the last word from Mr Thomson on the accounts had been to say that PwC weren't prepared to sign off on the accounts without sight of the signed agreement between LCF and Surge. Kerry, for her part, knows that she hasn't signed it. She wouldn't expect LCF's accounts to have been filed in the absence of the provision of that document. So it must have been something of a surprise for Mark to tell her. In the week after this, the PwC accounts start being relied on in the live chats, the chat transcripts and the calls with investors and so on as a point that the salespeople use to assist them in selling bonds. That seems to happen from around 10 or 11 November 2016. That's consistent with this email. It seems that Mark told them the accounts had been filed on 4 November 2016.

MR JUSTICE MILES: We will return at 2.00 pm. (1.00 pm)

(The short adjournment)

(2.00 pm)

MR ROBINS: My Lord, before the adjournment, I was showing your Lordship that Mr Partridge told Mr Careless, on 4 November 2016, that LCF's accounts had been filed. Those accounts are the PwC accounts. They are relied on in these proceedings by Mr Careless and Surge Financial, who argue that PwC gave LCF a clean bill of health and confirmed in the minds of Mr Careless and Ms Graham that LCF was an entirely legitimate business operation. So we should look at those accounts. They are in the trial bundle at <L1/7>. My Lord can see they cover the year to 30 April 2016.

On page 2 of the document, my Lord can see the company information. On page 3, there is a contents page showing the various parts of the accounts. On page 4, there is the strategic report from Mr Thomson. This says:

"The directors present the strategic report and financial statements ..."

There is a heading "Review of the business", and it says in the second paragraph:

"The company holds fixed and floating charges over the assets of its customers to secure the loans. At the year end the loan to notional value ratio is 15 per cent as below."

And the value of secured assets is said to be a little over £60.7 million. The carrying value of loans is £7.4 million. The notional value of loans is just under £9.4 million. The loan to carrying value is said to be 12 per cent and the loan to notional value is said to be 15 per cent. The difference between carrying and notional is then explained.

Then, on the next page, my Lord will see Mr Thomson's signature. On the next page, we see the directors' report. I don't think there is anything particularly significant there. I don't think there is much on the next page or on the page after either. Let's go to page 9. This is the independent auditor's report, and they explain that they have audited various parts of this document, not including the strategic report. But they go on to say, in the course of doing that, they haven't seen anything that's inconsistent with the strategic report. I think that's on the next page. My Lord can read it. I'm not going to read it out. It is signed by Jessica Miller.

Then, on the next page [page 11], we have the income statement. The revenue figure of £948,201 is the interest and fees payable to LCF by the borrowers. The finance costs of £618,719 are the interest liabilities owed by LCF to the borrowers and paid in the relevant financial year. That gives you a gross profit. There are then administrative overheads and the profit for the year is a little under £167,000.

My Lord will see the 25 per cent commission payable to Surge is not recorded in the income statement because it's a cost which LCF passes on to the borrowers. So it doesn't appear as an expense of LCF in its accounts. As we will see, I don't think there is anything in this document to suggest that PwC were aware of it. On the next page, we see the balance sheet, and LCF's net assets are a little under £26,000. The next page, we see it is signed by Mr Thomson. Then there are the usual notes. I think the only one -- maybe there are two.

MR JUSTICE MILES: Sorry, can I just look at the balance sheet again?

MR ROBINS: Sure. Previous page, please. Oh.

MR JUSTICE MILES: Yes.

MR ROBINS: I think there might be a note on page 25. Let's have a look. There's a note about credit risk: "The company's credit risk is primarily attributable to its receivables. The amounts presented in the statement of financial position are net of allowances for doubtful receivables."

Then it gives some information. On page 30, there's a note about related party transactions. It says: "During the year, the company had the following transactions with International Resorts Group Plc -- a company which MA Thomson was a director of until he resigned on 30 June 2015."

And they mention loans, repayments and interest and explain that some of the loans are included in the debtors. They say the loan book with International Resorts Group Plc was transferred during the year at par from Sanctuary International PCC Limited, a company where MA Thomson was director. Of course, one wouldn't expect to see anything about the fact that half a per cent of bondholder monies per month were being paid to Mr Thomson because that's something that started after the year end. But there's nothing in here to suggest that PwC was aware of that. Often related party transactions include post balance sheet events.

If we go back to page 4, there is another point I should make, which is that Mr Thomson is saying here that the value of secured assets is £60.7 million. My Lord saw before the short adjournment that, on 1 July, so not that long after the year end, Mr Thomson emailed to say the value of the security was £35 million. So, if this is right, something funny is something on. Why has the security halved in value, or almost halved in value, in such a short period of time? These are, as I say, the accounts that Mr Careless and Ms Graham rely on. We say that the PwC sign-off on these accounts can't really have changed things from their perspective. They knew things that PwC didn't. They knew that Mr Thomson was a liar. That was the in-house view of him at Surge. They knew that Mr Thomson had been intending to deceive PwC. As my Lord saw yesterday, he had asked them to sign a backdated contract with the date "2015" on the front, and they knew that he was planning to provide it to PwC. Kerry said, "He wants us to sign today because his auditors need it". Mr Thomson said, "I need Surge's support to get the audit concluded". He said, "I felt it would have been an easy ask just to sign it so I could evidence it to PwC".

So they knew he had been intending to deceive PwC with a backdated agreement. They didn't know what Mr Thomson had said to PwC to get PwC to approve these accounts. They didn't know, for example, what documents he had provided to PwC, they didn't know, for example, if PwC had relied on letters of representation from the directors of the borrowing companies regarding the value of the security. I mention that because we saw, before the short adjournment, Mr Thomson referring to "borrowing directors confirmed updated valuations". Well, which directors? Mr Hume-Kendall? Mr Barker? Mr Careless and Ms Graham didn't know what had been provided to PwC.

The fact that PwC sign off on the accounts doesn't cause the special knowledge possessed by Mr Careless and Ms Graham to disappear. They still knew that LCF was paying insane and unsustainable commission. As I said, I can't see any reference to 25 per cent commission in these accounts. Or at least Mr Careless knew that Mr Thomson was now receiving half a per cent of new bondholder monies every month. As I said, there's nothing to suggest that PwC knew about that, and PwC's sign-off on the accounts certainly didn't erase Mr Careless's knowledge.

Mr Careless and Mr Jones knew that LCF was making payments to Spencer, et cetera. There is nothing to suggest PwC knew about that and PwC's sign-off on the accounts can't have erased the knowledge of Mr Careless and Mr Jones.

Mr Careless and Ms Graham knew that LCF was lying to the public by misdescribing its business. It wasn't scouring the SME sector to find borrowers, as it said in materials, but was, instead, part of a group of people who were, in Kerry's words, "funding their own operations".

Mr Careless and Ms Venn were aware of the concerns about the absence of any process by which borrowers could apply for loans. The lending page, as we will see, was still not live. They knew that LCF was lying to the public by misdescribing GST. As Mr Partridge pointed out, it wasn't independent.

They knew that Mr Thomson had consistently failed to provide any sort of reliable information. He'd said it was five borrowers, then 80 loans to Spencer-related businesses, then 121 loans, the security was £60.7 million and then it was £35 million with no explanation. And Kerry, of course, as my Lord saw yesterday, had expressed the very clear view that LCF's rates were not credible.

So, the fact that PwC had signed off on these accounts wasn't something that could wipe the slate clean and erase special knowledge that the relevant individuals from Surge possessed about LCF's business. In any event, any crumb of comfort that they might claim to have gleaned from the fact that PwC had signed off on the accounts was extremely fleeting because, within about a month and a

half of Mr Partridge telling them that the accounts had been filed, £60.7 million of security was looking insufficient, in light of the total amount of bonds in issue.

We can pick that up with <SUR00137316-0001>, where Mr Jones, at the bottom of the page, emails Mr Partridge, copying Mr Careless, 2 February 2017, subject "LCF assets statement update":

"Further to our conversation yesterday, please could you forward PC a copy of the letter/email you are sending to LCF before you send it."

And Mr Partridge replies:

"Of course I would never have sent without showing you. Not sure it should come from me (at Chariot House anyway [Mr Partridge's firm] -- with what authority?) "Anyway comments first and we can decide how it is sent."

The draft letter that's attached to Mark's email my Lord can see in the attachment, "car104 lcf security letter feb17.docx" is at <SUR00137318-0001>. We can see the final version of the letter in a moment. I'm not sure it matters. Let's go to <MDR00073895>. This is four days later, 6 February, Mr Partridge's email to Mr Thomson, copied to Mr Jones and Mr Careless, with the subject "Security". My Lord can see the attachment has the same name. Mr Partridge says:

"Dear Andy.

"Hope that you are well.

"Please find request for information attached." The attachment, let's hope it's there this time, is <MDR00073897>. From Mark Partridge on Chariot House paper to Mr Thomson. It says:

"With the unprecedented success of the LCF bonds the director of Surge Financial Limited felt it was a good time to seek clarification of the fair value of the underlying assets securing the bonds. She [so it's Kerry Graham] asked us as the company accountants to request this information from yourselves. "LCF's stated policy is to issue bonds up to 75 per cent of the value of the security held. "As at 30 April 2016, the last audited accounts stated that LCF held a lien on assets valued circa £60m. That gives implied security for up to £45m worth of bonds.

"As LCF is virtually at that figure of £45m, in terms of bond notes issued, could you give us an indication of the fair value of assets you currently hold as security against the bonds.

"Obviously we can rely on the audited accounts once they are published but that could be 9 months hence." So, as I've said, my Lord, within about a month and a half of Mr Careless and Ms Graham seeing the PwC accounts, the figure of security given in them is insufficient in light of -- almost insufficient in light of the value of bonds in issue.

Mr Thomson replies to Mr Partridge at <MDR00074462>. This is three days later. At the bottom of the page, 9 February 2017, Mr Thomson emails Mr Partridge, copying Steve Jones and Paul Careless and he says: "Hi Mark.

"Thanks for your email. We are always happy to provide security values and the directors don't need to ask formally via yourself we are happy to let them have the detail at any time. As it happens we have just gone through the security values in preparation for our year end and the figures are as follows:

"Loan book.

"Circa £43 million.

"Verified security value.

"£215 million.

"Loan to value.

"20 per cent."

MR JUSTICE MILES: Can I just look again at the ledger from --

MR ROBINS: Yes, that was <MDR00073897>.

MR JUSTICE MILES: I'm just a bit puzzled about the numbers. He seems to be saying LCF is virtually at the figure of 45 million bonds.

MR ROBINS: Yes.

MR JUSTICE MILES: And the response seems to say that the loan book is, what was it --

MR ROBINS: 43.

MR JUSTICE MILES: Unless I have misunderstood, with the grossing-up, one would have expected the loan book to be 50-something.

MR ROBINS: Unless --

MR JUSTICE MILES: Unless they hadn't lent it all.

MR ROBINS: -- LCF was -- all the money hadn't been lent out, yes.

MR JUSTICE MILES: Anyway. He says what he says.

MR ROBINS: Let's go back to <MDR00074462>. That obviously gives rise to some questions. If the loan book is now £43 million, who are these borrowers? Are they still Spencer-related businesses? Are they still funding their own operations? How many are there? We have heard all these different numbers -- 5, 80, 121. Who are the borrowers? Has LCF finally found an independent, unconnected borrower to lend to? As regards the verified security value, well, who has verified it, when did they verify it, how did they verify it? In other words, what does "verified" mean? What is this security? Are we still talking about Cape Verde and Dominican Republic, as set out in the single facility agreement provided by Alex Lee? Or is there something else? How has it gone up so sharply? The last figure we saw was not actually the figure in the PwC accounts, it was the figure from Mr Thomson, on 1 July 2016, which was post year end, where he'd said £35 million. How on earth has it gone up so quickly to £215 million?

Why on earth are these borrowers prepared to provide such excessive amounts of security to LCF? It says that it seeks a loan to value ratio of 75 per cent. How is 20 per cent plausible? What borrowers are out there willing to provide security vastly in excess of the lender's requirements? It makes no sense at all and gives rise to numerous questions which you might expect to be asked. But we don't see any questions going back to Mr Thomson. Instead, at <SUR00137486-0001>, Mr Partridge comments to Mr Careless and Mr Jones: "The banana republic must have found some black gold ...

"He wasn't always happy back in the day providing any information."

The "banana republic" seems to be LCF or possibly the group of people behind LCF, including Spencer and Simon. The reference to "black gold" seems quite specific. The only thing we can think of that is routinely described as "black gold" is oil. We will see about that in a moment. "He wasn't always happy back in the day providing information" seems to be a slight concern on Mr Partridge's part that something has changed. He's puzzled by Mr Thomson's willingness to provide this information so quickly.

Mr Careless replies at <SUR00137487-0001>. He says: "Well, he's neck on the line."

I think he means, "his neck on the line": "I'm happy enough."

It is obviously an interesting comment. "His neck on the line" seems to be recognition on Mr Careless's part that Mr Thomson may be saying something untrue. Mr Thomson is exposing himself to risk. That's what "his neck on the line" means: he's put his neck on a railway line, he's taking a risk. The only risk he can be taking here is making an untrue assertion about LCF's financial position.

"I'm happy enough" is also interesting, because Mr Careless seems to be saying that he's happy to rely on the fact that Mr Thomson has said it. If LCF were to collapse in the future, Mr Careless would be able to justify his conduct by saying that he relied on what the managing director of LCF had told him.

But it is obviously a change in Mr Careless's position. Previously, he was asking Mark to conduct some DD, they were talking about getting valuations and facility agreements and Mark eventually pushed to get the three documents from Alex Lee. But now Mr Careless isn't asking for any documents. As I said, he's not asking who are the borrowers, who's verified the security value, et cetera. He just says, "[His] neck on the line. I'm happy enough".

As I said, the reference to "black gold" is presumably a reference to oil, and Kerry, as I mentioned to my Lord a few days ago, has been working on a proposed oil bond. The next day, she comments at <SUR00137494-0001>, I think it is the very next day, the 10th. She sends this email to Mr Russell-Murphy and Mr Careless, and she says:

"Just to make you aware of my current issue ..." And the second paragraph says:

"They have said that they do not have the assets independently valued. To do this they need a competent person's reports at each site and it will take a minimum of 5 months to get this done (geological studies take time) and actually they might not be able to get it fully complete at some sites where more in-depth tests need to happen/they are more early stage." She makes further comments about the proposed oil bond. My Lord can see it is about the oil bond from the reference to geological studies, and also, in the final paragraph, the reference to BP and Schlumberger. If Mark has been speculating that the verified security value of £215 million might have something to do with oil, then Kerry scotches that idea by communicating that those oil assets have not been independently valued; there is no verified security value, therefore, in respect of those.

We then come, a month later, to LCF's management accounts. We see that at <MDR00079552>, where Oliver Clive & Company provide Mr Thomson with a PDF of the management accounts for the period ended 30 November 2016. We can see those attached. It is <MDR00079553>. My Lord can see it is for the seven months ended 30 November 2016.

On page 3, my Lord can see that the value of secured assets is now said to be £189,450,000. On page 9, my Lord can see the balance sheet for 30 November 2016. The net assets are a little over £36,000.

Mr Careless gets hold of these and sends them to Mark Partridge. That's <SUR00137938-0001>. He's received them from Mr Thomson. He said: "... they show a significant jump from the previous financial statement ..."

At the top of the page, he forwards them to Mr Partridge. Mr Partridge replies at <SUR00137948-0001>. In short, he's not impressed. He says:

"Probably worth jack. No accountants name to it, also some of the figures just look wrong which makes you wonder who prepared. Technically short term insolvent which doesn't look right either.

"If you did want to ask the question it would be -- can you confirm that LCF can meet its short term liabilities ie those due within 1 year? Because the balance sheet suggests it can't by £7m. "And if I had £190m of assets I'd probably liquidate them now and enjoy ..."

If we go back to the accounts, <MDR00079553> at page 9, my Lord can see what Mr Partridge is talking about. In the balance sheet, there are current assets of £8 million and current liabilities of £15.2 million, giving net current assets of almost minus £7.2 million. So, Mark is saying technically short-term insolvent, which doesn't look right. So he's not impressed by that.

We then see, at <MDR00224095>, another letter from Mr Partridge to Mr Thomson:

"Thank you for your response to our most recent letter in February confirming the security cover for LCF's loan book.

"As a periodic review the directors of Surge Financial Limited have again asked me to seek confirmation from yourself as to the current levels of both loan book and the fair value of assets that you currently hold as security against the bonds. "Also do you have an idea as to when the audited accounts to 30 April 2017 are likely to be published?" That's on 6 June. Then, on the 19th of the same month, <MDR00091091>, Mr Thomson provides Mr Russell-Murphy with "Management accounts 31.04.17.pdf", that's the name of the attachment at the top of the page. He says:

"I am still waiting on the valuation so I think we should just use the draft set we have. The trading figures won't change at all, all that will be amended is the secured asset valuation which will only increase. It's up to you if you discuss this with your client but the figures I believe look good the way they are. "Can I ask you not to make these available to anyone else as they are still draft."

The attachment is <MDR00091092>. This is to 30 April 2017. On page 3, my Lord will see the secured assets figure has been highlighted, I think by Mr Thomson, £189.45 million. Again, there is an unexplained decrease. On 9 February, Mr Thomson has given that verified security value figure of £215,000 but by 30 April it has shrunk.

On page 8, my Lord will see the income statement. At the bottom, LCF has made a profit of £164,260 for the year. That obviously gives rise to questions: what sort of business is this? Surge Financial Limited is making more than that per month. In fact, Surge has made £164,000 of profit every 25 days in the year ending 31 January 2017. By the end of April 2017, it's making even more. Why on earth would LCF be giving away so much of the potential profits to its marketing company? On page 9, my Lord will see the net assets figure on the balance sheet is now said to be £189,000-odd. Mr Russell-Murphy sends these to Mr Careless and Mr Partridge on the next day, <SUR00139659-0001>: "Please see attached the latest set of draft accounts, Andy has asked me not to share this with anyone at the moment."

Mr Partridge replies on the same day at <SUR00127978-0001>, where he says, at the top of the page, to Mr Russell-Murphy and Mr Careless: "Not sure how he can afford a helicopter out of these accounts. I guess he bought it after 30/4/17 so that PwC don't have to think about it!!!! "£0.5m interest -- what is he charging. 2 per cent??????? The model obviously has lots of fees, looks wrong to me though; cf that with the Minerva offerings."

Again, Mr Partridge is not exactly impressed. Everybody seems to be aware, as my Lord sees, that Mr Thomson has very recently bought a helicopter. Helicopters cost hundreds of thousands of pounds. How on earth has he done that when he's a director of a company making a profit of £164,000 which has net assets of £189,000 and which, as the accounts we looked at a moment ago confirm, has paid no dividends. How on earth has he found the money to buy a helicopter? That's a valid question posed by Mr Partridge. But, again, nobody seems to go back to Mr Thomson at this point to ask any follow-up questions or to ask for any substantiation of the things that he's passing on.

We then come to a different topic, which relates to a website called Money Saving Expert, which has a public forum or message board on which members of the public can post questions and comments about various topics, from good deals with utility companies through to pensions and investment companies, and so on. Posts starting appearing on the MSE forum about LCF. We see evidence of the first at <MDR00074512>, where, on page 2, Craig Mason of Surge emails Jo Baldock and John Russell-Murphy, copying Aaron Phillips, to say -- with the subject "Very new MSE forum":

"Afternoon both.

"Very fresh Money Savings Expert post about LC&F and links to Cape Verde, International Resorts Group, et cetera, started on 8 Jan and was most recently posted on this week."

And he gives the link and he says:

"Few potential investors have used the information from this post. One of my potential clients has actually commented on the thread itself." I think he might mean "a few potential investors", "Few" would suggest hardly anyone, but I think he's saying some rather than hardly any. He's saying: "Just wanted to make you guys aware."

On the first page, my Lord can see Aaron Phillips forwards that to Ryan Holdaway:

"Hi mate, are you up to date with the LC&F thread on MSE?"

"Links have been made back to BSR and also Cape Verde, International Resorts Group." Then there's - I think that's a quote from the thread. Someone has said on the MSE forum: "So, it appears this RPDigitalServices Ltd site are fraudulently representing their services. It says at the top of their site:

"We present you with a selection of the current best fixed interest bonds as rated by our in-house analysts. Rates are checked and updated daily."

And they say:

"What does this say about their in-house analysts if they can't tell the difference between a fixed term deposit and a 100 per cent capital at risk unregulated investment not aimed at retail consumers. They even tick the option for security. Something that the L&C bond is not. Although it doesn't actually state what 'security' means. They are clearly not checking these and their claim is false. It is a disgrace. "You also have to ask how did that listing appear there in the first place. Are L&C asking for it to be listed? (which they shouldn't be) or are RPDigitalServices Ltd including it

through their own choice to generate traffic for their site." That's an extract. Jo Baldock forwards it to Mr Careless at <MDR00074542>.

He says:

"Let Andy know please Jo."

Jo forwards it to Mr Thomson, <MDR00074630>. Mr Thomson's initial response is to say: "Thanks for sending this over. The IRG loan isn't public information so someone who knows us has posted this. I'll have to look into it."

That seems to imply or accept that the post is, at least in part, factually accurate, and that it relies on non-public information.

Mr Thomson seems to change his tune and at <MDR00074632>, he says he's spoken to Lewis Silkin and they believe:

"... the site is supporting libellous and factually inaccurate content that is damaging to the company. So on Monday morning a letter from LS will be sent [to] the MSE highlighting this and asking them to remove the posts, if they do not we will start the legal process to have it removed."

Ms Baldock forwards that to Mr Careless and Mr Russell-Murphy. He has changed his tune and gone from implying it contains accurate but non-public information and is now saying it is libellous, although he doesn't explain how he says it is inaccurate. That's all in February.

A few months later, in July, the issue with the MSE forum reared its head again, <MDR00093505>, when there is a new and very lengthy post on the forum. If we look at page 2, we can see that a prospective bondholder forwards this to Scott of Surge. He copies and pastes it into his email.

It comments on LCF. At the bottom of the page, it says:

"The well-designed LC&F website and well-staffed mini-bond marketing and financial team are mostly about the direct marketing of the corporate minibond and the prospectus. You will find little about LC&F business operations on the website, other than description. Little about the company track record and means of interest payment to the bondholders, and repayment of capital. The website is all about marketing the mini-bond, not about the ... business side of LC&F and its practical discharge of financial obligations to investors."

Then it goes on to comment on the financial regulatory requirements for unregulated minibonds.

Then just over halfway, between halfway and two-thirds of the way down the page, it says:

"However, the LC&F website states this unprotected investment is secured. It is asset backed, that is secured on the assets of LC&F. On the LC&F website the risk to investors here is spelled out in the disclaimer of liability: 'The bonds are secured by a debenture over the assets of the company. There can be no assurance that, in the event that this security is realised, the amounts realised will be sufficient to satisfy the obligations to repay principal and accrued interest under the bonds.'"

Then it goes on to comment on the security. Then, over the page, it says, highlighted in yellow: "The LC&F website states it currently has over 4,300 investors ... and an increasing loan book in excess of £66m. Since 2012 LC&F has lent out over £108m, £42m in loans have been repaid since 2012 and the repaid funds have been successfully lent to other borrowers. "Companies House annual accounts indicate that LC&F has very little past experience in short-term SME loans. More on this later. The loan market is highly competitive. One online study indicates the current average small business bank loan rate is between 6-13 per cent per annum, from lowest to highest, much less than the loan

interest rates offered by LC&F. A business loan provider online comparison website indicates rates approx between 3.5-5.5 per cent APR on secured business loans. An application online with Santander by an applicant with good credit standing for an unsecured one-year business loan for £25,000 results in a 4.9 per cent APR interest rate. Much less than LC&F secured business loan rates at 12-20 per cent. "With such low interest rates on loans now and the large number of loan companies, it is a very competitive market. The 12-20 per cent lending rates applied by LC&F to SME loans may not be competitive enough in the UK asset secured loan industry. But it is unlikely that lending rates below 12 per cent would be sufficient to cover the LC&F company and minibond marketing expenses, wages, contractor fees and profit, as well as interest payments to bondholders. No other business model has been put forward by LC&F to pay bondholder interest and secure return of principal end of bond term." Then, on the next page, it says:

"A reason a business would be required to pay a higher rate of 12-20 per cent APR on a loan is because the level of risk of loan default by the borrower is higher. That higher risk would not bode well for the LC&F bondholder interest payments, nor for return of the SME loan capital and bondholder principal, nor for company expenditure and profits."

Then my Lord can see the final paragraph on the page has been highlighted:

"It is difficult to find out any evidence for the marketing team claim that LC&F have lent approximately £15 million to approximately 120 small and medium sized business enterprises ... secured on £33 million asset value since public launch of the minibond. These figures from 2016 are out of date by a few months. As of June 2017, LC&F claim in excess of £66 million has been invested with over £215 million worth of borrowers' and LC&F's assets held as security, along with a part of the bondholder capital. Up to that latter date LC&F state no borrowers have defaulted on the loans." Then, on the right-hand side, in the third paragraph:

"We said earlier that Companies House audited annual accounts reveal that LC&F have little experience of SME lending. LC&F claim on the website a 100 per cent track record of paying out interest, between 2012 and 2017. However, this appears to be the first public issue of the mini-bond. Companies House LC&F audited annual accounts clarify the picture. Before 2014 it appears from the annual accounts that no loans of any significance were made. The Companies House audited annual account return 2014-15 indicated only one loan customer paying interest on the loan, and the director of the lender LC&F, Michael Andrew Thomson, was also the director of the loan receiving company, One Monday now dissolved. The little activity in 2012-14 and the one loan client for the 2014-15-year does not really support the statement by LC&F that there has been a 100 per cent record of interest payment to investors since 2012." Then in the penultimate paragraph on the page: "All public consumer contacts, regarding LC&F business and the minibond offer and administration are through the marketing team. It is very difficult to speak to the LC&F directors or employees to find details of the SME's lending team. The marketing company are able to provide little information for the separate SME loan side for raising interest for mini-bond repayments to bondholders. Perhaps an external FCA approved loan contractor is used by LC&F. Perhaps the marketing team have not been briefed on the SME lending side." Then, on the next page [page 7], the second main paragraph:

"Regarding the LC&F lending side to SMEs, the bond marketing team reveals there is a trading interface between LC&F lending team and SME borrowers. From this LC&F accounts for bondholder interest payments, company profit and expenditure including contractor fees, wages and marketing costs. However, the marketing team do not appear able to substantiate this to potential or existing investors. Unlike other SME business loan providers, there appears to be no available company website interface for LC&F business borrowers to apply for business loans. No physical location other

than the Companies House registered office in Tunbridge Wells. No available names of existing SME borrowers. No names of the lending team employees. No lending team employee contact, no phone, no email address for the lending team. To apply for a SME loan you are asked to go through the bond marketing company team which is unusual. No internet searches have provided any evidence of how the bondholder interest is being paid through SME loan interest, nor is there such evidence on the LC&F website, nor can the bond marketing team provide such when asked.

"This does not mean LC&F are not carrying out these commercial lending activities. This does not mean that LC&F are not paying out due interest payments to bondholders. They are honouring interest payments to date. But where is the evidence where this money is coming from? Both potential and existing investors would like this. The lack of transparency has been a major cause of mini-bond failures as the lack of checks allows the steps to failure to take place. Bondholders do not appear to be able to access and check accounts as to what the bondholder capital is actually used for, to confirm it is used for stated purpose. In spite of the corporate trusts, the financial history of bond failures shows that the loan capital is often not used for stated purpose, which of course will precipitate collapse."

Then, on the next page [page 8], the last paragraph on the page:

"We have seen pointed out earlier the business and consumer loan industry is very competitive today with the Bank of England base rate being so low, along with other market factors. Consumers can get an unsecured loan from a bank at between 3 and 5 per cent per annum. Rates on secured business loans on business or personal assets, such as a home, can be similar as we have seen earlier. The Which? magazine and the internet has guides on loan offers and comparison rates of interest on loans. Loan interest appears to be at its lowest level. There is intense competition in the business loan industry and that means it is a difficult market and harder to make loans at higher rates of interest. Not good for LC&F, offering business loans at 11-20 per cent, if this is the only means of commitment to fulfilment of bondholder interest payments. Loan contracts default, although the mini-bond marketing team says they have had no loan defaults up to June 2017." If we could go back to page 2, my Lord will see where we saw a prospective bondholder sending this to Scott. If we look at the previous page, we see that Scott sends it to Jo Baldock and she sends to it Mr Thomson to say:

"A client has just sent us this. Do you want to make comments under his concerns highlighted in yellow, better coming from you I think?"

Mr Thomson says:

"I've seen this before and the info is based on assumptions not fact, I'll get something over. "The guy is a private investor who called the helpline, asked a load of questions re who we lend to and didn't get the answers he wanted. He has chosen to write the piece and has intimated there are others behind him inc professionals.

"Other investors have pointed out how he has misrepresented the piece as he hints that MSE have approved the piece, he gets pulled up on this and has to admit that MSE didn't approve it they just confirmed the total word count limit was within what was allowable. "He's technically incorrect on a number of issues, perhaps when I come down on Thursday I can go through it with the AMs."

That's hardly a satisfactory response. The post has raised a lot of good questions, supported by detailed explanations. Mr Thomson is now just saying, "It is based on assumptions, not facts and is technically incorrect on a number of issues". There is obviously going to have to be a rather better

and more comprehensive response than that from Mr Thomson. We see the issue begins to snowball at

<MDR00093870>. Aaron tells his colleagues: "This morning we have had 3 or 4 people comment on the MSE link with regards reviews -- I have had a large investor put off completely by it."

That's 15 July. The next day, <MDR00093909>. On the next page, we can see that Jo Baldock is told by Scott Allen:

"Andy needs to come back with a comprehensive reply to Mr Hammer's email last week ASAP as this MSE forum is clearly a problem now."

He says:

"I think we do need to address it."

Jo says, at the top of the left-hand page: "It's in hand."

<MDR00093919>. If we look at the first page, she says:

"Hi Andy.

"The client raising these concerns has chased us over the weekend, are you able to put some answers below that are acceptable for us to reply to him with." He says, "Okay, will do tomorrow". He doesn't do it tomorrow, he does it the next day, <MDR00094237>. He says:

"Hi Jo.

"Sorry it's late, have a read of this. Please don't send it anywhere as it's been written for internal purposes, I'm happy to talk it through with the AM." Let's have a look at what he's written. It's <SUR00140130-0001>. Let's have a look. He has copied the post into a new document. He's added his comments in red. We don't see any comments on the first page or indeed, I think, on the second page or the third page. He doesn't comment on any of that.

On the next page, which I think is the fourth page, he's added some comments in red. He says: "The volume of investors is taken from the number of active bondholders we have on our system the number is just what it is but it does fall in line with our average investment size which varies between 12-18,000. "The company has been going since 2012 but has only increased volume over the last 2 years as the directors were involved with other projects and built the infrastructure of LCF around the other commitments, when it was ready to scale the directors did so. "We initially lent to SMEs but have chosen to lend to medium to large sized companies as the operational cost is lower and the security is better and more enforceable. The author of the document ..." I think he's talking about the person who wrote the MSE post:

"... is not a financial professional and has no experience in the debt market the however if he had looked at a robust source of information such as the British Bankers' Association he would see that cumulative lending between 2011 and 2016 has dropped by 9.7 billion, furthermore the UK's Office of National Statistics predicted in 2016 that by 2017 the funding gap between business that require funding and those that have secured funding will hit 22 billion. These are not our figures they are directly from 2 well respected national sources, the author has sourced his information from a comparison website! I have served for over 20 years in the financial marketplace and I know which source of information I would rely on." If we go back to look at what that's commenting on, if we can look at the previous page as well, we can see what he hasn't commented on. For example, at the end

of paragraph 2, he hasn't commented on the comment about LCF loan rates being 12 to 20 per cent. He hasn't disputed that. He seems to accept it. He hasn't made any comment about interest rates in the market being lower. He's just said there's a lot of demand for loans. Well, that's a different point.

Then, on page 5, he says at the bottom: "No borrowers have defaulted, we would have to publish these as bad debts in our accounts which PwC audit and signed off on.

"We have had numerous loans repaid the author is simply making assumptions."

He seems to accept the assertion in the yellow text that the marketing team claim that LC&F have lent approximately £15 million to approximately 120 small- and medium-sized business enterprises. He doesn't correct or dispute that, he seems to accept it. And he fails to address the point about lack of evidence of such lending. So, it is a pretty hopeless attempt to address the point.

On the next page, page 6, he says in red that the experience of the director or directors, it is not clear because he hasn't punctuated, is extensive: "... what the author is alluding to is that the company does not have a long track record which is completely different, please see earlier comments re the last couple of years."

So, he doesn't substantiate that. He doesn't really challenge or answer the points made about the lack of evidence of any history of lending, which is really the thrust of the paragraph on which he's commenting. The next paragraph where he comments, he just agrees with the statements made, "Yes this is correct", that includes the comments about the £215 million worth of borrowers. Well, he said before it is £215 million worth of security. He is now saying £215 million worth of borrowers is correct.

MR JUSTICE MILES: That looks as though that's -- well, the author must have been talking about security, mustn't they?

MR ROBINS: Yes, but it's misdescribed it.

MR JUSTICE MILES: I know, but what does one make of that?

MR ROBINS: Well, it is not a very clear response from Mr Thomson. The next page, top of page 7, Mr Thomson has added:

"He is incorrectly reading the accounts and yes we subcontract out as many companies do which saves on costs we still have oversight over our subcontractors and control what they do. We do not subcontract out our loan operations as this is a specialist area, we do however receive support from our auditors PwC and our lawyers at Lewis Silkin when needed.

"If we were to directly employ the staff our costs would go up and we would pass less onto our bondholders."

I'm not sure there, really, what he's trying to say. The accounts did say that LCF had two employees. The suggestion that PwC and Lewis Silkin are helping to conduct LCF's lending operations is nonsensical. That's not what auditors and solicitors do.

Then on the next page, he hasn't answered the point about the names of the borrowers. He's just said: "We have chosen not to publish the detail of our employees due to the size of the capital being deployed this can leave an employee open to being targeted by criminals trying to extort/steal money from the company. By not publishing the details we are protecting the individuals as well as the company and bondholders."

Then he says, in the middle of the page: "This is pure assumption and is information that you would not be able to find in detail from any company, our borrowers require discretion and we provide it. If we didn't use the funds for what they were supposed to be used for as stated in our fundraising documents our auditor would confirm as much in their qualifications in the accounts. It is clear that the author does not have the experience in the financial market to know this." Then, at the bottom, he says:

"Again pure assumption, all lending operations are in house."

Then he attacks the author of the MSE post again. At the next page, at the top -- no, sorry, page 10: "The author is completely misreading the accounts and misrepresenting the position. If he was able to read accounts correctly he would see that it was a related party transaction, ie I had to disclose that two companies that I was involved with during the financial year had dealings with one another. At no time was I a director of both companies at the same time. The author again shows his lack of financial knowledge here."

But he doesn't deal with the point about there being only one borrower. And the point about him not being a director of both companies at the same time was wrong. The related party mentioned, in the accounts of One Monday, he was a director of that company and LCF at the same time. His other comments on page 10 don't really add much. If we look at the next page, there's nothing there. And that's it. He hasn't provided anything of substance to answer the very valid concerns expressed about market interest rates or the lack of evidence of SME lending. If anything, he's only compounded the concerns by saying that "LCF's borrowers require discretion and we provide it", which is obviously very mysterious.

At <MDR00094248>, we can see what the Surge team think of Mr Thomson's response. At the bottom of page 1, we can see Jo Baldock says:

"Hi".

Over on the next page, she says:

"Please see attached from Andy with the answers to our clients concerns. He does not want these sent to the client so I suggest maybe a summary email in response to the points raised that we send only to clients who raise the issue?."

On the left-hand side, Mr Careless, at the bottom, says:

"John -- you need to address this."

John says, at the top, to Mr Careless, Jo Baldock, Ryan Holdaway and Ms Graham:

"I will speak with him tomorrow.

"Scott and I put a response back to one of his clients earlier today as we couldn't wait for Andy to reply.

"I do agree with Andy on making this an internal document though. He hasn't responded particularly well and we couldn't share the document the way it's written. "Leave it with me."

So, they seem to recognise, or at least Mr Russell-Murphy recognises, that Mr Thomson's responses are insufficient. He hasn't responded particularly well. And it is not a document that could be shared with prospective bondholders. So, the very valid concerns on the MSE forum essentially remained unanswered.

My Lord, I see the time.

MR JUSTICE MILES: We will take a five-minute break. (3.12 pm)

(A short break)

(3.18 pm)

MR ROBINS: My Lord, I got to about July 2017. <MDR00098992>. At the bottom of page 1, my Lord will see 27 July, Mark Partridge emails Andy: "We had a board meeting yesterday and wondered if there was any update on the value of your security figure as you indicated in June.

"Also any update on how the audit is coming along and when the accounts are likely to be signed off." My Lord will see the response. It is at the top of the page. But it is over a month later. So I will come to it in a moment. I just need to deal with an email on 22 August, <MDR00098081>. It is a point I have touched on previously. At the bottom of page 1 and over to page 2, Jo Baldock emails Katie Maddock to say: "Sorry to bombard you with questions this morning but a few things we need info on please ..." And 3 is:

"We are looking to add a bit of a newsletter with the series 10 launch email and would like a little info on the lending side, it would be good to be able to say, look what your investment has done, what SMEs you have helped progress, et cetera, can you give us some examples please, we don't need specific borrowers names just something like, we lent £100k to a property company in Sussex who have used the funds to improve a school, if I could have these ASAP that would be great so the email marketing team can get to work on the design." She chases, and Katie Maddock fobs her off. As I said, when we first looked at this sort of request prior in 2015, the Surge salespeople obviously want real-life example to help them sell the bonds, but Mr Thomson's firm position is that he is not prepared to provide any information about the borrowing companies. If we then go back to <SUR00141030-0001>, this is Mr Thomson's response. This is 29 August. It is over a month after Mr Partridge asked the question. He said: "Hi Mark.

"I hope you're well and apologies for the delayed response to your request. The current value of assets we hold charges over as security totals £247.6m. Our new auditors Ernst & Young will be reviewing the details of the assets and associated loan and security documentation as part of their audit over the coming weeks. As per last year the total value of the security will be detailed in our audited accounts." That's forwarded by Mr Careless to Ms Graham, who replies to him and Mr Russell-Murphy and Ms Baldock: "I am really interested to know what the security comprises and how many loans are currently issued." My Lord, two obvious points on that. First, Ms Graham, Mr Careless, Ms Baldock and Mr Russell-Murphy have no idea what the security comprises: what is it; what assets; where? As my Lord saw, the earlier attempts at due diligence had really come to nothing. There is no information about what the security comprises. Similarly, there is no information about how many loans are currently issued; how many borrowers are there now. The numbers have varied. What's the current position?

These are obviously key points. One thinks, well, why not ask? Why not ask Mr Thomson to provide the documents? Not just answer these questions, because the in-house view is that he's a liar, but to substantiate his answers, to show by provision of reliable, substantiated information what the security comprises and how many loans are currently issued. But those questions aren't asked. There is, instead, as I mentioned before, an attitude that, if Mr Thomson has said it, then that's sufficient, even if they think he might be lying. "It's [his] neck on the line, I'm happy enough."

That's seems to be why there is no hesitation in deploying the new figure. <MDR00098993>. Jo Baldock emails Chris Mason to say:

"Andy has now confirmed the assets figure is £247.6m can you let the AMs know and update any email templates. Tech are sorting the changes on the website." And <MDR00098994>. Chris Mason emails the salespeople, sales@lcaf:

"Andy has now confirmed the assets figure is £247.6m, this is alongside the £78.5m in loans. "This is a 31.8 per cent LTV.

"I will update the email templates this evening -- so can everyone close them before they leave today." This is 29 August. A month later, 27 September, there's an interesting email, <SUR00141995-0001>. On the second page, we can see that Mr Carlo is saying: "Great bit of exposure."

I think we might need to go a bit further. We can see at the bottom there Ryan Holdaway is saying, on the left:

"Check this out. We are full featured in the DM [Daily Mail]."

On the right-hand side, there is a link to a Daily Mail article. The subject of the email is "Daily Mail -- LCF and BMB [Blackmore bonds]". Both have been featured in the Daily Mail. George Carlo thinks it is a great bit of exposure, which is a natural thing to think if the company you are responsible for promoting gets some press coverage. But, if we go back to the first page, we will see that Mr Partridge and Mr Careless have a rather different attitude. Mr Partridge says:

"Great publicity. Is it good sticking head above the parapet?????"

Mr Careless says:

"We didn't ask to do it ..."

I mention this because it seems to be consistent with the general tenor of other documents we have seen previously, including the comment about Wellesley sticking their head above the parapet by going on TV, and Mr Careless said that LCF would stay under the radar for a while yet, so there seems to be a concern about attracting undue attention to LCF and inviting scrutiny through media exposure. Sticking head above the parapet is not necessarily a good idea and not something you would ask to do.

We then move to another topic related to a topic that I addressed your Lordship on earlier today. To put it in context, my Lord has heard quite a lot about Mr Careless's dealings with Spencer Golding. He was the king pin, if I can put it that way, at the first meeting in the Long Barn, holding court. He was there with Mr Hume-Kendall. He is the big boss of LCF, he's the man they go to if they need to overrule or squeeze Andy, and Mr Partridge thinks he's Madoff.

My Lord saw the last invoice from Mr Thomson for September 2017 for 0.5 per cent, which was attached to an email dated 9 October 2017. Seven days before that, on 2 October 2017, we have this. It is <SUR00084106-0001>.

Mr Golding, at the bottom of the page, has sent an email to Mr Russell-Murphy with the subject "Invoice" and he says, "Thank you". Mr Russell-Murphy emails it to Mr Careless and Mr Jones to say:

"Just received this from Spencer, he has backdated the invoice to June!!!

"Give me a call when you're free."

We can see what he's talking about. The invoice is <SUR00084107-0001>. It says at the top "SG Golding Consulting. *****". It is addressed to Surge Financial Limited, dated 20 September 2017. It is for three items described as fundraising consultancy. They're for June, July and August 2017 respectively. My Lord can see that they are mathematically 1 per cent each of what is described as the raise for that month. So the raise for June 2017 was just over £5.2 million. The amount invoiced by Mr Golding is 1 per cent. Similarly, for July, he's invoiced 1 per cent of the raise and the same for August. These are the amounts of new bondholder money paid to LCF in each of those three months. He wants 1 per cent of the new bondholder money paid to LCF each month. That gives rise to a net amount of just over £220,000. Mr Golding then applies VAT at 20 per cent to give an invoice total of just over £264,000. There is a VAT number at the bottom right, which is the VAT number of Home Farm Equestrian Centre, Mr Golding as a sole trader, it is his horse business. It says at the bottom, "Payment due: on receipt of invoice", and he gives his account details. Mr Russell-Murphy, as my Lord saw, is concerned, or expresses a concern, that Spencer has backdated the invoice to June. Steve Jones comments on it at <SUR00084118-0001>. He comments on the VAT number. He says in the middle of the page:

"The invoice is from SG Golding Consulting, however it is not a limited company.

"He has quoted a valid VAT number for Spencer Golding Home Farm Equestrian Centre. "His invoice is for June-August."

At the top of the page, he forwards that to Ms Graham, and copies Mr Careless, to say: "Just FYI [for your information]. How can we justify paying c £80k per month to an equestrian centre?"

He seems to have some concern about that, and his concern is that it is going to be very difficult to justify it if called on to do so. There is no obvious reason why Surge Financial Limited would be paying £80,000 a month to an equestrian centre. The next day, at <SUR00084183-0001>, we can see that, having sent this invoice backdated to June, Spencer is now not picking up the phone. Mr Russell-Murphy says to Mr Careless:

"Spencer didn't answer my call again??" And Mr Careless says:

"Text him. Try something like this? Hi Spencer, been trying to get hold of you regarding your invoice. You agreed with Paul in the meeting it would be backdated to the beginning of September only. You also agreed it would be 1 per cent gross. The number can be £80k. Can you reinvoice please?"

"Also, Paul wants to confirm that you want the same deal on the oil deal from when it launches in November?" And Mr Russell-Murphy says:

"Okay will do."

On that, first, it's apparent that there has been some agreement about this between Mr Golding and Mr Careless in a meeting, and what they have agreed is that Mr Careless can invoice his 1 per cent gross -- so not with the addition of VAT on top, it's got to be 1 per cent in total -- and backdate it to the beginning of September. That's presumably because Mr Thomson's invoice for September isn't going to be paid. The arrangement to pay half a per cent of new bondholder money to Mr Thomson is being replaced by an arrangement involving the payment of 1 per cent of new bondholder money to Mr Golding. It's not just for LCF. It's envisaged Mr Golding will also get 1 per cent of new bondholder money from the oil bond when that launches. So, the man behind LCF, the head honcho, "Madoff", wants 1 per cent and Mr Careless is happy to agree that, provided that it's 1 per cent gross and that it doesn't overlap with the payment of half a per cent to Mr Thomson.

Ms Graham seems to be rather less sanguine about what's going on. At <SUR00084244-0001>, there is a WhatsApp conversation between her and Mr Careless, and on the first page, the fourth from -- it is towards the top, fourth from the top. Mr Careless says to her: "Hey, you need some time to relax. I'm worried about you."

This is 5 October, so it's two days later: "Hey, you need some time to relax. I'm worried about you. I've never seen you unwell." And she replies:

"Andy hasn't asked us to be an AR before." That's authorised representative:

"I'm very sensitive to stress but I don't usually experience it. Andy has tipped me over the edge." And then she says:

"It's just a bad headache so I'll be fine. The issue is that being an AR of Andy could be a permanent headache."

Mr Careless says:

"Can you switch off today?"

And:

"Let's talk biz tomorrow."

He then says:

"The Spencer thing is also got to be sorted properly."

And Ms Venn says:

"I want us to be part of something to be proud of. I can justify a little clever marketing ..." Presumably things like fake comparison websites: "... but I can't justify breaking the Briberies Act for Spencer and being unethical in our choice of who we are an AT of."

I think she means "AR of". She says:

"We aren't wheeler dealers we are growing to become a financial institution."

Then she says:

"I can switch off. I'm going to sleep as soon as I get home. I know we can have a fair debate on this tomorrow and make a good decision. I've never felt stronger about any decision than this: it's simply wrong to be an AR of your own customer. A company that we don't trust."

That's what she thinks about LCF, "a company that we don't trust".

The reference to the "Briberies Act", as she called it, the Bribery Act 2010, seems rather specific, particularly for a nonlawyer. The clear implication of that reference seems to be that Mr Golding is requiring a payment in return for something. There is some quid pro quo. He wants a payment in return for something of benefit to Surge Financial Limited.

The most likely, perhaps only, potential candidate would seem to be the commission rate. That's what Surge Financial Limited receives from LCF. That's been the game-changer in terms of its growth and its profitability.

The inference seems to be, or the explanation seems to be, that Mr Golding is demanding payment of 1 per cent in order to maintain the commission as it is, at 25 per cent, and not reduce it. He wants, as Kerry puts it, a bribe. He wants 1 per cent of new bondholder money. Because he's backdated it, and that's not what he agreed with Paul at the meeting, it's not paid immediately. About a month and a half later, at <SUR00086593-0001>, he sends through a revised invoice, on 23 November 2017. John Russell-Murphy emails Mr Jones and Mr Careless. The attachment is an invoice and he says:

"Steve.

"Spencer has sent through his outstanding invoice, please can we discuss this with Paul this afternoon." The invoice is <SUR00086594-0001>. My Lord can see it's in broadly the same form but there are differences. First, it's now backdated to the beginning of July 2017, rather than the beginning of June. It covers July, August, September and October. The figures are different. My Lord can see that the amount for each monthly raise is no longer 1 per cent, it's lower than 1 per cent, it's 0.8333 recurring per cent, and that's because that is the percentage that you need to apply in order to arrive at 1 per cent gross following the addition of VAT. So, the invoice total at the bottom of the page of just under £301,000 is 1 per cent VAT inclusive of the four monthly raise amounts. So, there seems to have been a bit of a compromise. As I said, it's back to the beginning of July instead of June. My Lord has seen already that Surge has already paid half a per cent of new bondholder monies to Mr Thomson for July and August. So, if Surge were to pay this, there would be some overlap. It would be paying, for July and August, half a per cent of new bondholder monies to Mr Thomson and 1 per cent on a VAT-inclusive basis to Mr Golding.

I have mentioned already that, whereas, before, it was 1 per cent plus VAT, it is now such sum as equals 1 per cent when VAT is applied.

That invoice was paid by Surge. That's <MDR00113573>. My Lord can see the payment confirmation, the amount in the middle of the table is just under £301,000. The subsequent invoices from Mr Golding are monthly and they are paid. We have set it all out in our opening written submissions at <A2/1/275>.

At N3.26 and N3.27, we deal with the invoice that we just saw and make the point about the overlap. N3.28 and N3.29 are the next invoice. That covers November. Over the page, [page 276], N3.30, we mention that was paid. N3.31 is the next invoice, and we point out that Mr Russell-Murphy has told Mr Golding the final figure for December was £7,883,068, and the invoice, as Mr Russell-Murphy reports to Mr Careless and Mr Jones, will be 1 per cent of that. That invoice is then provided in N3.32, and forwarded to Steve in N3.33 and paid in N3.34.

In N3.35, the figure for January is provided to Mr Barker and, N3.36, there is an invoice from Mr Golding for 1 per cent on a VAT inclusive basis of the January new bondholder receipts. That's sent to Steve and is paid to Mr Golding by Surge Financial and Mr Jones reports that to Mr Golding to say, "All paid for you".

Then, over the page, my Lord can see how this works. In N3.37, Mr Barker is asking Mr Russell-Murphy for the final figure for February for his invoice. N3.38, Mr Russell-Murphy replies, "Just got this from Jo. This was for the month of February" and he gives the figures. N3.39, Mr Golding provides his fifth invoice for 1 per cent on a VAT-inclusive basis. That's forwarded to Steve. At N3.40, Mr Careless instructs Steve to pay. Surge pays. Then Steve tells Mr Careless and Mr Russell-Murphy, "It's paid chaps". Mr Russell-Murphy says, "Thanks Steve, I will let him know." So that gets us to -- well, we have got some more. My Lord can see. I'm not going to read them all out. There is some more on the bottom of the page. We get to the end of April 2018.

Then we get an exchange about this at

<SUR00099146-0001>, where, on the left-hand side, Mr Russell-Murphy emails Mr Careless and Ms Graham and says:

"As you know, I met with Andy earlier and here are the notes from our meeting. I would suggest we discuss the points once Paul is back next week." Let's mention the first topic, "5-year bond": "After some serious negotiating Andy and I settled on the following figures -- 8.95 per cent for the rate [the interest rate that's going to be payable on the new five-year bond] and 22.5 per cent commission. The starting point from his side was 15 per cent comms, he kept on saying the cost of capital raising was far too expensive. I believe we are lucky to have settled on these numbers."

Then the second topic is "SG":

"Andy said that Spencer didn't go to Las Vegas in the end, he has been dealing with some marital issues and has gone on the missing list. I'm sure he will be in touch when his ready to communicate again. "We discussed the SG invoicing and Andy wants to get everything out in the open."

So Mr Thomson knows all about this. Of course he does. The payment of half a per cent to him stopped around the time that the payment of 1 per cent to Mr Golding was being agreed:

"... Andy wants to get everything out in the open. One of the requirements of our AR status with them, will be to provide our financials to LCF. Andy and Kobus will see the payment going to SG and will ask further questions."

If Andy knows about it, then he's going to have to pretend, when Kobus sees it, that he doesn't know about it and he's going to be asking questions as a pretence. Kobus, of course, is going to be asking genuine questions, and you can well understand why: "Andy said he was willing to make a 1 per cent interest reduction on the loans to SG if we reduced our commissions to 24 per cent. I said we will discuss this with SG and will let Andy know."

Before commenting on that, I should just carry on with what he says about the new bond future proofing. He says:

"Andy has a 250m regulated bond which is being finalised and will be available from September this year. The bond rate will be much lower but the clients will have the protection on the FSCS. Andy thinks the minibond market has about 18 months left before the FCA makes significant changes to our sector. A regulated product will ensure our longevity if this was the case. The bond will be offered to various platforms and IFAs and he wants us to continue in the same role but with the new bond. He also said that a secondary bond will be set up in case the minibond clients have to be switched over. This will be precautionary in the event that the FCA have an issue with LCF selling our current products."

Then there's a comment about AR status and Alexander David. My Lord saw Kerry wasn't very keen on being an AR of LCF but Mr Russell-Murphy says, in the second paragraph:

"After a lengthy discussion we both agreed that the best course of action will probably be to cancel our application with AD [Alexander David, another financial company] and to start a fresh one with LCF." So Mr Russell-Murphy is more keen than Ms Graham on LCF having an oversight role and Surge being AR of LCF. To go back to the text, in the second paragraph under the heading "SG", in the final two lines of that paragraph, there is a clear and obvious link that's being made between Surge's commission and benefit to Spencer Golding.

If the alternative to the payment of 25 per cent commission to Surge and the payment of Mr Golding's invoices by Surge is said to be a reduction on the interest payable by Mr Golding and a reduction in Surge's commissions, that link is obvious. If Surge can't make payments to Mr Golding, then the same economic result has to be achieved in a different way, and the answer to that is for LCF to pay less to Surge and for Mr Golding to pay less by way of interest to LCF. In other words, the payment of the 1 per cent to Mr Golding is the price for keeping Surge's commission at 25 per cent. If it is not going to be possible for Surge to pay the invoices issued by Mr Golding, then Surge's commission is going to have to go down. If we go back to the top of page 1, we can see in the second email on the page that Kerry says: "This sounds very positive. Particularly the regulated bond and fixing the Spencer payment." Then she says:

"I'm guessing I shouldn't actually take any action re cancelling Alexander David ..."

Mr Careless responds at the top:

"Noted.

"All good."

So he is happy with the suggestion as well. Then if we go back to <A2/1/278>, we can pick it up at N3.47 with Mr Barker asking Mr Russell-Murphy for the figures for May for SG's invoice: Mr Russell-Murphy provides those and then adds:

"From June onwards we are looking at paying the invoice a different way. I will let you know once a process has been finalised. In the meantime, send me the May invoice and I will arrange a payment." So that invoice is sent over. Mr Russell-Murphy provides it to Steve Jones, copying Mr Careless, saying: "Please can you pay the attached invoice for SG." And Surge pays that. We should look over the page, please. We mention that the new process for paying D4's invoices was going to involve payments via a company which Mr Thomson was setting up. So, rather than reducing Surge's commission and reducing the interest payable by Spencer, there's an idea that Surge can carry on making payments for Mr Golding's benefit, but it can make the payments to a company.

We see that at <D7D9-0010862>. It is an exchange of messages between Mr Thomson and Mr Russell-Murphy. In the middle of the page, 21 August 2018, at 16:22, Mr Russell-Murphy says:

"Spencer has called chasing his money. I've said we are going to organise the payment via a company which you're setting up. He's now said he doesn't want to do that and he doesn't want you to know. Don't mention anything at the moment. I will discuss a different solution with Paul."

So, Mr Golding doesn't want to get his money via a company. Perhaps he's worried about the position regarding his role in the management of companies. If we go back to <A2/1/279>, my Lord can see, at N3.50, we explain that no different solution was implemented at this time. Instead, on 6 September, Mr Russell-Murphy sent a message to Mr Barker saying:

"Hi Elten, can you email me an invoice for Spencer covering the last three months. Figures are ..." He sets out the figures for June, July and August. The total is a little under £400,000. The new invoice, as we explain, was going to have to cover the three-month period because the previous one went up to the end of May.

N3.51, Mr Golding provides an invoice in that amount on the VAT-inclusive basis and that's paid by Surge Financial. We mention an email in paragraph N3.52. I think we need to see the whole thing because there's a bit more of relevance. It's <D7D9-0009104>. My Lord will see, in the middle of the

page, Mr Russell-Murphy, on 12 September 2018, emails Mr Careless, Ms Graham and copies Mr Jones and Jo Baldock with the subject "Notes from meeting with Andy". It is the two topics encompassed by the first paragraph that seem significant. The very fact that they are addressed together in a single paragraph as if they are a single topic or at least linked. He says: "Andy has agreed to continue with the 25 per cent and 22.5 per cent (5-year product) commission until further notice."

So the Surge commissions are not going to be reduced:

"The cost of the LCF internal team will be paid monthly as a deduction against our commission. I will discuss payments to SG and the solution with Paul tomorrow."

So, the suggestion seems to be that if Surge's commissions are going to continue at 25 per cent for everything, save for the five-year product, which will continue at 22.5 per cent, as previously agreed, then the payments to Mr Golding are also going to have to continue and there will need to be a solution that will be discussed between Mr Russell-Murphy and Mr Careless about that.

Then he says:

"The security figure and amount of issued loans will be given to us next week, he indicated the figures to be close to 500M and 400+ loans to 17 companies. "AR status will be discussed with Kobus over the next few days and I am planning to meet Kobus early next week to start our application."

Then he makes some comments about WCF, which I will address my Lord on tomorrow. In the penultimate paragraph, he says:

"GST -- revised accounts are being prepared to show the company active ..."

It had been shown as being dormant on

Companies House, dormant accounts had been filed, which caused an issue:

"... he has also organised James to start on a website for them."

James Thomson is Andrew Thomson's brother and Mr Thomson was getting his brother to set up a website for GST. Very belatedly. This is just a few months before the FCA raid. But the sort of online provenance that Mr Careless had been so keen to set up so that the GST issue would go away. It is finally being addressed. Mr Thomson's brother is going to set up a website for GST. So, as Mr Careless had previously put it: so, when Googled, it provides comfort.

So, we have seen now three separate documents that suggest that the payment of 1 per cent to Mr Golding is the price of maintaining Surge's commissions. There's Kerry's reference to the "Briberies Act", there's Mr Thomson's explanation that an alternative could involve the reduction of the sums paid by LCF to Surge and reduction of the sums paid by Mr Golding to LCF, and there's this email which, in the first paragraph, seems to tie the continuation of Surge's commission at the existing level to the payments to SG.

My Lord will see this is now September. We are very nearly at the end of LCF's existence. If we go back to our written submissions at <A2/1/279>, in N3.53, we explain that things carried on as before. There is a further invoice, on 19 October, for 1 per cent, including VAT, of the new bondholder money for September, and that's paid by Surge. N3.54, there is another invoice from Mr Golding for October. Again, 1 per cent. If we look over the page, my Lord can see that's paid. Then N3.55, 11 December, the day after the FCA's raid on LCF, Mr Golding provides another invoice. This is for November. It is 1

per cent of the new bondholder monies for November on a VAT-inclusive basis. Mr Russell-Murphy sends it to Mr Careless, commenting:

"I think we should hold [off] from paying this for the moment."

Mr Careless replies:

"We have lost 90 per cent of revenues. We should cut our cloth accordingly."

So that final invoice from Mr Golding is not paid." What that means is, for the whole of the rest of the period on which I will be addressing your Lordship tomorrow, Surge is paying 1 per cent of new bondholder monies to Mr Golding. My Lord saw that that starts with the invoice covering the period from the beginning of July 2017, and it continues right up to the end of LCF's existence. So, when we're looking tomorrow at what happens in the later part of 2017 and during 2018, the arrangement for paying half a per cent of new bondholder monies to Mr Thomson has been replaced by an arrangement for payment of 1 per cent on a VAT-inclusive basis to Mr Golding.

Surge wasn't registered for VAT so it couldn't recover the VAT that paid on Mr Golding's invoices. It wasn't submitting VAT returns.

My Lord saw yesterday the desire to ensure that the services were described in the contract in a way that wouldn't attract VAT. What that means is that, of the commission that comes through the door at Surge, 4 per cent of the money that comes in is being paid to Mr Golding. His 1 per cent of new bondholder monies is economically equivalent to 4 per cent of Surge's 25 per cent commission, which is obviously a significant factor.

My Lord, I could continue with a few more documents or I could break there. I'm really in your Lordship's hands.

MR JUSTICE MILES: It sounds as though that is a chapter ending, to some extent.

MR ROBINS: Absolutely.

MR JUSTICE MILES: I think what we will do is rise now.

Housekeeping

MR JUSTICE MILES: Just looking towards next week, the timetable has provision for the defendants' openings. What's the position as regards --

MR ROBINS: May I just mention one point, my Lord?

MR JUSTICE MILES: Yes, go on.

MR ROBINS: Your Lordship had indicated assent to my suggestion that Mr Slade's application shouldn't come out of my time. I've lost a total of 3 hours and 10 minutes so far. I don't think I will need all of that, but I'm aware there are some unanswered queries from your Lordship, which I might need to address your Lordship on, on Monday morning. I don't think it would take more than about an hour in total. But I think that would then be --

MR JUSTICE MILES: All right. Three hours and 10 minutes sounds rather a lot.

MR ROBINS: That's what I have lost. I don't need all of that. I'll need --

MR JUSTICE MILES: When you say you lost that --

MR ROBINS: That's right. On the --

MR JUSTICE MILES: I don't remember it occupying the court for that long.

MR ROBINS: We have got time-stamped transcripts. I'm not being precious about it, but I have been through the exercise of working out how much time I have lost from dealing with various other matters.

MR JUSTICE MILES: Let me just explore this to see where we are.

MR ROBINS: As I said, I don't need all of that time.

MR WARWICK: My Lord, yes. I think the original intention was for the defendants to take their openings in the order in which they appear as defendants. I haven't had an update on the position lately on the first defendant's side. It might be that there is more information now available. I know the solicitor is here.

MS DWARKA: My Lord, as far as I know, we might not be ready for Monday, so the suggestion was for defendant 1 not to go ahead on Monday, for another defendant to go ahead.

MR JUSTICE MILES: Can you perhaps discuss that amongst yourselves and see whether there is a satisfactory way of dealing with it? I don't know whether that causes you any difficulties, Mr Warwick, or --

MR WARWICK: Not especially. Obviously, three weeks of opening generates quite a lot of points to try to address, and, on the constraints of budget and time, we won't be able to address all of them. But it would be, I would imagine, helpful for the court for us to review as many of them as we possibly can, so more time is useful to Mr and Mrs Hume-Kendall.

The other issue that dovetails a little, or may do, is that, as foreshadowed when I interrupted my learned friend briefly on the question of the scope of his case, there will be a point taken about the scope of the claimants' case by reference to a table which is in the course of generation at the moment, and I think, courteously, I ought to provide that in advance. Presently, the neatest way through this may be to ask your Lordship to rule on one or two of the key points which do generate difficulties, including to do with the timetable, where the ambit of the case to expand -- the ruling to be sought would be whether what's been said is within the scope of the pleadings already or whether it is without it, mindful, of course, that there is always material that can be put to witnesses on a question of credit, and so on and so forth, or to contradict something they have said in evidence. But actually expanding formally what's going to be relied on, for example, as a particular set of facts from which claimants will ask your Lordship to draw an inference is quite a different matter. So, it may well be that it is possible, for example, my Lord, to look at that table earlier and then -- I'm anxious to not suggest something which is not neat, insofar as it involves hearing from me and then addressing an issue -- issues that arise out of a table before the whole of the rest of my opening. But I think --

MR JUSTICE MILES: It sounds to me as though it would be helpful if you were able to provide that table to the claimants -- I don't know whether this is realistic -- by close of business tomorrow. I don't know whether that's going to be --

MR WARWICK: I think that is realistic, my Lord.

MR JUSTICE MILES: -- possible, so that they can consider that. I think what we will then do is hear argument on it, as you consider appropriate.

MR WARWICK: I only mention it, my Lord, because, of course, there can be argument downstream from it as well. So it might be that's something that has to be dealt with early on.

MR JUSTICE MILES: Yes, but I assume, if there are going to be points taken on the scope of the pleadings, then there may be sense in resolving those earlier rather than later.

MR WARWICK: Quite. But I have to be clear, my Lord, our position is fairly firmly that the defendants ought to be taken in order, simply because of the way in which the allegations arise and the company ownership position and the flow of borrowing, and so on. But that is --

MR JUSTICE MILES: Do you mean in terms of next week or later on in the trial?

MR WARWICK: In terms of next week, my Lord. But I have your Lordship's guide on that and I will liaise with people on this side to see what we can agree, if possible, and trouble you with as little as possible.

MR JUSTICE MILES: Yes, the -- sorry, I will come back to you.

When you say you may not be ready for Monday, when would you be ready?

MS DWARKA: I don't know yet, but I was told I don't think we will be ready for Monday. But I can find out and then I can liaise with Mr Warwick about it or with any of the other barristers.

MR JUSTICE MILES: As I understand it at the moment, Mr Warwick, your position is that you would rather, if possible, maintain the existing order.

MR WARWICK: Yes, my Lord.

MR JUSTICE MILES: My concern, if the first defendant says he is not ready, is that, if we do that, then time will be wasted. I will need a fairly clear explanation as well as to why the first defendant won't be ready.

MS DWARKA: Yes, my Lord, I will get that.

MR JUSTICE MILES: It won't be good enough just to say, "We would like a bit more time". I will need a proper explanation of that.

But it may be, Mr Warwick, that, with a bit -- I'm not going to push you on this, but, with a bit of reflection, you might think it doesn't matter very much at this stage in the trial. You might think that, as regards the later steps of the trial, including the taking of evidence, then, yes, but you might think that you can make your submissions first and I can then hear from the first defendant. But I will leave that to you to reflect on. Obviously, we want to avoid any slippage in the timetable.

MR WARWICK: Yes, my Lord. Relatedly, I have asked my learned friend, who has very gratefully replied -- I am very grateful for his reply, about the sequence in which the witnesses of fact within the block of time set aside for claimants' witnesses might appear, which, of course, matters to planning because it will come straight on after that.

MR JUSTICE MILES: Yes, of course. Well, I would expect the claimants to let you know the order in which their witnesses are going to be called.

MR WARWICK: I'm grateful.

MR JUSTICE MILES: What do you say about Mr Robins' point that he might need to eat a little bit into Monday?

MR WARWICK: My Lord, there is no difficulty with that.

MR JUSTICE MILES: What do the defendants think, overall, about the time that they will require next week? Because, at the moment, there are four days allocated to all of the defendants for their opening submissions. Perhaps you could just talk to one another, rather than doing this on the hoof, overnight and come back to that tomorrow and let me know where you are on that.

MR WARWICK: Yes, my Lord.

MR JUSTICE MILES: 10.30 am tomorrow.

(4.16 pm)

(The hearing was adjourned to Thursday, 7 March 2024 at 10.30 am)

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