

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 12 - Thursday, 7 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

Housekeeping

MR ROBINS: My Lord, housekeeping first, and there are two points to flag. They both relate, in fairly broad terms, to the topics of quantum and mitigation.

First, my Lord will have seen that we have set out previously the position in respect of the deficiency in LCF's estate, most recently as at mid December last year. That's obviously not relevant to the proprietary claims.

It is, however, relevant to the fraudulent trading claims, which are concerned with the loss to creditors, and it is also relevant to the claims for equitable compensation.

My Lord has made the point previously -- I can't remember at which CMC -- that the deficiency is obviously not static, it is something that varies over time, and that it would be incumbent on the claimants to ensure that the court was provided with the up-to-date position.

It might, of course, be said that the precise amount of the deficiency is academic because, if the claimants were to succeed in respect of that amount, none of the defendants would have sufficient assets to discharge it in full. But I think it is important, as your Lordship has said previously, to ensure that the court has the up-to-date position.

So, we have provided yesterday a witness statement setting out the current position. We thought that it was important to do that now, in advance of the defendants' oral opening submissions and the cross-examination of our witnesses; that the defendants should be able to see the current position now, in case they wish to make any submissions on it or put any questions to our witnesses.

If I could just show my Lordship, it is at <C1/9>, page 1. There is a witness statement of Clare Lloyd. Then the meat of it is <C1/9.1>, page 1, which is a calculation of the deficiency. I think we need to go to the next page [page 2].

Now, this was served on the defendants yesterday. Obviously, I'm not expecting them necessarily to be in a position today to say whether they have any objections, but it would be helpful to know by, say, 4 o'clock tomorrow if they have any objections to this being filed and, if so, on what basis, and then, to the extent necessary, we will be able to address your Lordship on it on Monday.

I should say, we would anticipate that Ms Lloyd will produce a further updated spreadsheet around the time of closing submissions, again, just to ensure that your Lordship has the most up-to-date position. (Pause).

MR JUSTICE MILES: Okay.

MR ROBINS: The second point to flag relates --

MR JUSTICE MILES: I'm not going to say anything at the moment requiring the defendants to set out their position in relation to this by a certain -- well, certainly I don't think I should do that by tomorrow. I think, on the other hand, if they are able to -- I'm not going to put them under a firm deadline, but if they are able to give an indication of their position as soon as possible, that would be helpful.

MR ROBINS: I'm grateful. My Lord, the second point is of a similar character, and I suspect that it will follow the same pattern, and that relates to submissions on mitigation in particular. As my Lord knows, we filed our written opening submissions on 15 December last year, and then, on 10 January,

we received the opening written submissions from the defendants, including Mr and Mrs Hume-Kendall, who, in section K, made a number of points on the issue of mitigation. Now, as my Lord has seen, we say that mitigation, in the strict sense, is irrelevant. It is not relevant to proprietary claims, it is not relevant to claims for breach of fiduciary duty, and so on, it is not relevant to claims for fraudulent trading which look at the loss to creditors, but the written submissions of Mr and Mrs Hume-Kendall do make various serious criticisms of the conduct of the administrators, who are professional people. The administrators would not want those criticisms to go unanswered, even if your Lordship were to hold that they are legally irrelevant. With the best will in the world, even on the basis that I'm going to eat slightly into Monday morning, I'm not going to be able to set out our responses orally, but, at the same time, it wouldn't seem to be particularly satisfactory to keep our powder dry and wait until closing submissions to set out our responses. So, we have produced a responsive note which addresses section K of Mr and Mrs Hume-Kendall's written opening submissions. It is responsive, in the sense that it responds paragraph by paragraph. It is very carefully focused on being purely responsive and not straying outside that remit.

We think the defendants should have the opportunity to see what we are going to say in response to what Mr and Mrs Hume-Kendall have submitted before they address your Lordship next week or cross-examine our witnesses after that.

We have got copies of the responsive note. We have not put it in the trial bundle yet because it is not something we have flagged yet with your Lordship or with the other parties. We thought it would seem premature to put it in the trial bundle, in those circumstances. But I'm going to provide copies to the defendants. Again, it would be very helpful if, at some point, preferably at the end of this week or early next week, but, in any event, as soon as possible, they could tell us whether they have any objections and, if so, what those objections are, and we can then address your Lordship on it to the extent that we need to.

MR WARWICK: My Lord, I can foreshadow this to some extent immediately. As your Lordship may be aware from your Lordship's review of the pleadings, Mr and Mrs Hume-Kendall's case on mitigation is set out in great detail in an addendum to their amended defence, a copy of which is at <B2/3> in the bundle. I wonder if that could be brought up.

As your Lordship will see, on the final page of that, which I believe is page 16, the date of that document was 31 July 2023. On page 5 of that document, your Lordship will see section B of this pleading deals with quantum including mitigation. And over what follows, which is, I believe, all the way through to the end of that pleading, paragraph 49, that's on page 15, is set out in some detail a properly pleaded case on mitigation. In particular, back on page 8, if I may, the most significant item, at paragraph 23, which relates to an offer in respect of LOG's interest in IOG from RockRose -- I won't go into any greater detail because it is not for now, but the idea that this is new, in section K in the written opening submissions for Mr and Mrs Hume-Kendall, is false. It is not new. It has been pleaded since July.

I received no warning of any kind from my learned friend or anyone else that this note would be produced and handed up today, this morning. I may wish to consider this, my Lord, with those instructing me briefly, if I may -- it runs to some 42 pages, which would be 42 pages in excess of the 300-page word limit which your Lordship imposed at the PTR -- and address you further on that, if that is okay, my Lord. But I felt it would be remiss of me not to mention the pleading point immediately, my Lord.

MR JUSTICE MILES: Right. Thank you for that.

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

MR ROBINS: Then, in terms of loose ends, I think there are two that I could usefully deal with this morning. The first relates to your Lordship's company law questions, if I could put it that way. Your Lordship had a question about redeemable preference shares. Essentially, I think, whether the Elysian SPA could have worked even if the preference shares had been issued. We have set out the provisions of company law in a note, which is at <A4/3>, and over on the next page [page 2], we have dealt with the position relating to allotment of shares at a discount, and some of the shares can't be allotted at a discount. New shares have to be paid up to the extent set out. At the bottom, at 4:

"There are restrictions on the allotment of shares by public companies as fully or partly paid up for non-cash consideration."

Then, over the page [page 3], we deal with restrictions on the issue of redeemable shares. Over on the page after that [page 4], "Redemption of redeemable shares".

MR JUSTICE MILES: Sorry, can I just look at that, going back.

MR ROBINS: Go back, sure.

MR JUSTICE MILES: Right.

MR ROBINS: GRP was a Plc, so I think the key points are, it couldn't have redeemed the preference shares unless they'd been fully paid up, and it could have done so only to the extent that it had distributable profits. Mr Judd is reminding me that they couldn't be issued at a discount, but I think that's implicit in my first point.

So, I know your Lordship had that question. It is obviously not the facts of this case because the preference shares weren't issued, but I hope that's sufficient to answer your Lordship's query. (Pause).

MR JUSTICE MILES: Right.

MR ROBINS: The second loose end relates to the origin of the involvement of GCEN and GST in LCF's business. I mentioned before that it came out of difficulties encountered running the business through Buss Murton's client account, and I told your Lordship that I'd come back to it.

As my Lord has seen, when SAFE started issuing loan notes in September 2013, the monies from investors were collected by Buss Murton, who also discharged SAFE's liabilities, such as the liability to pay commission. That continued to be the case throughout 2014 and the first half of 2015, including after the rebranding of SAFE as LCF. But Mr Sedgwick's colleagues found out about it and were not particularly happy. We can see some of that at <MDR00016562>. This is not in relation to SAFE, it is in relation to Lakeview. It is a Liberty invoice, but it is related because it is a concern about Buss Murton's client account being used inappropriately. At the bottom of the page, Alex Smith of Buss Murton emails Mr Sedgwick with the subject "Liberty Invoice -- Lakeview" and says: "Corinne has passed me the attached invoice to be paid to Liberty on behalf of Lakeview. As we have explained before, we cannot be receiving, holding or sending any monies that are not related to an underlying legal transaction, and I do not see why this payment should be made out of our client account. The invoice was sent directly to Andy (the client) for payment, who has then simply forwarded on the email to us for payment. The invoice was not sent to Buss Murton, and therefore should not be paid

by monies in the Buss Murton client account or treated as any sort of disbursement. Therefore this invoice needs to be paid by the client."

Mr Sedgwick forwards that to Mr Thomson at the top of the page saying:

"Accounts are being a pain over this."

A few days later, at <MDR00016639>, we see, at the bottom of the page, Alex Smith of Buss Murton is emailing Mr Sedgwick again. He says:

"Bearing in mind what has come to light recently, I have asked the accounts department not to process any monies in or out, and to pass to me.

"We will not be transferring any funds between any of these clients on our system, or making any payments out (other than to the original payee or if there is a clear legal transaction, which we need to see for each payment).

"If you believe that a transfer or payment is clearly related to a legal transaction, please provide the supporting documentation ..."

Mr Sedgwick forwards that to Mr Thomson to say: "As you can see, I am in some difficulty." Then about a week later, at <MDR00016721>, in the middle of the page, Mr Sedgwick says to Mr Thomson, in the second paragraph, that he has been speaking to Alex and Alex -- that's Alex Smith and Alex Lee -- about compliance, and he says:

"... I need to show to them copies of the documents for the various trades that have gone through our client account. I think that they will want the same for the SAFE and London Capital & Finance transactions. It would be really helpful if the money did not have to involve Buss Murton as it will be quite a bureaucratic process."

Mr Thomson asks to discuss.

Then at <MDR00016734>, at the bottom of page 1, there is an email from Mr Sedgwick. We see it if we turn over to the next page. He explains to Alex Lee that:

"Andy is in the process of opening an account with Lloyds for this company ..."

That's the company in the email subject field, London Capital & Finance Limited:

"... and I believe it may well be open now. As discussed yesterday, he would like also to open what he calls an LCF 'client account' which he wants to be operated by trustees, including Buss Murton as trustee. There would be a detailed agreement setting out the role of the trustee which is to hold money until LCF can certify that it has adequate security over the assets of the companies to whom it is lending the money to give 150 per cent security for the funds being released." On the left-hand side, Mr Lee replies to say: "Robert.

"I have just spoken to Andy about this, and will discuss internally.

"As I mentioned yesterday I was okay with you being on the mandate, but what Andy is asking now is a different thing."

But Mr Thomson seems to think it is going ahead. At <MDR00016736>, he explains to Mr Russell-Murphy, Mr Careless and Ms Graham:

"Just to update you re some changes that are occurring to our client account with Buss Murton. "Buss Murton are putting in place a specific client account/process for us, this will speed up the receipt of funds and ultimately the speed in payment of fees and commissions. Hopefully I should have the specifics later today and will advise as soon as I have them." But that optimism proves to be misplaced. At <MDR00016747>, we can see that Alex -- I don't know whether it would be Smith or Lee -- is unhappy with the situation because he's either going to transfer the funds to LCF's bank account or return them to sender, and Mr Sedgwick thinks he's more likely to do the former.

Then <MDR00016739>. We see the formal position. Mr Lee emails Mr Thomson to say:

"I refer to our conversation this morning regarding your proposed idea of Buss Murton acting as a kind of trustee [in] relation to an account opened by London Capital & Finance in relation to inward investment funds from third party investors. We have discussed the issue here among the partners and taken advice from the regulator regarding the proposed operation of the account.

"First of all it is clear that the issue of use of our client account in such context does not arise, and the matters we discussed yesterday are not applicable. However, having considered the matter carefully, and the advice that we have received, the members feel that we are therefore unable to help you in this instance. "We have no objection to Robert appearing on the mandate."

This is, of course, a bit of a problem because it means that LCF is no longer able to accept new bondholder money. It was being collected by Buss Murton, but that service is no longer available. So, Mr Thomson considers the alternatives. My Lord will recall Mr Thomson's involvement in the LUKI bond. Global Currency Exchange Network, or GCEN, handled investors' money in relation to the LUKI bond, and the related company, GCS, was the security trustee in relation to the LUKI bond. We can see that at <MDR00013601>. This is the LUKI memorandum, which my Lord has seen before. On page 5, my Lord can see, at the bottom, on the left, "Bankers to the company", GCEN, and on the right, "Security trustee", GCS. Mr Thomson explained in his evidence that the LUKI bond was where he learnt about bond issues and so, in circumstances where Buss Murton are no longer prepared to collect bondholder monies, Mr Thomson gets in touch with GCEN, and we see that at <MDR00018946>. At the bottom of page 2 -- we just see 14 October. If we go over to page 3, the email from Mr Thomson to Luke. In the third paragraph, he says:

"In a nutshell, we would be interested in GCEN administering all the collections, both online [and] via a card payment ... and via bank transfer for all our bonds. Additionally, we would also like GCEN to be the security trustee for all bonds. I have attached the deed of charge for your information."

He explains:

"The security we are offering is a charge over the loan book and all associated security that accompanies a loan, the trustees only responsibility would be to represent the interests on bondholders if the company fails and ensure via a liquidator that the security is enforced for the benefit of the bondholders." On the previous page, we can see that Luke replies to say he is going on holiday, but will forward the email to the head of compliance. Above that, Mr Thomson says that it's urgent.

The point he mentions is that, simultaneously with all this, the new offering memoranda being prepared, as he says, "The bond cannot be signed off until a trustee/collections solution is in place". There is then some further delay, if we go back to page 1, because Catherine at GCEN is asking questions. She's the compliance officer. At <MDR00019366>, my Lord will see Ian McDonald of Lewis

Silkin provides Mr Thomson with a draft security trust deed and asks if he could confirm if GCS will be acting as the security trustee.

At <MDR00019612> -- this is just a few days later -- Mr Sedgwick emails Mr Thomson to say:

"I have applied to form Global Business Security Limited. Unfortunately 'trustee' is a sensitive word but I think that the Global Business Security works well enough. We can always change the name at a later date but would need to establish that the company is only going to operate as a trustee. I will let you know when the company is formed and let you have the company details."

Then <MDR00019748>. Three days later, there is an internal Lewis Silkin email, Ian McDonald to Graham Reid:

"I have just spoken to Andy.

"GCEN will just be doing payment collection and won't be security trustee. The IM does not refer to GCEN or GCS at the moment.

"Andy is going to send over the details of the security trustee later."

There is a further email on the topic,

<MDR00019751>. Mr McDonald says:

"Dear Andy.

"Further to our call and Graham's email below, if GCEN are not going to be the security trustee and will only be providing payment services, you should let GCEN know as this will prevent delays caused by GCEN's lawyers reviewing the IM and raising questions on the documents."

So, that is how GST, although it is known initially as GBS, becomes involved as the security trustee. It subsequently changes its name to GST. That's at <MDR00020398>. At the bottom of the page, my Lord can see the name has been changed and, at the top of the page, Mr Sedgwick forwards that to Mr Thomson, among others.

So now, my Lord, I can pick up with where we left off yesterday. My Lord has seen the consistent theme of Mr Thomson refusing to provide any information to Surge relating to LCF's borrowers. We see that again at <SUR00085053-0001> where, in the middle of the page, Ryan Holdaway is saying:

"I think a blog would work a lot better for Blackmore ...

"Unless you can think of a way to incorporate a blog into LCF?"

At the top of the page, Neil Marklew of Surge says: "We've been asking LCF for some of their success stories for a while now, for some reason they're loath to give any details."

So it remains the case that Mr Thomson is unwilling to provide information. We see that again at <MDR00110217> where Jo Baldock emails Kobus Huisamen and Mr Thomson, copying Mr Careless. She says: "Hi.

"We are looking to send out an email and update the website in the next week now we have reached the £100m milestone, as part of this we would like to make a big statement claiming that we are the UK's biggest minibond."

Then she says:

"Also as part of the email we want to show how the investment funds have assisted UK businesses, nothing client specific but a simple strapline/case study. "For example, Blackmore Bond are contacting clients with updates on their developments, et cetera, and it's working really well increasing volumes as clients love to see what their funds are doing.

"If you can get back to me at your earliest convenience please then we can put some templates together for your approval. We would like to make the changes as soon as we can to maximise the opportunity for increased volumes."

But, again, no information from Mr Thomson is forthcoming.

At around the same time as this, this is 8 November, we go back now to 30 October, LCF's accounts are delayed again. We see that at <SUR00142491-0001>, where Mr Partridge explains to Mr Careless and Mr Jones, subject "LCF":

"Accounts were due for filing tomorrow. But on 16 October they changed their accounting reference date by 1 day to 29 April. The change gives them an extra 3 months grace. New filing date 16 January 2018. "This is a smoke and mirrors change -- they are still allowed to make their accounts up to 30 April as the rules say that you can still make accounts up to a date 7 days either side of your actual accounting reference date."

The other big development around this time is the launch of the LCF ISA bond, which I have mentioned before. It is what resulted in bond sales increasing very significantly at the end of 2017/beginning of 2018. We see the beginning of that part of the story at <SUR00086370-0001>. At the middle of the page, Mr Russell-Murphy says:

"I have spoken with Andy this afternoon regarding the ISA situation for LCF and he has confirmed the following.

"The HMRC have approved them as an ISA manager and he expects to receive the written confirmation in the next few days.

"Lewis Silkin have finalised the paperwork and EY are doing a final check on the taxation section. Once this is complete the ISA can go live, he expects this to be done in the next 2-3 days."

And Mr Careless says, "That is good news". At <SUR00086380-0001>, Kerry says just below the burgundy box:

"I'm impressed. Blackmore's lawyers told us that it was necessary to have a retail prospectus but Andy has obviously found another route. Great news!" And then <SUR00142769-0001>, Mr Thomson says, in the second email on the page:

"See below from HMRC, another chapter in LCF fundraising is beginning."

Mr Careless says:

"Brilliant news -- well done!"

We can see how the ISA marketing materials look at <SUR00087339-0001>. At the bottom of page 1 is the start of the email that's to be sent out. It says: "Get an 8 per cent fixed rate return - tax free. "London Capital & Finance's new ISA is now available.

"With fixed interest rates of:

"6.5 per cent over 2 years.

"8 per cent over 3 years.

"Capital at risk."

On the next page [page 3]:

"Find out more >

"We're happy to announce that our new bond ISA is now accepting applications.

"Please be aware that this initial offer is limited to £50 million total investment and we're expecting a high demand."

Then, if we go back to page 1, my Lord can see Mr Russell-Murphy's comment on that on the top left is: "Isn't the limit 5m not 50 on this one?." At <MDR00115381>, at page 2, we see the beginning of the draft email. This is another draft: "Get an 8 per cent fixed-rate return - tax free". Over on the next page [page 3], it says: "There's less than 24 hours until London Capital & Finance's new ISA launches."

And there is going to be a countdown:

"From 9 am tomorrow, you'll be able to apply for a tax-free, 8 per cent fixed-rate return with our new bond ISA*."

Then, over on the next page [page 4], it says again: "Please be aware that this initial offer is limited to £50 million total investment ..."

Back on page 1, Mr Russell-Murphy again takes issue with the 50 million figure. He says in the bottom left: "Again, 5m raise."

Above that, Jo Baldock replies to him:

"All been checked out with Kobus and questioned by Kerry and apparently this is correct. Just as well as the phones have been ringing off the hook since 10 am!" Mr Russell-Murphy says in response:

"They have got it wrong, you have to issue a full prospectus to do 50 million. What does the IM say?" In terms of the questioning by Kerry to which Jo Baldock has referred, we see that at <MDR00115449>, on page 3. We see Kerry's email to Kobus. She says: "When you mentioned that the bonds are not transferable and this is how you have been able to offer £50m and not just up to the S.21 exemption of EUR 5m; I just looked back at my notes to double-check and I found that our solicitor had given us contradictory advice:

"ISA regulations 8A(4a) state that bonds must be transferable to be offered as an IFISA. The only exception being to issue under the EUR 5m exception. "I have just got off the phone to Roger Blears who has been advising Blackmore on their retail prospectus to double-check my understanding and he was adamant that this is the case. I thought I should let you know what we have been told, hopefully you have found a useful and clever exemption but I thought you should know about the advice we received just on the off-chance that something has been missed so that we all have the correct information before Mondays go live."

Above that, my Lord can see that Kobus replies to say:

"According to the guidance notes for ISA managers, this relates to crowd funding, ISA debentures." And he sets out a provision.

On the previous page, we see that Kerry emails Jo Baldock and Mr Russell-Murphy and Mr Careless to say: "Kobus is really sticking to this (strangely citing a different rule than the one I shared with him). I could quote the legislation back at him explaining why (as 3 separate solicitors explained to me) he isn't exempt from the EUR 5m limit. However, it's not appropriate for me to push it and ultimately we did our job by double-checking.

"So as directed by Kobus and Andy we do have a £50m limit which is really fantastic news."

Then, over on the next page, she says:

"Is there a risk this could cause a big issue down the line having to repay bondholders over the EUR 5m and possibly having to write to all to explain? Possibly but I suspect this risk is low because he is nearly ready with his retail prospectus and once he submits that in two months he could have a new ISA offering anyway."

Mr Careless responds on the left to say: "It's great news!"

Kerry Graham replies:

"Yes in a strange way this is fantastic news!" And we can see that, above that, Jo Baldock has forwarded the chain to someone. That's apparent on page 1, where Mr Russell-Murphy replies: "Thanks Jo, it's their problem."

He's the person to whom Jo Baldock has forwarded the chain. He says:

"Thanks Jo, it's their problem."

She replies:

"Exactly, we have evidenced that we have challenged it that's all we can do."

Then <MDR00115498>. At the bottom, Kerry Graham has emailed Mr Thomson to say:

"For the avoidance of doubt, it is correct that the IFISA Limit is £50m and not EUR5m?"

Mr Thomson replies:

"Not sure where you are getting the EUR5m from?" At the top left, Kerry responds to him copying Kobus Huisamen and John Russell-Murphy. She says: "Not to worry Andy, if you have to ask the question, clearly this hasn't been an issue and that's good news, we are pleased it isn't capped at a lower level because the demand today has been phenomenal.

"Just to answer your question, however, EUR 5m is an exemption amount that a non-transferable S.21 bond can be sold as an IFISA. It is an annual limit of EUR 5m. "We will proceed as we have started with a £50m promotion.

"Have a lovely weekend."

So that's 1 December. Then, on 10 December, <SUR00143410-0001>, and we need to start on page 10, someone called -- at the bottom, Kerry Graham sends an email to someone called Mark Holleran at Lithium Capital, and Pat McCreesh, with the subject "IM for LCF £50 million ISA". She says:

"Please find attached the IM as discussed. We were actually sent 2, the first includes the ISA wording. "Please let me know if on reading this you find whatever loophole they have used?"

Then, on page 9, we see that, at the bottom, Mark Holleran forwards that to a group of people, including Roger Blears, and on the previous page we see Roger's response. Right at the bottom, he says, "Mark", and then over to the next page:

"There are two offers: (1) non-transferable securities -- series 1 ISA, 3-year 8 per cent bonds; and (2) non-transferable securities -- series 2 ISA, 2-year 6.5 per cent bonds.

"Both IMs have been approved as financial promotions pursuant to section 21 FSMA. The target raise is £50 million in each case. They are not prospectuses. There is no need that they should be because the bonds being issued are not transferable and the prospectus rules only apply to transferable securities. "On page 7 of each IM there is a statement that investors are able to hold the bonds in a LC&F innovative finance ISA. However, the ISA regulations provide that debentures (ie bonds) may only be held in an innovative ISA account if the conditions in regulation 8A(4) are met and the first condition is that the debenture is a transferable security. See page 54 on the attached document which is a consolidated version of the ISA regs which I printed off in April when we were first instructed.

"Jake is the ISA expert and so in case there has been a recent amendment to the ISA regs which enables bonds to be held in an IFISA account even where they are not transferable I am copying Jake into this email with the request that he confirms whether or not he knows of any rule change which dispenses with the need for IFISA bonds to be transferable.

"This tax point aside, if IFISA bonds are transferable then a company can issue up to EUR 5 million in any rolling period of 12 months without the need to publish a prospectus.

"I have confirmed this advice to Kerry on several occasions in the last few weeks. If LC&F are doing something clever which we have missed then we should learn what it is and copy them. I have not as yet read the IMs from cover to cover. If you would like me to do so I gladly will but I think this preliminary point needs to be addressed first.

"Jake, please can you opine on the ISA regs." Mark, on the left, says:

"I was concerned about the transferability point but would welcome Jake's views as soon as possible ..." We see Jake's email, I think it is going to be page 6 or 7, it is on the left. He says [page 7]: "Good morning all.

"Mark -- in the ISA guidance notes, paragraph 9A.9a states the following criteria for crowd funding debentures ..."

The first which he has put in bold and underlined is "be transferable". And then he says:

"I would urge you to consider and resolve this issue carefully and promptly. Ineligible securities being held within an ISA can result in the ISA manager receiving penalties and the tax saved being charged to the ISA manager; the aggregate of these can create a large potential liability for the ISA manager. I am not the expert on the legals but we can approach our lawyer who Roger has dealt with previously to provide further clarity if you would value that." Then, above that, Roger says:

"I think the next step is to ask Kerry to ask her lawyers/tax advisors how they square offering IFISA status for non-transferable bonds and to let us know what their answer is."

Then, on the previous page [page 6], we can see that Mark forwards the chain to Kerry, copying Pat McCreesh, to say:

"One for your legal guys I think below here as the bonds are clearly stated in the IM on page 2 to be non-transferable which both Jake and Roger are telling us is not allowed for ISAs, my original point along with FCA authorisation.

"Clearly ours are transferable in both the base prospectus and will be for the 5m euro raise. "Could you double-check as this could have implications on your side too.

"I had thought I'd copied you in on both email chains but obviously decided not to send you back the IMs you sent us ..."

Then the previous page [page 5], Kerry clarifies to say:

"It's not my lawyers that have created this, it is LCF's (Lewis Silkin) and they won't let me into the secret because they know I will immediately exploit it for Blackmore.

"I have read through the email trail and it is very interesting that everyone is in agreement that this cannot be done. Perhaps LCF have got this wrong but this surprises me because Lewis Silkin are a great firm. "Andy (CEO of LCF) basically told me I didn't know what I was doing when I quizzed him on how he achieved this with a non-transferable bond. By email he cited this ..."

And she quotes:

"Hi both.

"Just to clarify the IFISA has certain rules around transferability amongst other things however also included in the terms and conditions/guidance from HMRC there are allowances for the underlying product and the HMRC rules confirm that the terms and conditions of the underlying product can effectively overrule the ISA terms in certain circumstances."

On the previous page, we see that Mark forwards Kerry's email to Roger Blears and others, and he says: "Please see Kerry's response below on this which is the only information that we can get from LCF. "I have to say I cannot comprehend how HMRC 'rules' could override the legislative framework introduced by the prospectus directive, but I would very much welcome your comments again so that we can put this issue to bed once and for all.

"If we can have a definitive view they are wrong, it will help internally hugely. The only credence I give this at all is that Lewis Silkin have advised and although not specialists in this area as Roger and his team are have advised."

On the previous page -- I think we need to go back one page further. We have got Roger Blears' long email. He says [page 2]:

"It is a very curious. There is a danger in trying to second-guess what they are doing when the reality is that LC&F may simply have missed the point about transferability under the IFISA regs."

On the next page [page 3], in the second paragraph, he says:

"The LC&F application form is an application to open an LC&F IFISA account coupled with a 'wish' to invest in the bonds. The 'wish' aspect of the application form might indicate that this state of affairs is what they are trying to achieve but it doesn't go very far and so, on balance, I am inclined to think LC&F have simply missed the point on transferability and/or that their offer documents are a sham attempt to sidestep the prospectus directive."

If we go right back to the first page, we can see that Mark responds to say:

"I really do think they have missed the point here. I am amazed but cannot see how an arrangement like this could possibly work for us. The last thing we want to end up with is a regulated UCIS product which could cause us no end of problems."

Mark Holleran, at the top, says:

"It is baffling it really is.

"I can't see that they could do this having just checked their permissions."

Then at <SUR00093452-0001>, this is on the same subject, but a couple of months later than the emails we were just looking at. Kerry is emailing John Russell-Murphy and Paul Careless with the subject "Need to discuss this with you". She says: "Are you busy now? Want to discuss this with you briefly ..."

And she sets out the text of an email she has received from Roger Blears. The email from Roger says: "Hi Kerry.

"LCF seem to be selling non-transferable bonds in order to avoid the prospectus directive and yet claiming they qualify for holding in an IFISA notwithstanding that IFISA eligibility requires bonds to be transferable!!

"Why don't you reply to Kobus and say:

""dear Kobus.

""LCF seem to be selling non-transferable bonds in order to avoid the prospectus directive and yet claiming they qualify for holding in an IFISA notwithstanding that IFISA eligibility requires bonds to be transferable. There appears to be a serious problem here. Please can you ask your lawyers to write to us providing clear advice'."

So, that covers the period around the launch of the LCF ISA bond. We are also going to look now at a different topic, relating to LUKI. We are back at 7 December 2017, <D7D9-0010491>. Kerry sends a WhatsApp to John Russell-Murphy. It is a link to an article on the Citywire website.

Then at <D7D9-0010495>, Kerry sends a further message, explaining:

"One of the failed investments in this payout was Lakeview UK Investments. That's Spencer's firm. I checked at Companies House and Roger (Spencer's in-house, drunk, solicitor) is the director." The article to which she's referred is at <MDR00226934>. My Lord will see it is headed "Questions for FCA as FSCS pays out £7m over one small advice firm". It says:

"As advice firm Cherish Wealth Management lands the FSCS with a bill of £7m and rising, Jack Gilbert asks if this was a compensation problem the FCA could have nipped in the bud."

Over on the next page, there's a diagram. Right at the bottom, one of the circles says "Lakeview Country Club UK investments":

"Country club investment promising bondholders possible 12 per cent interest per year." Ms Graham also sends this to Mr Careless, <SUR00088188-0001>. Right at the top of the page, she says:

"One of the failed investments in this payout was Lakeview UK Investments. That's Spencer's firm. I checked at Companies House and Roger (Spencer's in-house, drunk, solicitor) is the director." Mr Careless replies, "Hmmm". But nobody seems to have asked any questions about that, and my Lord

knows, about this time, Surge is paying 1 per cent of new bondholder monies to Spencer Golding. Mr Careless and Ms Graham are both aware of that.

The next topic to mention briefly is one that we see cropping up first towards the end of November or middle of December 2017. We see it first at

<SUR00086628-0001>. It is a concept that goes through a number of name changes. Initially, people talk about CCF, Countrywide Corporate Finance, and that's the name we see here. Mr Russell-Murphy, on 24 November 2017, emails Mr Careless to say:

"Hi Paul.

"I have attached my basic notes following our meeting with Simon and Spencer the other day. "Our focus should be on the shortcomings of LCF, and ensure CCF don't have the same issues ie lending policy, board of directors, et cetera.

"I will be speaking to Simon today to discuss the FCA application and will update you afterwards. "Enjoy the Cotswolds.

"PS, I'm not convinced on the name -- 'Countrywide' I think we can do better."

The notes that he has attached are at

<SUR00086629-0001>. We can see what is being planned. It says at the top:

"Countrywide Corporate Finance Plc. Founded in 1947, incorporated in 2008 and upgraded to a Plc in 2017.

"Main features.

"National corporate lender.

"FCA regulated for lending purposes ... "Shareholder capital/starting balance -- 1m of gold. "Asset protected.

"Capital guarantee scheme ...

"Experienced board.

"Strong trading history.

"Market leading rates.

"CCF will be a back-up in the event of LCF having any issues in the future, it will need to be better in every way, especially as we build its profile over the next 12 months.

"Main differences compared to LCF --

"The main website should lead to a corporate lending site, which explains who the company lend to, the sectors they focus on, case studies of completed deals and a click-through section for the investment bond", et cetera.

So CCF, as it is known at this point, is going to be a back-up in the event of LCF having any issues in the future. It is essentially an exercise in contingency planning.

There seems to be some concern that Mr Thomson will not react well to the news of this back-up bond being discussed. We see that at <SUR00088439-0001>. This is 12 December. Mr Russell-Murphy emails Mr Careless to say:

"I hope you are feeling better today ... "Quick update on a few bits, firstly I spoke to Damian over the weekend and he is very interested in taking a key role in the Countrywide Corporate finance bond."

Then in the fourth paragraph:

"Simon and I spoke several times yesterday about the Oil Bond and LCF 2."

That's one of the names that's used to describe the CCF idea:

"He has given me the green light and said start building the bond. I am working on their membership to the various bodies I have suggested. I am also researching various corporate lenders online to get a feel of the content and look of what other companies are doing. Kerry wants to help with an overall plan and with the IM/brochure ...

"Spencer is seeing Andy this afternoon and will be in touch afterwards to let us know how Andy responded to the new company being set up."

My Lord can see why there may be some concern about how he would respond. They are getting up LCF 2 and it doesn't involved him.

There is continued work on this into the early part of the next year. At <SUR00089456-0001>, Mr Careless's assistant, Vicky Bennett, sends him some meeting minutes. These include, right at the bottom of the page, the heading "LCF", that says: "Anticipate equity play to be enforced this year. "LCF 2 (currently Countrywide Corporate Finance) in development with Mike proposed to head up. "New name required to replace Countrywide." We see the reference to the new name again at <SUR00090042-0001>. Mr Russell-Murphy emails Mr Holdaway. He copies a group of people, including Mike Tovell, Paul Careless, Kerry Graham and Ashleigh Newman-Jones. He says:

"I met Spencer earlier but unfortunately Simon HK wasn't available.

"Spencer said he was not bothered about the name 'Countrywide' and said we can rebrand the company any way we like.

"He also said it makes sense to have a clear divide between the Newco and LCF, with this in mind we will not be using Andy to approve the marketing material. Kerry, you are free to speak with Alexander David now about them completing the section 21 sign-off. "He was not aware of a business plan for the new company and suggested I call Simon in the morning which I will do. I suspect there is no plan in place and we will need to build this from scratch.

"I will send another email once I have spoken with Simon."

Then we see at <SUR00091516-0001>, on page 2, at the bottom, John Russell-Murphy says:

"Simon HK has just phoned to say they have a replacement for Neil Harris."

Then over on the next page:

"The new chap is John Lutterloch, who has fantastic credentials and will certainly bring a lot to the company. I met John several years ago at Daniel Stewart stockbrokers. They are suggesting a meeting on Monday next week to make the introduction, Simon will let me know the time later.

"...

"I also mentioned to him the potential name change to Westminster Corporate Finance, he is happy to leave that decision to us. He confirmed they can still purchase AMG Property Investment if required or another company we recommend. We could use City One Securities to appointment WCF as an AR."

I think he means "to appoint":

"Assuming we are all in agreement with the new company name and we can get the URL, shall we buy this immediately?"

Originally, it was going to be called Countrywide Corporate Finance. I think there's been a suggestion it should be called AMG. I think Portland was another name mentioned, Portland Corporate Finance, but now they seem to have settled on Westminster Corporate Finance. There is a suggestion that someone called John Lutterloch should head it up.

At the bottom left, Mr Careless says:

"That sounds like a good plan.

"I love the new name, let's buy everything we need and get going.

"I can't do Monday."

Above that, Mr Russell-Murphy says:

"I will ask if they can change the meeting to Tuesday ...

"Mike, can you look into buying the various web addresses for WCF, thanks."

And he replies to say that that is already being done.

Then, if we go back to the previous page [page 1], we can see right at bottom that Kerry says: "I have someone in mind to run LCF 2 as an alternative to John Lutterloch. His name is Dave Woodcock. He was an Eastern European government debt bond trader for 34 years. He knows his stuff and I think he would be the right fit. I believe he has the balls for the risks involved and he is very hungry for a new opportunity. He is a real man of action, he gets things done. It would also mean we have someone on the inside. I have not discussed this with him but I think we should discuss this possibility together tomorrow." And Mr Russell-Murphy responds to that, on the bottom left, to say:

"Thanks Kerry but they won't agree.

"They want their own man, so funds get utilised their way."

Kerry replies above that to say:

"Dave can utilise funds their way.

"I'm suggesting someone who I believe would go into this understanding the expectations and risks.

"Unless you don't think they would take a recommendation from us through concerns that we get too much intel on them?"

Mr Russell-Murphy replies:

"They won't agree, will explain why face to face." So he's not prepared to explain in writing what he means, "They want their own man so funds get utilised their own way". It is something that he is only prepared to explain face to face. Mr Careless shares the same view because he says:

"Can we stop the emailing and discuss in the morning please."

He doesn't want anything further to be said in writing on this topic.

The work to set up Westminster continues, <SUR00092350-0001>. Mr Careless, on 8 February 2018, sends an email to his colleagues, and there's a heading at the bottom of the page, "Westminster". He says: "This [needs] setting up quickly and holding in reserve a back-up to LCF."

So, again, we see the idea that it is a back-up bond that will be launched in the event of LCF having any difficulties in the future.

While this is all going on, LCF's accounts are delayed again. At <SUR00090663-0001>, at the bottom of the page:

"Hi guys.

"Any news on the accounts from Andy?"

Jo says she's chased. Then, at the top of the page, Mr Russell-Murphy says:

"I don't think we will get the accounts any time soon, Andy has altered his filing date by 3 months." So there are still no accounts.

In the meantime, the issues regarding posts on the MSE forum erupt again. We see that at <MDR00129284>. At the bottom of page 1:

"Hi Andy.

"Here's a link to the latest thread talking about LCF and Surge on Money Saving Experts' forum." There is a link to it:

"In it, they set out the business relationship between the two companies, and its two directors, Kerry and Paul.

"They then go on to mention minibond failures Secured Energy Bond and Providence Financial and discuss the absence of info on LCF's lending unit. "Eloise and I are going to chat this afternoon about the upcoming blogs we discussed to set out LCF's expertise in the lending area, as well as other issues brought up online in a similar way."

We can see that Mr Thomson forwards that to Mr Russell-Murphy. Mr Russell-Murphy then forwards it to Mr Careless and Ms Graham, and Mr Careless says: "Can I have some views on it please, I can't get the link to open ..."

Mr Russell-Murphy says:

"It does link LCF to Surge, but that's not a problem, we don't hide the fact that we deal with their account management.

"It mentions that there is very little evidence that LCF lends to SMEs as there is no lending site. Not sure if this is an issue or not.

"I think it doesn't justify a response." My Lord, I see the time. I wonder if that would be a convenient moment for the shorthand writer's break?

MR JUSTICE MILES: Five minutes.

(11.43 am)

(A short break)

(11.49 am)

MR ROBINS: My Lord, we were looking at <MDR00129284>. We saw that Mr Russell-Murphy had said it mentions that there is very little evidence that LCF lends to SMEs as there is no lending site.

Then, at <MDR00129307>, Ms Graham emails Mr Careless and Mr Russell-Murphy to say:

"We are not referenced in a bad way. Some of what is said about Surge is very fair and some was even complimentary about us doing a good job. "One negative criticism was that Surge could be turning a blind eye to get fees for marketing a bad asset. The criticism is all about speculation that LCF could be a sham, mostly based on the fact that there is no evidence of who LCF lend to which the writers consider to be strange. They don't like the fact that account managers will not answer even the most basic questions about [how] many companies have been lent to. "I thought the article was strange in the way it was written and the references to us. Made me wonder about the motives of the author and whether it was written by an independent observer."

Then at <MDR00129319>, on page 2, at the bottom of the page, Mr Russell-Murphy says:

"I've let Andy know. No further action required now.

"It does bring up a good point about the lending side, this is why I have been pushing for WCF [Westminster Corporate Finance] to have a strong lending element to their website."

Then Mr Careless comments to Mr Russell-Murphy and Ms Graham and Ms Baldock:

"How long have I been saying that LCF needed a client site for lending????"

And Jo Baldock replies:

"I know! FOREVER!!."

Then, at the top of the page, Ashleigh Newman-Jones says:

"About this one ..."

And he includes a link to a website that seems to be lcfinance.wpengine.com/borrowers.

At the top of the page, we can see someone has said, "What is it?" At the bottom of the previous page, we see that is part of an email from Mr Careless, he says: "Again I can't open that link. What is it?" Ashleigh replies on the left:

"It's a lending site that Andy half set up but never completed. You can get to it from www.lcaf.co.uk which is the domain which all AM emails come from, so some dedicated people will find it."

Kerry replies above that, in an email to Ashleigh Newman-Jones and Paul Careless, but copying Jo Baldock and John Russell-Murphy:

"I know we don't want call to actions that take investors away from the bond website but possibly we need a link to this corporate website in some place? For example, such as the FAQs under a new question: 'I am a company wanting to apply for a loan with LCF, how do I apply?'

"Would this tick a box?

"More importantly, we must have a case study, surely we can press to get just one case study, JRM?"
And Mr Russell-Murphy replies to say:

"Yes I'm sure we can get a case study, I will ask Andy.

"The LCAF site is very poor, its promoting the bonds, borrowing and becoming an advisor. "A lending site should have one clear message -- LCF wants to lend money to businesses, [that's] it." We haven't seen the post yet on the MSE forum. We see at least part of that at <MDR00129338> where Kerry Graham emails Mr Russell-Murphy and Mr Careless with the subject "MSE forum -- mentions of LCF/Surge Financial". She says:

"As you can't open links, here is a cut and paste of the part that goes in to most detail about Surge and references our names."

The article heading is "Surge Financial Limited, LC&F and proof of lending". The post says: "I mentioned Surge Financial Limited in an earlier London Capital & Finance post above. This company is responsible for the marketing and administration of the LC&F minibond investment. It mans the LC&F 0800 number. According to Companies House annual return, Surge has two officers, Paul Careless and Kerry Jane Graham. The company has on average 10-15 employees according to LinkedIn although more than this number is said to be involved with LC&F. Surge, based in Brighton, has been in existence for three years and according to Companies House annual accounts has made in the last financial year most of the £1.5 million income since formation. Perhaps that has mostly come from its employer, LC&F. Credit where due, good performance for a start-up company by the officers and staff.

"We have all heard of the adage: don't bite the hand that feeds you. However, you would think the officers and staff of Surge would want to know something about how LC&F, a commercial lender, a very small start up with debts and no previous track record of SME lending is making the money to pay Surge, company expenses and profits, and the investor interest, especially as that is not clear at all. Yet staff in Surge appear to have no information about the bond related commercial lending business of LC&F, even basics such as how many lending team employees, who they are and where they are based. In fact, there are only two employees in LC&F, both students according to LinkedIn."

I think that must be a reference to the administrative staff:

"I can understand Surge Financial not pursuing it, but it should be careful. If LC&F does fail and any wrongdoing or negligence is shown in the receivership process then for sure the daily newspapers will jump on it, as in the case of recent minibond failures (Secured Energy Bond and Providence International) and Surge could end up being a casualty in the media fallout. "If I was an officer in Surge Financial that would make me a little concerned. Why? For the same reason investors and prospective investors in LC&F should be concerned. Everything depends on the success of this vague commercial lending business: company profits, wages, contractor payments, tax payments, investor periodic interest and repayment of capital. "Yet LC&F have not disclosed evidence of the SME lending business existence. This does not mean it does not exist. Rather very few appear to know that it does exist. Audited account returns are lodged at Companies House. Is it the norm for loan companies

offering investment bonds to not provide such evidence? Data protection is a lame excuse as data protection laws in the UK only apply to live individuals not to companies."

I should just explain, my Lord, that last point. What we see in quite a number of the call transcripts is that, in response to questions from members of the public about LCF's borrowers, Surge's salespeople frequently refer to data protection laws. They say, "We can't give out information about the borrowers, due to data protection laws". But the point that's being made here is that data protection laws in the UK only apply to individuals and not to companies, so, it was an inapt reason to be given for failing to disclose information relating to corporate borrowers.

Then, over on the next page, the post continues: "Many companies like to showcase their trading clients' names on their websites, including the company website of one former director of LC&F. You see many invited investor Feefo reviews on the LC&F website. Do you see any names of the hundreds of companies LC&F is lending investor capital to on the LC&F bond website? No, only numbers, how many and how much and not a single loan failure, even though the LC&F loan interest rate as high as 12 to 20 per cent, well above average, would indicate a greater lending risk.

"It is true that employees and directors are bound re disclosure by their employment contracts, but we are here talking about disclosure of the basic fundamentals of the very existence of a business which is supposedly the only source of LC&F income and bond interest payments. But what if a company had no choice but to not provide or disclose evidence of a commercial business because the business actually did not exist? The only business that can be really seen to exist in the case of LC&F is the bond marketing business exclusively dealt with by the LC&F website run by the contracted Surge Financial. Millions of pounds of bondholder capital brought in by Surge for LC&F with no proof of what it is actually being used for and no proof where the company earnings and capital interest payments are coming from.

"Thousands of reasonable, experienced and risk-aware investors, not confused savers, are investing in LC&F (and other minibonds). Probably aware that there is no proof of the existence of the lending business, no track record of SME lending. Yet they are all quite happy to invest in an unregulated, unprotected, non-negotiable 100 per cent capital at risk investment product, assuming a much higher than average market rate of capital interest and 100 per cent return of capital. However, even if a track record of past and present business is provided this does not mean the company will not fail.

"Explanations for this assuming investment behaviour? Is it the result of slick advertising and marketing? Is it somehow related to the herd mentality seen in the stock market? The Lemmings syndrome?", et cetera, and so on.

So these are the comments that are made on the MSE forum. It is all about the lack of evidence of any borrowing. That's obviously something that everyone at Surge is something with. They know Mr Thomson refuses to provide any evidence to show that there is a lending side to LCF's business.

This post on the MSE forum does cause some consternation amongst the various people at Surge. We can see that at <SUR00092853-0001>.

At the bottom of page 1, Mr Russell-Murphy emails Mr Careless and Ms Graham to say:

"Paul, I've just been talking to Kerry about how to protect ourselves better following the blog that was on MSE."

They have had a discussion about how to protect themselves better. He says:

"We need to create a role for an individual who has the responsibility of ongoing due diligence on our clients -- LCF and BB.

"The information that we should be collecting is quarterly management accounts, company responses to any bad press or blogs, recording of minutes when meeting our clients, et cetera. This should be collated and put in a shared management file.

"If one of our client bonds fail in the future, we could then show a history of ongoing DD. This won't help the investors but will help protect our reputation and soften the blow if a bond does fail. "Let's discuss this next week when you're back." He wants, essentially, to ensure that they have evidence to mount a strong defence by saying that they conducted due diligence. He wants to collect information with that objective in mind. But it is all about protecting themselves better and ensuring that they can protect their own reputations. Mr Careless responds, on the left, to say: "We already do what we can. For example, I have Mark Partridge request accounts, underlying security reports from both bonds. I have been running this for two years."

He's referring to the intermittent letters that we have seen from Chariot House to Mr Thomson. He says: "Right now LCF is behind with its accounts, but he has provided reasons why.

"We simply need to make a decision on whether we should stop marketing the bond or wait. What else do you both suggest?

"Creating a role is pointless in my opinion. "It's either fiscally strong or not.

"Mark P is best placed."

John Russell-Murphy says:

"It's good that Mark has been requesting this information and that we have the history. "If we recorded my other suggestions that would suffice.

"Example -- BB has received bad press lately, you have spoken with Pat and Phil numerous times and have met them as well. If this was recorded and we got an official response from them explaining the situation, this could then form part of our ongoing DD and help protect our position."

So, it doesn't seem to be about actually getting to the truth, but about creating a sufficient paper trail to ensure that they can protect themselves in the event of a bond failing in the future. That's what then seems to lie behind an email that Kerry sends to Mr Thomson on the same day. That's at <MDR00129373>. She emails Mr Thomson and copies Mr Russell-Murphy, Mr Careless, Mr Partridge, with the subject "Housekeeping" and she says:

"Hi Andy.

"Paul is away at the moment but has asked me to contact you to get an update re two things: "1. Can you please confirm when the audited accounts will be ready? In the interim, please can you give us information about current performance and the security, ideally management accounts and a summary of the loan book? We are processing large amounts of investor funds and need to be assured of the current position as a duty of care to your investors. "2. We are still relying on the original contract, now that we are an AR can we please revisit the proposed contract so that we have a more current/accurate contract in place that will clearly define the roles of both parties. Do you have time for a call today or tomorrow to discuss?"

In the first point, she's wanting information about current performance and security, ideally management accounts and a summary of the loan book. That's not provided because the accounts are approved. I think it's, in fact, on the very same day. Again, I should take my Lord to those at this point. Mr Careless and Surge Financial rely on these accounts. These are the Ernst & Young accounts. They rely on those accounts to say that they were reassured by them about LCF's bona fides. They say that these accounts confirmed in their minds that LCF was entirely legitimate. Those accounts are at <MDR00004384>. My Lord can see that these are the annual report and financial statements for the year ended 30 April 2017.

So, they are quite out of date, if I can put it that way. They are finalised in the middle of February 2018, but they cover the period up to 30 April 2017. On the next page, we see the company information. The page after that, the contents, the various sections. The page after that, we have the strategic report from the directors. It says in the second paragraph: "The company's principle activities during the period continue to be raising funding through the issuance of medium-term private bonds to retail investors and then lending the proceeds of the bonds to medium-sized businesses on a fully secured basis." It goes on, in the next paragraph, to say how many additional bonds have been issued, how many loans have been issued in the financial year. And in that paragraph, in the penultimate sentence, it says: "At year end, the company had a total of 11 corporate borrowers (2016: 5) ..."

"The company holds fixed and floating charges over the assets of its borrowers to secure the loans. At the year end the loan to collateral value ratio was 21 per cent (2016: 15 per cent) ..."

Then it sets out "Value of secured assets", and gives a figure of £284,725,329. The carrying value of the loans as at 30 April 2017 is £47.9 million. The notional value as at the same date is £58.8 million, or thereabouts, and then, the loan to carrying value is 17 per cent, the loan to notional value is 21 per cent. So, there are two key points on this page, I think: the 11 corporate borrowers and the £284.7 million value of secured assets.

Over on the next page, my Lord will see Mr Thomson's signature. He's signed on 14 February 2018. Above that, under the heading "Business performance", it says: "The profit of the company for the year was £273,234 ..."

He mentions administrative expenses of just under £901,000.

Then, over on the next page, we get the directors' report. On the next page, my Lord can see Mr Thomson has signed that. Over on the next page, is the auditor's statement, and on the next page --

MR JUSTICE MILES: Sorry, can I just look at that?

MR ROBINS: Yes, sure. That continues on the next page. My Lord sees, at the top of the page, although the strategic report and the directors' report aren't actually part of what's audited, they say they haven't identified any material misstatement in those. That's signed by Neil Parker for and on behalf of Ernst & Young LLP.

The next page has the statement of comprehensive income, and, as with the previous accounts that we saw, the interest receivable, which is around £7.8 million, is the interest payable to LCF by the borrowers. The finance costs of £6.6 million are the interest payable by LCF to the bondholders. There's then the gross profit. Administrative expenses of almost £901,000 is deducted to get to the operating profit. After income tax, the profit for the year is just over £273,000. My Lord has seen that, by this point, Surge is making millions of pounds, so this is, again, a rather strange situation. It must have seemed very strange, at the time, that the company running this operation is making

extremely modest profits and that the subcontractor is being allowed to take the overwhelming lion's share of available profit.

On the next page, we see the statement of financial position, and the bottom line is -- I don't mean the bottom line on the page, I mean the bottom line in balance sheet terms is, net assets of just under £299,000.

MR JUSTICE MILES: Loans and receivables, is that the whole of the loans to borrowers or is some of it in the current assets? I'm just looking at loans and receivables of £47.9 million.

MR ROBINS: Yes, I can see in current assets you get the same subheading but there is a dash. So I'm assuming --

MR JUSTICE MILES: What does note 7 say?

MR ROBINS: Let's have a look. Can we get through to the notes -- does my Lord want to see it straight away?

MR JUSTICE MILES: Just to find that point.

MR ROBINS: Can we click through to find note 7, please. If we could go back to page 12, please, the next, after the "Statement of financial position" is the "Statement of changes in equity". My Lord can see retained earnings, so there hasn't been any dividend again. On the next page, we get a statement of cash flows, and cash and cash equivalents at end of year are a bit over £1.8 million. Then the notes, I think, start on the next page [page 14]. We have got the various accounting policies, which I don't think is particularly material.

On the next page, more accounting policies. On the page after that, the same. The page after that, more accounting policies. The page after that, we have got some more notes. Note 4 [page 18] is "Employees". That says:

"The average monthly number of persons (including directors) employed by the company during the year was 6 ...

"Their aggregate remuneration comprised ..." It is wages and salaries, £87,689; social security costs, £8,790.

Then:

"Directors' remuneration for the year was £nil (2016: £nil)."

So Mr Thomson hasn't had a dividend, he hasn't had any remuneration as a director, yet he's going around buying helicopters.

On the next page, there are various notes on tax. The next page, please, "Property, plant and equipment". Next page, we have seen that one. Next page, please, "Trade and other receivables". I don't think there is anything there.

"Fair value of financial liabilities" and "Liquidity risk". Next one, please, "Bonds payable", "Trade and other payables" --

MR JUSTICE MILES: Can you just go back to that note?

MR ROBINS: Sure. Yes, I skipped over the second paragraph [page 23], which refers to the collateral figure. There is an unnecessary "m" at the end.

Next page, please. I don't think there is anything on that one. Next page, various other notes. Page after [page 26], "Related party transactions". It says: "During the year one of the directors, K Maddison, was remunerated via a service company ... "Included within other creditors ... was an amount of £7,474 owed to M Thomson, a director ... The amount represents a noninterest bearing working capital loan ..."

Once again, no mention there of the fact that half a per cent of new bondholder monies was paid to Mr Thomson. That's not something that Ernst & Young knew about. The next page, please -- that's it. We have got to the end of it.

So, my Lord has seen there, there is no mention of the payment of half a per cent to Mr Thomson. There is nothing there that seems to suggest that Ernst & Young were aware of the 25 per cent commission. It is certainly not apparent from the face of the document that they were.

Of course, our position is that the Ernst & Young sign-off on the accounts can't really have changed things for Mr Careless and Ms Graham. My Lord has heard what we say in relation to the PwC accounts and what we say in relation to the Ernst & Young accounts is essentially the same. Mr Careless and Ms Graham both knew that Mr Thomson was a liar. That was their established view of him. They didn't know what he'd said to Ernst & Young to get Ernst & Young to approve these accounts. They didn't know what documents Mr Thomson had provided to Ernst & Young. For example, they didn't know if Ernst & Young had relied on letters of representation from directors of borrowing companies regarding the value of those companies' assets. And the Ernst & Young sign-off of these accounts didn't cause the other special knowledge of Mr Careless and Ms Graham to disappear. It didn't scrub their minds of everything else that they knew. I won't repeat all the points that I made yesterday, but, to take an obvious example, the Ernst & Young sign-off of the accounts didn't erase their knowledge of the fact that Mr Thomson had been receiving half a per cent of new bondholder monies every month, it didn't erase their knowledge of the fact that Mr Golding was now receiving 1 per cent of new bondholder monies every month. But, in any event, any crumb of comfort that they might have obtained from the fact that Ernst & Young signed off the accounts was extremely, extremely fleeting because, within the day, the in-house view amongst the Surge personnel seems to have been that these accounts raised serious concerns, certainly raised more questions than they answered.

We can see the reaction to these accounts in the documents. It starts at <SUR00093302-0001>. Mr Russell-Murphy emails Mr Careless and Ms Graham, copying Jo Baldock, subject "LCF accounts update": "I have just spoken with Andy, he said the LCF accounts have now been fully audited and are available at Companies House. I have checked, they are not on there at the moment.

"He said the revised security figure is 287 million with a loan to value percentage of 21.

"I asked about a case study for the website and he said he is struggling to find a suitable example. I also reminded him to respond to your email Kerry." Then <SUR00093314-0001>. Mr Russell-Murphy comments to Mr Careless:

"The 21 per cent is low, equates to a 60m loan book. But the figure is from 30 April 17."

Then at <SUR00093339-0001>, this is 20 February, at 3.11 am. Mr Careless emails Mark Partridge with the subject "LCF" and he says:

"Hi Mark.

"Could you take a look at LCF's accounts which have allegedly been filed yesterday and give me a view please."

I emphasise the word "allegedly" because it reinforces what I said about the in-house view of Mr Thomson. They seem to have thought that nothing that he said could be trusted. If he said that the accounts had been filed, that may or may not be true. So, he says, "Could you take a look at LCF's accounts which have allegedly been filed yesterday".

Then -- this is at 3.11 am -- at 8.33 am, <MDR00224100>, at the bottom of the page, 8.33 am, as I said, Kerry Graham emails Mark Partridge: "Hi Mark.

"The LCF accounts are attached.

"Let me know what you think."

At the top of the page, at 10.16, Mr Partridge emails Ms Graham and Mr Careless, copying Mr Jones. This is at 10.16 am. He says:

"Well good news.

"EY have assessed their security at £284m which gives them 5 x cover on loan book at 30/4/17. What bonds in £m have been issued since then? "I can't reconcile their costs to commissions that Surge should have been paid on new bonds (at least £13m on £53m increase in bonds outstanding) their cost including interest paid is only £6.6m. Not really our issue though the main thing [I think he means 'main thing'] is the bond cover looks more than adequate." He is making the point in the second paragraph that the 25 per cent commission is not an expense of LCF that's recorded in the accounts. As I mentioned yesterday, it's because it's something that's recharged by LCF to the borrowers. People among Surge have always maintained that they weren't aware of that. We will see in due course Kerry Venn, as she is now, has made clear that she always thought that the 25 per cent commission was a liability of LCF, an expense or overhead of LCF. It must have seemed puzzling that that wasn't reflected in the accounts.

This is an email that is relied on very heavily by Mr Careless and Surge Financial because they say it shows that Mr Partridge was content with the accounts. "EY have assessed their security at £284m". This is obviously a fairly high-level response from Mr Partridge. He's only received the accounts a very short while earlier. But it is also not the end of the story. This is 10.16 am. Quite a lot happens in the rest of the day. We begin to see that at <SUR00093402-0001>. We can see, at the bottom of the page, that Kobus Huisamen is emailing Kerry Graham, copying Paul Careless and Mr Thomson, and he says: "Just to follow up on what we have discussed this morning."

So this is an email at 3.44, but they must have had a discussion in the morning. The first point relates to the ISA bond. He says:

"We don't need a prospectus, because our securities are not transferable ..."

Again, he seems to be missing the point. Then he says:

"ISA.

"The ISA is only a tax break on top of the underlying security. The ISA is not the security and does not have any bearing on the structure of the underlying security."

I'm not sure what that means. Then "Accounts": "As for your request to perform more due diligence on us: as mentioned, our management accounts would differ from audited accounts and is not public knowledge.

"I am not comfortable with providing such information to anyone. I have tried to speak with Angus on this matter, but he was not available this afternoon. "However, I can't see any reason for oversight into management accounts. As an authorised firm, we are required to ensure proper risk management and systems, so I would request you rely on this.

"I would kindly resist any such attempts and I don't think Angus would insist.

"Remember, you're acting on our behalf -- not as reseller, or introducer."

So, it's clear from that that, in their discussion on that morning, Ms Graham had asked to perform more due diligence on LCF. In particular, she'd asked for management accounts. That's obviously important because it underlines the suggestion that the Ernst & Young accounts provided any comfort. She wasn't content with the Ernst & Young accounts and, on the very day that she received them, she got in touch with Kobus Huisamen and said she wanted to see management accounts and he said no.

At the top of the page, we can see that she's not happy with that. She emails Mr Russell-Murphy, Mr Partridge and Mr Careless and says:

"A polite pushback on my request for quarterly MI [management information].

"Not happy. It shouldn't be too much to ask to see ongoing management accounts. Quarterly is not onerous. "My other suggestion was a breakdown of the loan book or a statement of assets and liabilities." So she hasn't been satisfied with the Ernst & Young accounts. She has not been reassured by Mark's comments. She's asked Kobus for more. He's refused. She is not happy. And she can't really understand why he would refuse.

Then, at <MDR00130465>, this is also during the morning of the 20th, 11.18 am, Jo Baldock emails Mark Partridge copying Paul Careless with the subject "LCF accounts -- questions", and she says:

"Hi Mark.

"Hope you are well.

"Following the release of the LCF accounts after taking a quick look through there are a few items on them that I know will raise questions with potential clients:

"1. The asset figure quoted [that's the £284 million] was only confirmed to us the recent up to date figure yesterday by Andy ..."

So it is a figure that he'd only given to them on 19 February as being the up-to-date figure. She says: "... back in April 2017 [which is the year end of the accounts] we were quoting an asset figure of £215m as confirmed by Andy at the time?"

"2. The accounts quote there are 6 employees with salaries of £87k but the directors took no funds -- clients will ask how the directors made an income.

"3. Where in the accounts does it show a comms payment to Surge?"

"4. Page 1 states that LCF only lent to 11 companies, we are quoting many more than this to our clients (100s) -- is there any further explanation to this?"

"5. It states all charges are held by LCF but there is no mention of the debenture, should there be? "I realise some of these can only be answered by LCF themselves but these questions will definitely be raised by clients and we need to be prepared, are you able to put the question to them on our behalf please."

My Lord can understand her concerns. She says the asset figure of £284 million is something that Andy had provided only recently and that, in April 2018, they were quoting an asset figure of £215 million. My Lord will recall that was the figure that was being advertised at that time in The Times, The Financial Times, The Daily Mail. There's a discrepancy between what LCF was saying in April 2017 and what the accounts now say about the position as at that time. She's also right, of course, to say that Surge's salespeople had been telling members of the public that LCF had made loans to hundreds of companies. That was based on information that Mr Thomson had provided. My Lord has seen quite a lot of that. There was a document which Mr Russell-Murphy provided to Mr Thomson and Mr Thomson added his responses. Mr Russell-Murphy had said "around 120 loans currently issued" and Mr Thomson had added the response, "Agreed, this is okay". We don't need to go to it now, but for the transcript that's <MDR00052599>.

There was also Kerry's email reporting on her highly confidential call with Andy Thomson where he said there's no 30 million security. In that email, one of the things that he had told her was, "Currently there are 80 loans". Again, we don't need to go to it, but for the transcript, <SUR00131168-0001>. There was also a document we saw, I think yesterday or the day before, where a question that had been put to Mr Thomson was, "How many clients have we lent to?", and his reply was, "As at the beginning of May 2016, LCF has made 121 loans". Again, we don't need to go to it but that's <MDR00041257>.

Perhaps most relevantly, for the purpose of these accounts, given the year end, my Lord saw yesterday where Mr Thomson provided some responses to what had been said on the MSE forum in July 2017. Mr Thomson did not take issue with, or disagree with, the comment in that post that LCF had made loans to approximately 120 small- and medium-sized business enterprises. That was <SUR00140130-0001>.

So, against that background, one can see why it would have been highly anomalous and concerning to see, in the audited accounts, that LCF had lent to only 11 companies. It was completely inconsistent with what Mr Thomson had been saying to Surge employees and what Surge employees had, in turn, been saying to members of the public to induce them to purchase LCF bonds. It is not just Jo Baldock who is concerned by the Ernst & Young accounts. We can see Aaron Phillips of Surge is also concerned at <SUR00144763-0001>. This is the very next day, the 21st. At the bottom of the page, he sends an email to Jo Baldock:

"Questions from the team for Kobus."

At the top, Jo Baldock sends the questions on to Kerry Graham. The questions are at <SUR00144764-0001>. It says:

"A few of these were covered off at the meeting this week, but not to the whole group, so if you could clarify for the benefit of all that would be great." The first is:

"How many companies do we currently lend to? We were told 150 companies in June 2017."

Given the timing of this, the day after the accounts, one can only assume this has been promoted or prompted by that statement we have seen in the accounts about there being only 11 borrowing companies as at April 2017. Then:

"Please be clear on the legal charge status of assets. We were unaware that we do not take a first legal charge over all assets.

"Do we use the terms 'fixed and floating charges'? "Why would a company borrow from LC&F at our high rates?"

"Please clarify the debenture LC&F bondholder structure.

"We use the term Short term loans -- what is the maximum loan time?"

At the final paragraph:

"Due to the detail in the new accounts ..." So he has seen them:

"... a few questions may arise regarding the business model itself -- with less active loans over longer periods of time, and a fee paid to Surge, how do LC&F make a profit after paying high interest rates to bondholders?"

That final question is obviously an extremely important one: how on earth can LCF survive as a going concern? If it is paying away 25 per cent of bondholder monies as commission to Surge and taking, as it says in its own information memoranda, a 2 per cent fee from borrowers and charging an interest rate of -- I think it said a target rate of 10 per cent in the information memorandum, how on earth can it make the money to not only pay the interest rates to bondholders but actually show a profit in its accounts?

On the same day as this, the 21st, at <MDR00130961>, Kerry Graham is emailing Kobus Huisamen, copied to Paul Careless, Andy Thomson and John Russell-Murphy, and she says:

"Hi Kobus.

"Thank you for following up on our meeting." The first point relates to the ISA. She says: "Apologies if I seem like a cracked record on the IFISA, it is simply because we have received conflicting information and, as a result of that, we looked deeper and still our advice differs from yours. However, I will take our conversation yesterday and your email here as confirmation that you are operating within all necessary regulation and we do not have an issue." Then:

"On the subject of ongoing monitoring, we are keen to have a formal process in place but this should not in any way be onerous or invasive. If our suggestion of a quarterly P&L and balance sheet is not your preference, how about a quarterly statement of assets and liabilities as a more streamlined/light touch compromise?"

"Why am I asking for this when we have the audited accounts signed off by Grant Thornton ..." I assume she means Ernst & Young:

"... and you are FCA regulated? It is a best practice/safeguarding measure, we are now 9 months forward from the period the accounts document, we are averaging £10 to £12 million funds in to LCF on a monthly basis, the trend is showing that this can increase to circa £20 million a month. If our only update is on an annual basis, the business will have grown by more than 100 per cent and the circumstances will have changed substantially. We are assisting this large volume of people to invest so we feel a moral obligation to make sure that the underlying investment continues to perform at an appropriate level to sustain LCF's obligation to investors.

"On a separate subject, your training session yesterday coincided with the AMs' first read of the April 2017 accounts and it became apparent that the official answers we have to some see questions are

now out of date and we could do with a refresh. The AMs are making a list of key questions that they would like to have an official answer to and I will send this later today. We want to be sure that we are representing LCF correctly and compliantly. We have a call with Andy tomorrow at 11 am and can pick up on this then." Kerry Graham then emails Mr Thomson, that's at <MDR00131073>. This is again the 21st. She copies the email to Jo Baldock and Kobus Huisamen and she says:

"Hi Andy.

"We were very pleased to receive the accounts yesterday. £284m of secured assets against a loan value of £59m gives prospective investors significant comfort and certainly aids us in our work.

"On digesting the accounts it became apparent that the official statement that we relay to customers is now quite out of date.

"You sent the attached back in May 2016 and it is still in use by the account managers as an example of how you prefer us to answer these common questions. Naturally the business has progressed since then and is in great need of a refresh. E.g.

"At the time your average loan size was £75k, clearly this has increased.

"As at May 2016, LCF had made 121 loans. "We would like to co-ordinate a response to common questions to ensure we are representing LCF accurately and compliantly, we request that you review the attached and send us an up-to-date version."

Then she says:

"In addition, the account managers have discussed this today and have some new questions to add to the list:

"1. There is confusion on whether LCF take a first legal charge over the assets? Andy says yes and Kobus says no. Please clarify.

"2. LCF charged borrowing companies high rates, why would a company borrow from LC&F at these high rates?" My Lord can see this is adapted from the document that Aaron Phillips sent to Jo Baldock with questions for the team from Kobus. He had asked, "Why would a company borrow from LC&F at our high rates?", and Kerry says:

"LCF charged borrowing companies high rates, why would a company borrow from LC&F at these high rates?

"3. Please confirm or edit as appropriate: LCF takes a first legal charge over the borrowing company's assets and a debenture over the borrowing company -- this protects LCF in the event of borrowing companies defaulting. The bonds are secured by a debenture from LCF. This debenture is in favour of the security trustee who hold this is in trust on behalf of all bondholders.

"4. We use the term 'short term' loans: what is (a) the average loan term and (b) the maximum loan term.

"5. What is your average lending fee?

"Thank you for your assistance, we want to make sure we are ready to answer client questions in the manner that you prefer and will represent you accurately." The attachment, so my Lord can see what she is referring to, is <MDR00131077>. It's the document from Mr Thomson in May 2016 which says, for example, just below the middle of the page, under the heading "Lending":

"How many clients have we lent to?"

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

So, she's sending that to him saying that it seems a bit out of date.

If we go back to her email, <MDR00131073>, although, in the bottom half of the page, she has based her list of questions on the questions from the team for Kobus that was provided by Aaron Phillips, there is one question missing. If we go back to <SUR00144764-0001>, we can see the final question was:

"Due to the detail in the accounts, a few questions may arise regarding the business model itself -- with less active loans over longer periods of time and a fee paid to Surge, how do LC&F make a profit after paying high interest rates to bondholders?"

As I said, a pertinent question. If we look at Kerry's email, <MDR00131073>, that's not there. That's not made the cut, which seems rather strange. It is an important question. It is not an insignificant issue. It is the sort of question one might expect someone to ask. It seems rather puzzling that she has deleted it. Why not ask the obvious question?

We know why she didn't ask that question, because she has told us. We see what she says at <SUR00144774-0001>. She forwards the email to Jo Baldock and comments at the top of the page: "I had to water down the AMs' questions slightly as Paul thought my original email was too contentious, particularly this question:

"Due to the detail in the new accounts, a few questions may arise regarding the business model itself: with less active loans over longer periods of time and a fee paid to Surge, how do LC&F make a profit after paying high interest rates to bondholders?". "I can try and answer it by piecing together the information. I did ask about his lending fees and typical term of loan and we can use this information to do the maths."

As she explains there, it seems she proposed to ask the obvious question, but Mr Careless thought it was, in the words of the email, too contentious. He told her not to ask the obvious question, not to make the obvious enquiries.

Of course, when we come, in due course, to make submissions on the law relating to blind-eye knowledge and the concept of not asking questions because you don't want to confirm your suspicions, this is an episode to which we will return.

My Lord, the next topic is one that's going to take a bit of time, but I can probably use the next few minutes just to introduce it. It is about a telephone call that took place the day after this email, on 22 February 2018, between Mr Thomson, Mr Russell-Murphy and Ms Graham. Ms Graham explains that she normally took calls on her mobile phone, even whilst in the office, but, on this occasion, her battery in her mobile phone was flat and so she had to take the call on the office line.

As my Lord has heard, Surge had in place a system for automatically recording all outbound telephone calls. So, this telephone call between Mr Thomson, Mr Russell-Murphy and Ms Graham was, unusually, recorded. It is the only such call that seems to have been recorded.

At some point, Surge's legal team obtained a transcript of it. We have the transcript in the bundle. It is what we are going to look at after the short adjournment. We do also have the audio file. I'm not proposing that we should play that and listen to it. It is quite a long call. It lasts for about an hour. I don't think we need to sit here and listen to the whole thing. Obviously, if your Lordship does want at

any point to listen to it, we can give your Lordship's clerk instructions as to how that can be achieved. I think it is possibly even in the trial bundle somewhere. But, as I say, I'm not proposing to press play and sit back and listen to it. We can take your Lordship to the relevant passages. But it is something that we are going to need to look at quite carefully after the short adjournment. Because there are three people often talking over each other and quite a lot of nuanced points, it is something that we are going to have to take quite carefully. I'm not, I'm afraid, just going to ask my Lord to read it because I fear that there are points in there that I would like to emphasise which might not be immediately apparent on a read-through. But we can come back to that after the short adjournment.

MR JUSTICE MILES: 2 o'clock, thank you. I should say, sorry, I have got to rise promptly at 4.20 pm today, just so you know.

(12.57 pm)

(The short adjournment)

(2.00 pm)

MR ROBINS: My Lord, the call transcript that I mentioned before the short adjournment is <SUR00125394-0001>. My Lord will see it is a transcript of a telephone conversation on 22 February 2018 between Mr Thomson, Ms Venn, as she was at the time, and Mr Russell-Murphy, transcribed by Opus 2.

On the next page, my Lord can see it begins with the automated message from PowWowNow, asking for the pin to be entered.

Mr Russell-Murphy records his name. Mr Thomson says:

"Hi John."

Mr Russell-Murphy says:

"Hi Andy."

Kerry says, "Hi John", and John says "Hi Kerry". I'm assuming from that that all three people are in different locations. It wouldn't be normal for John to say hi to Kerry if he's sitting next to her. So I'm assuming they are all in different locations. Mr Thomson says, "How are you doing". Kerry says she's good, then -- sorry, Mr Russell-Murphy says he's good. Then Mr Russell-Murphy says:

"Just to let you know, Paul was with me but unfortunately he's been delayed so he's not going to be able to make it. So it's just the three of us." We can see Mr Careless was due to be on this call but he's not and sends his apologies. Mr Thomson says "Oh", and Mr Russell-Murphy says:

"Sorry about that, Andy. He did say that what we'd do is, we'll probably have a catch-up face to face maybe next week depending on your diary."

Mr Thomson says:

"Oh, next week's done. I'm booked up all next week."

There is some discussion about when he might be available. He tries to get his diary up at the bottom of the page and says, "I've got next week all booked up". So the following week, for face to face, he suggested the Monday or the Wednesday and Mr Russell-Murphy suggests the Wednesday, the 7th. Then, over the page, they suggest late morning, about 11.00. But Mr Thomson is not around in the

morning, he gets back around midday, so eventually they say around 2 o'clock, on that date. Mr Russell-Murphy says, in the bottom half of the page:

"You're in great demand at the moment. You seem to be extremely busy."

Mr Thomson says:

"I'm running around a bit, yeah. Absolutely." He thinks his mouse doesn't work and he says he's trying to co-ordinate a trip to Manchester with some other people who are, he says in the final line "being a bit, to be brutally honest ... useless". Then over on the next page [page 4], they start having some discussions about Mr Thomson's helicopter. He says "I mean, at the moment ... the helicopter's still in the bloody ditch". Mr Thomson says: "... there's an electrical problem that's affecting the -- the equipment you use to fly through cloud but that -- that's no biggie. We just don't fly through cloud. But they've got to put --

"...

"-- the whole thing back together."

Mr Russell-Murphy starts to say he doesn't know if he wants to go in a helicopter, and Ms Graham says, "That sounds a bit risky, Andy". Mr Russell-Murphy says, "Yeah, sod that", and Andy says:

"... most private aircraft that you see up in the sky and most helicopters are -- are what's called VFI rated only, so it's basically visual line of sight, so you can't go through cloud and ... you've got to be able to see the ground."

They carry on chatting about helicopters and the height at which they fly, just above the cloud base. Then, over on the next page, Ms Graham asked Mr Thomson if he flies it himself, has he taken lessons and he says:

"It's actually -- flying a helicopter ... when you're up in the air isn't that difficult. "...

"Well, it depends what helicopter you've got. The one that I -- the one that we have has -- has got autopilot and other bits and pieces and it's got -- "...

"-- certain controls that make it -- make it easier. If you're flying completely manual then it's -- it's not as easy ..."

MR JUSTICE MILES: Do we need all of this? I can see they are talking about a helicopter.

MR ROBINS: This is just the background. If we go to the next page, page 6, we see the start of the relevant parts. They begin to talk about the contracts between the two parties. About a third of the way down, Mr Russell-Murphy says:

"As I say, Kerry, with these conference calls they always work best if someone sort of chairs the call, so do you want to do that ..."

She says she sent an email which could be the basis of discussion. Andy says:

"... I thought it was a general catch-up, not just focusing on this -- I know you whereabouts to talk about an agreement but I thought it was -- we were covering, you know, numerous and everything."

And Kerry says:

"... anything you want to cover, that's great, we'll go through it, but I guess the biggest agenda point for us is that we're really keen to get a contract in place because it's been outstanding for so long ..."

Again, making the point that, so far as she's aware, there is no signed contract in existence: "... and now we're in a position where we're going to be an AR and literally any day now we'll actually officially see that on the register, we thought that removed one of the bigger issues that Lewis Silkin had identified for you, which was the services section which was an issue for both of us. You because you felt you couldn't sign whilst we were unregulated and us because we needed that level of detail ... So now we've actually achieved this milestone we were wondering if we could revisit the contract, make any compromises that need to be made and actually get it signed.

"...

"What do you think, Andy?"

He says:

"... I will send it back so you -- because you're now -- I know -- I understand that you've signed it and you're just waiting for it to be registered and all the rest of the stuff."

Then, over on the next page [page 7], she says: "Yeah, and apparently that happens in like a week and we did it a few days ago, so I'm actually thinking if -- if there's still probably some negotiation points here that we can pick up on."

He asks:

"... what happens when you apply for AR status, the FCA's got to approve it, so the paperwork would have gone in and the FCA would be having a look and when they're happy they'll say 'Go on, chuck it up there' ..."

And then, towards the bottom of the page, Kerry is asking him, about two-thirds of the way down: "There's no -- there's nothing you wanted to hold off for any particular reason?"

And Mr Thomson says:

"No. I -- I've -- you know, I've always been open -- open to doing it."

Kerry says:

"Because we thought you really wanted one but we -- I'm just wondering if that circumstance has changed at all."

And the response is, "No. No, not at all", and Kerry says:

"No, okay, good. Great, brilliant. So

Lewis Silkin, when they reviewed it they identified six key areas that you would like to compromise on. I don't know if you're in front of a computer but I emailed these to you and these -- these are the sort of points that they really wanted to change, and we're very happy to compromise where we can."

So then they go through the various points. Whilst the detail isn't particularly material, there are some incidental observations which are quite relevant. They have a discussion about the term of the contract, whether it should be two years or five, and Mr Thomson says, in the middle of the page [page 8], that he's not looking to run off anywhere. He says:

"... I'm hoping you guys aren't as well." And after that, he says:

"... for me, that number 1 is -- is, you know, it's -- it ensures, you know, that you are -- you are, you know, in -- in the high 90s in terms of percentage of our fundraising at the moment and I'm in the high 90s in -- in terms of paying it."

I think he's saying that Surge are responsible for bringing in something in the high 90s in terms of percentage of LCF's money and he's in the high 90s in terms of providing Surge's revenue. Kerry says, "Yes, absolutely", and she says:

"So we'll -- we'll look after each other." And Mr Thomson says:

"... it makes it sensible that -- that we stick together on that. So I'm fairly relaxed ..." So they decide to make it three years with six months to terminate. Then they go on to have a discussion. Mr Thomson says he's not enormously fussed on that one. Then, on the next page [page 9], there's a discussion of termination provisions. Mr Thomson says:

"... if you guys did something that materially -- materially -- if that's a word, affected us in terms of regulatory stuff, so what -- whatever it is, then there's a -- there's a get-out clause in terms of having -
-"

And Kerry says:

"There is a get-out if we're in breach of the contract, so if we did something wrong you can get out immediately. There is that provision for that." And Mr Thomson:

"Oh, no, it's more reputationally, that sort of thing.

"...

"So you've not breached the contract but something has happened ..."

He says:

"To be brutally honest, I can't see a whole lot of that happening."

And they discuss those provisions. Then, on the next page, they go on to start discussing the intellectual property rights. I don't think there is anything particularly significant in those provisions. Surge has designed various bits of information technology that's used to sell the bonds to the bondholders. There's a whole application process and there's a question of who would own that if the contract were terminated.

On the next page [page 11], there is continued discussion of that. My Lord can see the larger paragraph of Andy text at the bottom of the page: "... if we parted ways we would want to just continue raising money as -- as we do now, on a -- on a -- on a direct channel, and that would include, you know, people signing up. We wouldn't licence that product to anyone else."

So that's what they're discussing. Then, over on the next page, they are getting to the end of the list in respect of the contract. They're talking about the further issues. One at the bottom of the page is responsibility for complying with anti-money laundering legislation and Kerry makes the point that that's outsourced to GCEN and, over the page, Mr Thomson is saying, well, you come into contact with members of the public, you would have your own duties under money laundering legislation. He refers to what he describes as the Proceeds of Crime Act 2007, and he says: "... anyone that comes ... into contact with the -- the process has a duty ... for AML."

And he goes on to explain a point. On the next page [page 14], he gives an example. He says: "... there's no partial liability to AML. If you're -- if -- so let's track it through. Let's say Mustafa, for want of a better name, comes in and he says, 'I -- I've got £2 million, I'd quite like to chuck it in'. First point of contact is -- is your account ...

"Yeah."

MR JUSTICE MILES: I'm not sure why it's necessary to look at all this stuff. We are not really concerned with money laundering, are we, or --

MR ROBINS: Well, no, we can skip this bit. I was just showing my Lord what's in it. I didn't want it to be said --

MR JUSTICE MILES: I know, but I don't need to see everything of everything.

MR ROBINS: Fine. Well --

MR JUSTICE MILES: It is your job, in opening, to show me relevant material.

MR ROBINS: Absolutely. Well, I hope I've been doing that.

MR JUSTICE MILES: I'm just saying, I think this is not really that important, so far.

MR ROBINS: Let's skip forward and take it a bit quicker. On the next page, my Lord can see it is about the same, talking still about money laundering. Next page [page 16], again, the same, "... if shit hit the fan", et cetera, in the middle of the page. Next page, they are still discussing the position in respect of compliance. And then on the next page, they're concluding their discussion about the contract position. Then we get to the next page, and we get to the material that is particularly important and relevant. This is where, in the middle of the page [page 19], Mr Russell-Murphy says:

"Andy, firstly, thanks for providing us with the accounts. You know, it's really --"

Mr Thomson says:

"A long road --

"...

" -- but we got there."

Mr Russell-Murphy says:

"Yes, you got there and the accounts are really good, so you even got a glowing report off Mark Partridge, which I've only known Mark for three years and he's never given -- given a glowing report to anyone ..."

Mr Thomson says he's got two months and he starts "the bloody process again."

Mr Russell-Murphy says:

"So it's really helped out, especially with the account managers, having those accounts filed online.

"However, that information --

"...

"-- the minute -- the moment you put it on there, as you're aware, it's out of date and it's key really for us to -- because the amount of money that we're raising, to have a regular probably quarterly

figure now of asset and liability just so that we can continue to keep the account managers up to date because --" Mr Thomson interrupts to say:

"Yeah, I'm actually building a -- I'm building a spreadsheet at the moment that does that." Mr Russell-Murphy says:

"Brilliant ..."

And Mr Thomson says:

"And we'll update that on a quarterly basis, so I can give you headline figures from that." Mr Russell-Murphy says:

"Yeah. So I think what -- what would be really good is probably to have the figures immediately, as of this month's, and then quarterly thereafter if that -- if that works for you."

Mr Thomson says:

"Let me build it with everything else I'm doing." And then he says:

"So I'm -- I'm -- I can -- the figures that you have in those audited accounts are enormously out of date. I mean ..."

Mr Russell-Murphy says "Yeah, of course". Mr Thomson says:

"... loan book at the moment I think is about 100 and -- probably 117 million at a guess. We've got about -- we've got -- depending on what comes over today, unfortunately, you know, last night's collections report was ... a touch -- it was actually one of the smallest ones I've ever seen, so --" And Mr Russell-Murphy says, "Oh, was it? Okay". Mr Thomson says:

-- we've got ..."

Then he says:

"... no, hang on a second, let me just grab ... it. Where are we?"

Mr Russell-Murphy tries to bring him back to what he was saying:

"But you're anticipating it to be around 117, and what about the security?"

And Mr Thomson says:

"The security -- I've got a bit of an issue with the security, and it -- it's a believability issue. So if I -- if I actually tell you, but don't repeat it --" Mr Russell-Murphy says "Yeah" and Mr Thomson says: "-- the security -- the valuation of the security that we hold is a billion pounds."

Mr Russell-Murphy says:

"Is a billion?"

And Mr Thomson says:

"And going to take that -- yeah."

And Mr Russell-Murphy says "Okay" and Mr Thomson says:

"And it takes that loan to value --"

Mr Russell-Murphy got there before him and says, "What, 11 per cent", and Andy says, "-- down to --" and Mr Russell-Murphy says "11.7". Andy says: "It's -- it's not a lot. So then you've -- then you've got -- then -- then you've got that -- 'that's too good to be true' questions."

And Mr Russell-Murphy says:

"Well, yeah, that is from --"

And Andy interrupts to say "So I'm trying to -- to -- to structure -- restructure things, because I think in -- in the -- in the mid to high thirties is a nice comfortable level."

He's talking about the loan to value ratio. Kerry says:

"Yeah."

Andy says:

"And it's --"

Mr Russell-Murphy says:

"Yeah, definitely."

Andy says:

-- nice and believable.

"..."

"You turn round a 117 million loan book and say our loan to value is 10 per cent, everyone's going to go, 'Fuck off'."

And Kerry says:

"Yeah, they're going to want to see more and that -- "...

-- might not be possible so --

"..."

-- that, yeah, would be an issue."

Mr Russell-Murphy says, "Yeah, you're right" and Mr Thomson says:

"So I'm trying to deal with that at the moment. "...

"And that's deal -- dealing -- dealing with a number of companies to -- to -- to restructure -- "...

-- stuff."

Then Mr Thomson says:

"Then the other side of the coin is I want as much security as I can get, so --

"..."

-- I'm kind of caught between a rock and a hard place."

And Mr Russell-Murphy says:

"Yeah. So, Andy, what I'm talking about -- you know, obviously this is not information that's going to be checked and audited, it's a figure for the account managers to hang their hat on, so even if we --
"

"-- even if you knew it was a billion but you said, 'The figure I'm happy for the account managers to use as of this month is --

"...

"-- '300,000', or whatever that figure's going to be --"

Mr Thomson says, "I hope it's not 300,000". Mr Russell-Murphy says:

"Well, 300 million, rather, sorry. 300 million --" "...

"Whatever that figure's going to be."

Mr Thomson comments and Mr Russell-Murphy says: "Yeah, you'd be in the shit if ..."

And Mr Thomson says, "I'd be investigated". Then Mr Thomson says:

"I mean, perhaps if they change the language and say 'in excess of' or 'loan to value is sub-40 per cent' ..."

Kerry says:

"I think it might be more useful to have it in writing from you ... so we quote you exactly and we're saying it very compliantly, which is why yesterday I sent a statement you wrote a long time ago and wanted an up-to-date version."

And Mr Thomson says, "Yeah, that was". She says: "Because we can have that in writing."

And Mr Thomson says:

"Yeah, I can -- I can see that. We were -- we were, dare I say, you know, between the two of us spinning lots of plates."

And, at the bottom of the page, he says: "And that's why you've got -- I think one of them was 'How many clients do you lend to?' Well, and then we specifically say, 'We've made 121 loans'. Well, each drawdown's a loan, as we knew at the time ..." Kerry says, "Yeah". And Mr Russell-Murphy says: "We need to be focusing on loans rather ..." And Kerry says:

"But it -- that's fine."

And then she says:

"That's fine. But we -- because the -- one of the earlier pages in the accounts says there's eleven foreign customers ..."

I wonder if that's right, I wonder if it's "borrowing customers", but there we are: "One of the earlier pages in the accounts says there's eleven foreign customers, I'm sure some -- some studios customers will pick up on that one so it would be nice to have an official line."

Then she says:

"Well, we have the three loans ..."

And Mr Thomson says:

"The line from that is ..."

This is where they are talking over. She's postulating what a customer might say, "How do you explain that?" And Mr Thomson says:

"The line from that is for me a really simple one and it's a positive, in that we've moved to a more qualitative stance as opposed to quantitative." And Kerry says, "I like that, yeah" and Mr Thomson says:

"So we can spend more time with our borrowers. We know them in -- you know, in and out. We monitor them on a regular basis. We attend board meetings. Though we're a qualitative-based mid cap lender as opposed to chucking out 50 grand to Joe Bloggs' corner shop. So we carry less staff and that's how -- why we don't have big [overheads]."

John Russell-Murphy says:

"Sort of like a private bank --"

And Kerry says, "That makes a lot of sense". Mr Russell-Murphy says:

"But, again ... if you could just confirm the figure that we can hang our hat on, Andy, that would be really useful for this month because we don't want to be quoting ..."

And Mr Thomson says "Hang on, one at a time". Mr Russell-Murphy says:

"Yeah, sorry. We don't want to be quoting the April '17 figures. So if we can maybe use, say, 117 of the million as a loan book, if that's the figure it is, and then if you decide what figure you're comfortable to release obviously it's not a --

"...

"-- it's your figure with that little bit of detail you just mentioned about quality rather than quantity, that would be extremely useful. I think that would tick 99 per cent of the boxes which the account managers have, just -- just those figures because that's -- that always gets asked. All that other stuff is minor stuff but 'How much do you owe?' and 'What have you got as security?' are probably the key questions that we have to get answered."

Ms Venn says -- Ms Graham as she was at the time: "Yeah, and thinking about that ..."

But then Mr Thomson interjects, saying: "So if the (inaudible) set off and then loan to value sub, so in fact we're giving -- instead of giving the real figure, you know, security can expect 100 billion and the loan to value of sub-35 per cent." And Mr Russell-Murphy says:

"Well, you see, the thing is, if you do that then the account managers say, 'Okay, if it's at 35 per cent, it's 117, that works out that the security value is a minimum of 400 million', whatever the figure is, then they're going to quote that figure. So you're better off quoting a figure really."

And Mr Thomson says:

"Why -- why would I say, you know, security and these are just examples, security and a loan to value of sub, let's call it 40 per cent for argument's sake. And the reason you don't give a specific is because that changes on a daily basis or a weekly basis." And Kerry says:

"Yeah, that's good. Yeah."

And Mr Russell-Murphy thinks, hang on a minute, that doesn't make any sense, and he says:

"Well, would it though because when we're looking at assets, be it stock or, you know, do assets -- will assets -- you know, because when that -- when it concerns if assets are fluctuating, you know, that much."

And Mr Thomson says:

"But though -- but the other side of the coin, changes -- the loan quantum changes."

Mr Russell-Murphy says okay and Mr Thomson, "Daily", and Mr Russell-Murphy says:

"Well, you're the chief executive. You know, you put it in writing and we'll quote it."

That's really, I think, the quotation that encapsulates everything we have seen on the call so far. They don't seem concerned to know what the true position is. They want to have something in writing from Mr Thomson which they can then rely on whether or not it is true.

Presumably, they didn't believe his suggestion that he had security of £1 billion. Mr Thomson introduced that by saying that he had a believability issue about the security. It is a preposterous suggestion. But their concern is to have something in writing from him: "You're the chief executive. You know, you put it in writing and we'll quote it."

Mr Thomson says:

"Okay. All right. I'll get something back to you." Kerry then asks him also to review the questions that the AM had, that would be really good: "It's not that they would always use all of it but it's that they need to have it in their toolkit, if you like."

And Mr Thomson asks if there is "anything else that you want to go through".

Mr Russell-Murphy says he has some questions in the accounts, there is something in the notes about writing off a loan and he asks how that's consistent with zero defaults and it takes Mr Thomson a while to get to the relevant page and to look at the note. It is note 7 in loans and receivables. At the bottom, he is puzzled by it because he says:

"We haven't written off any loans."

But then, at the next page, he says that there was a very large refinancing, as he puts it in the third line of the first substantial paragraph, and that the loan quantum was reduced as part of that, and that that's what the note must be referring to. Mr Russell-Murphy says:

"So, sorry, could we say that was a readjustment of interest when organising a new loan for an existing client? Something quite simple. Something along those sort of lines?"

And Mr Russell-Murphy seems happy with that then. At the bottom of the page, he says:

"Okay, the AMs have put a list of questions together asking you to -- asking you various things. A lot of them are out of date and they should know the answers for. I didn't have any input with them putting these questions. I'm a little bit ..."

And Kerry says:

"They've hinged on -- I -- I forwarded them on to Andy yesterday."

Over the page, Mr Russell-Murphy says:

"Things like the average loan size and things like that, if the AMs are querying that, well, I think probably we need that information sooner rather than later because, rightly or wrongly, I always say that you don't do anything under a million pounds because that's based on what you said previously. Is that still the case or is it a lower figure than that?" Mr Thomson says:

"Yeah, no, it's don't do anything under half a million pounds."

And then, at the bottom half of the page, Mr Russell-Murphy says:

"There are a lot of soft questions that get asked which aren't included in the information memoranda, general questions."

And he says:

"We have quoted figures previously so if it does come up it would be useful to know that." Mr Thomson says:

"We don't do small loans. We don't give out specifics of our loan book."

He refers to a qualitative process as opposed to a quantitative:

"Our loan book is 117 million off seven companies." That's what he says. My Lord saw it said 11 in the accounts, he is now saying seven. Mr Russell-Murphy says:

"Okay, fine. And am I right in saying that your loans are never longer than 12 months? You review after a 12-month period and then they're ongoing, so they may extend more than 12 months but they're never longer technically?"

Mr Thomson says it is roughly right, it is up to three years. I think the signal is bad. Mr Russell-Murphy says "I keep losing", over to the next page. He's doing a WiFi call. It is a dreadful line. He asked Mr Thomson to repeat it and Mr Thomson says it is a maximum of three years.

Then Kerry has another question about the accounts. She wonders a little bit later if there is a missing page and they discuss that. The answer seems to be no. And then, on the next page, they continue discussing some of the notes in the accounts. Then we come back to discussing where they are going to have the meeting with Mr Careless.

I think there is one more bit somewhere in the next few pages, if I can just look for it. The previous page, there was some discussion about the FCA's complaints that we looked at yesterday, and then, on the next page, there's some further discussion about that. And there's one final page I want, but maybe this is the penultimate page. Next page, please. Next page, please. Oh, no, previous page, it must be. I'm trying to look for a bit where he's saying "a grumpy (inaudible)". Previous page, please. Maybe the previous page. There we are [page 31]. At the bottom, he says:

"I had to deal with a grumpy (inaudible) yesterday ..."

And I think, having listened to the call, the phrase is "grumpy Kobus". He says, over the page: "... I think ... you've questioned on a number of occasions ..."

I think he's talking about the ISA issue. And Mr Thomson says:

"... all I can say is that -- that needs to stop. We -- HMRC are happy with us. The FCA are happy with us. I'm happy with us. Lewis Silkin are happy with us. We do, and our track record shows, we've done everything in the bright side of good, for all of our financial products ... so you need to stop doing that, please." And Kerry says:

"There is a very good reason for doing that, which is that our professional advisors have obviously given us different advice to that you have received and we just want to be certain that what we're doing is correct."

And Mr Thomson says:

"It's our product and, with respect, we would carry the can if we did it incorrectly. So it's not good. The fallout yesterday was fairly unentertaining." So, I think that's everything in the call. It is obviously the reference from Mr Thomson to a believability issue about the security valuation of a billion pounds which is significant.

I said that Kerry Graham and John Russell-Murphy can't have believed it, and we see Kerry's summary of the call at <SUR00093580-0001>, where the next day she emails Mark Partridge, copying it to Mr Russell-Murphy and Mr Careless, and says:

"Just to keep you in the loop, we had a call with Andy yesterday where we quizzed him on the up to date management information.

"He is going to put this in writing but on the phone he said:

"Current loans out: £117m.

"Security: £1bn (yes billion, not a typo). "They have moved to a more qualitative business model, they don't lend to SMEs, they lend to mid-cap businesses and they don't lend less than £1m. "The loan terms are 3 years or less.

"He has refused quarterly monitoring in the form of balance sheet and P&L however he will consider providing a statement of assets and liabilities on a quarterly basis. He was vague in not committing to anything but did say he would respond in writing to my email requesting the up-to-date information." The billion-pound figure is obviously incredible. How on earth could the security figure have risen so much in such a short period of time?

Mr Thomson had said that he would respond in writing. He didn't. We can see that at <SUR00154633-0001>. After the commencement of LCF's administration, Kerry Graham forwards to Paul Careless the email that she sent to Mr Thomson on 21 February 2018, and she says:

"The attached is Andy's answers to questions in 2016 and below is a forward of my email to him when the audit came out in 2018, I challenged [him] that these appear to be out of date, there are key inconsistencies from the 2016 communication and the 2018 audit. "He didn't reply, he was always reluctant to put anything in writing, which at the time we put down to him being lazy, but on reflection it seems evasive in the extreme."

My Lord, we suggest that's not something that requires any reflection for it to become apparent. It is something that would have been apparent at the time. I don't think we have seen any suggestion that the contemporaneous view of Mr Thomson was that he was lazy -- a liar certainly; everybody at Surge seems to have taken the view that he couldn't be trusted and was very quick to say untruths, but we haven't seen anything, so far, going through these documents, to suggest that the in-house view was that he was lazy. There are some answers, however, provided by Kobus, and we see those at <MDR00136622>. He provides Mr Russell-Murphy and Ms Baldock with an email with the subject "Answers to AM questions". It is dated 20 March 2018. The attachment is <MDR00136624>. It is an updated version of the 2016 document. Mr Thomson hasn't provided any answers, but Kobus Huisamen has. The first text is about GST. That's not changed. Then lending:

"How many clients have we lent to?" This has been updated to say:

"The audited accounts for 2017 indicated 11." That's obviously an interesting way of putting it. It seems to confirm that Mr Huisamen has absolutely no involvement in any lending operations. His information comes from the audited accounts for 2017 which are obviously, by definition, quite out of date. Then average loan size has been changed. It says: "There is no average loan size. Our loans are bespoke to each borrower based on their operational requirements."

The material about the lack of lending application process is the same. That's not changed. The text about the assets hasn't changed. "What is their value?" It says at the bottom of the page:

"The secured asset values as at the end of February 2018 was £300 million."

Hang on a minute. At the end of February 2018, Mr Thomson said that the security value was a billion. Now Mr Huisamen is saying that it's £300 million. That's a substantial disparity. What on earth is going on? Where does the truth lie?

Then the rest of the document is largely the same. There is a new bit of information right at the end of the document. I think it is new. If we go to the next page. Here we are. This is the additional questions added by Kerry on 21 February 2018. That's right at the bottom on the left. On the first point, Mr Huisamen says:

"We do not always have a first charge. Simply state that we take a charge over all the assets of a borrower."

Then he says:

"LCF's competitive advantage is that we provide bespoke lending to each borrower for his specific requirements, including operational needs and timelines."

That's why he's saying companies would borrow at a high rate. Then he deals with the security trustee point. He also says loans are for three-year terms. And then, in response to the final question, "What is your average lending fee?", he says:

"We charge 1.75 per cent on top of the bond interests and a 2 per cent facilitation fee." That is presumably something that would have given rise to questions of concern. As I said earlier today, the various people within Surge maintain that, at the time, they thought the 25 per cent commission was a liability of LCF alone, that they had no idea that it was being passed on to borrowers. If that's the case, how on earth is this meant to work? LCF pays away 25 per cent at the outset. It is left with 75 per cent. It loans that 75 per cent with a 2 per cent facilitation fee and charges 1.75 per cent on top of the bond interest. There is absolutely no way, mathematically, it could get back to where it would need to be in order to pay out the bond interest and return 100 per cent of principal at the maturity of the bond. It is just mathematically impossible on the description of the business model.

The next topic, my Lord, relates to Thistle. It is something I mentioned yesterday. It is another point on which Mr Careless and Surge Financial rely. I need to take my Lord to a few of the key documents on it in opening.

Thistle are described by Mr Careless in his witness statement as FCA compliance experts in the UK. That's paragraph 55. He says in paragraph 85 that Thistle were a market leader in assessing FCA compliance. Kerry Graham emailed Thistle on 25 May 2018, that's at <SUR00099716-0001>. She is emailing Alex Paschalis of Thistle Initiatives with the subject "To be an AR or not to be an AR", and she says that she requests for him to quote for:

"... a project to review the services we provide (listed below) and comment on whether each one is a regulated activity or not. Ultimately we need to make a decision to be regulated or not. To continue with our AR application with Alexander David Securities or to withdraw (potentially giving up any activity that has been identified as regulated)."

My Lord saw previously this was an issue in the context of the preparation of a contract between Surge and LCF. Macfarlanes had drafted a contract which Lewis Silkin said couldn't possibly be signed because it indicated that Surge would be committing a criminal offence by performing regulated activities whilst unregulated.

She says that they're asking for Thistle to advise. It is a relevant email because she identifies the activities that are being carried on by Surge at this point in time. She provides what she calls a complete list of the activities that are provided to Blackmore and LCF, and it includes:

"Lead generation through digital marketing ... "To a very small extent marketing through press (advert in The Times)."

She says "We do not cold-call". She says: "We do not sell or advise. All calls are recorded and monitored ..."

She then says they design and write copy for bond issuers; they design and maintain an online application form; build and maintain the technology behind the online sign-up process. She says:

"A small percentage are paper-based application forms and sometimes we pre-complete it with an investor on the phone and post it out to them to review and sign. All calls are recorded."

She says:

"Assessing suitability: This is done prior to sending out the IM."

She says:

"We don't do AML or handle cash."

She says:

"Once an application has been accepted we send out welcome letters, bond certificates and terms and conditions.

"We follow up with calls after the first coupon has been paid to make sure they have received and to upsell them on further investment. The further investment is only ever for the company they invested in, we do not do cross marketing."

In other words, when an investor receives the interest, they phone them up and say, "Would you like to use that money to buy some more bonds in LCF?" Then:

"When the bond issuing companies launched IFISAs we telephone bondholders to upsell this.

"Our team send out any client communication such as newsletters, tax statements, GDPR emails ...

"We are the client facing team for the bond issuing company. If you have any question for LCF or Blackmore it is actually our office you are calling and we either answer your question or put you in contact with the person you need at the bond issuing company. "Surge are unknown to the public, we 'act as if' we are either LCF or Blackmore, eg answering the phone, 'hello, you have reached Blackmore how can I help you'." She says:

"Both bonds are currently section 21 but moving quickly towards more regulated structures. We need to consider how the above activities would be viewed when we are providing these services for Blackmore." I think that's the end of it, but can we just check the next page? That's right. So Mr Paschalis of Thistle responds a few days later at <SUR00099945-0001>. He is commenting on Kerry's email, and some of the things he says should be fine, my Lord can see in the middle of the page. There are other things that he says need assessing. For example, just halfway past the midpoint and towards the bottom of the page. Then he provides some questions, which I think are probably on the next page. No. It must be a mistake in my notes.

At <SUR00099954-0001> -- oh, there are some more comments, are there? I think that's the original email. If we can go, please, to <SUR00099954-0001>, my Lord can see that Kerry provides further comments in blue in response, so she's provided a detailed and seemingly fairly comprehensive description of what Surge do. She says at the top:

"Thanks for this. I have answered your comments below in blue, let me know if my answers change the quote at all and I will discuss with our CEO Paul Careless when I see him in the morning." At <SUR00099995-0001>, we see towards the bottom that Mr Paschalis said:

"We can cover all the highlighted points ... and write a report for £5,000."

Ms Graham says:

"That is very helpful, thank you.

"One more thing to help me sell this internally. Can you please answer, what are the consequences of doing a regulated activity when you are not authorised?" Mr Paschalis says:

"It's quite serious: regulated activity when not authorised to do so is a criminal offence. Potential consequences include custodial sentences." Ms Graham responds at <SUR00099997-0001>: "That should do it. Can't argue with that. "I'll be in touch later."

So, Thistle are retained to prepare a report. They turn it around in a very short period of time, less than a week, and we can see it at <MDR00002215>. It is an audit report, it is described as for Surge Financial. They say "Date of visit: 4/6/2018". They have interviewed Kerry Graham. Then, on the next page, there is just the contents. After that, they say that the objective is so that Thistle can review the firm's activities to assess and review the firm's internal processes and operations. Audit scope is set out. Then on the next page, "Limitations". Methodology: "Kerry Graham provided information about the way in which compliance operates within the firm's business." A summary of the items referred to in appendix 1 was reviewed and discussed at length. Then nothing on the next page, but page 6, we have the executive summary: "2.1. Overall assessment.

"The overall grading for this audit is: red. "The firm is carrying out regulated activity while being an unauthorised firm; the firm must cease all regulated activity until it becomes an authorised firm or appointed representative. The firm's management identified that its wide scope of activities likely included some activities that may require the firm to be authorised. Several major breaches/issues were identified; these may require onerous remedial work or lead to censure or disciplinary action, particularly if all regulated activities are not ceased. Failure to address the issues immediately may result in escalation and the issues carrying increased significance with the FCA."

Then 2.2 "Evaluation of regulatory risk": "Given the firm is conducting regulated activity as an unauthorised firm and given the nature of the products and services which it offers, based on the audit findings it is our opinion that it is to be deemed high risk. It is highly possible that the regulator

would pay further attention to Surge Financial Limited and may even consider regulatory action were a visit to take place.

"In order to avoid this scenario, it is required that the firm urgently addresses the issues identified in the observations and required actions outlined below, ceasing the regulated activities until it becomes an authorised firm or appointed representative." I don't think there is anything on the next page. There we are, that is actually the page I wanted, page 7 "Observations, required actions and risk gradings". We can't see, my Lord, on this version, because it is in black and white, but the risk rating, on the right-hand side, is, I think, red in the original. It says:

""Scope of permissions.

"The firm provide many services to two bond issuing companies, London Capital & Finance and Blackmore ... the majority of the services are unregulated activities. "At present, the firm is conducting the regulated activities of 'arranging (bringing about) deals in investments' and 'making arrangements with a view to transactions in investments', both of which it is not currently authorised to conduct and would need to cease these activities until authorised by the FCA. "Conducting these activities without regulatory permission could potentially lead to an unlimited fine and up to two years in prison for the directors. "The firm has applied to be an AR of Alexander David Securities some two months previously ..." We can go to the next page:

"... and had yet to be placed onto the FCA register. "Since the audit, the firm has withdrawn its AR application through ADS and has decided on applying through another firm."

If we just go back to the previous page to finish that off, my Lord can see the action required: "To be able to conduct the regulated activities, the firm must either become directly authorised or go on as an appointed representative of an authorised firm. The firm must stop all regulated activity until either is completed."

The action deadline is "ASAP".

On the next page, there is another red item, "Breaches/notifiable events". It says:

"The firm sometimes assists investors during the application process by precompleting the application form with the investor over the phone; therefore, conducting the regulated activity of arranging the transaction.

"The firm actively sells and upsells additional investments over the phone with previous and current investors; therefore, conducting the regulated activity of arranging transactions."

Then it says:

"In accordance to COBS 4.7.7, the contents of each website must not be communicated to a retail client unless the recipient is one of the following:

"High net worth investor.

"Sophisticated investor.

"Restricted investor.

"The appropriateness test does not assess a client's knowledge and experience in non-readily realisable securities. Therefore, the appropriateness test for both bonds is not compliant ..."

On the right:

"The regulated arranging activities the firm conducts are a breach as the firm is not authorised or regulated to conduct such activity. The firm must cease such activities until it has permission to conduct them. "Thistle has provided a template of an appropriateness test for both bonds that is compliant ..." et cetera.

Then, on the next page, my Lord can see there are other things reviewed, but they don't have the red risk rating, so I don't think, for our purposes, we need to look at them. If we just flip through page by page until we get to page 15, please, we can then see there's a heading "Financial promotions and client communications", and it says:

"The firm conducts phone selling activities to previous investors of the same bond company and phone upselling to investors of a current bond; both could constitute financial promotions and arranging a transaction.

"The firm stated the website and all other forms of marketing to clients are approved under section 21 by an authorised firm."

On the right, it says:

"The firm should cease the proactive phone sales activities until the firm is an appointed representative.

"All financial promotions must be approved by an approved person ...", et cetera.

Then the next page, please. There is another red item "Client onboarding". In the third column, it says: "The firm must not complete any application forms on behalf of the client."

Then, on the next page, please, there is further breaches of the rules that are itemised and the recommendations set out.

Then, finally, the next page, my Lord can see the rest of the items are not red items.

So, obviously a concerning report, a large amount of what Surge does is in breach and they're told that they need to stop doing it immediately.

Kerry Graham emails Mr Careless at <SUR00100478-0001>. She copies the email to Mr Russell-Murphy as well. She says:

"Thistle have completed their review. They went through each activity that Surge undertakes and rated it either: regulated activity or nonregulated activity. "The regulated activities amount to only two main areas:

"1. Completing applications over the phone. "2. Contacting clients to upsell eg 'Dear customer you have a bond, do you know we have launched an ISA ...'.

"We could stop doing these activities or we could become an AR. I propose we become an AR because these activities are valuable in terms of revenue generation. "We discussed the virtues of sticking with Alexander David or pulling the application and moving to LCF. Anecdotally, Thistle do not rate Alexander David. Their concern with LCF is around 'conflict of interest'. "I propose we press the button on becoming an AR of LCF but to mitigate any concerns around 'conflict of interest' by having some third party checks and balances."

In the final paragraph:

"Andy has done a good job of working with the FCA so presumably we would be in good company to become an AR of LCF if we can make sure that any downside is mitigated we could start this process this week?" It's obviously surprising to see Ms Graham say anything nice about Andy. She says Andy has done a good job of working with the FCA and, as far as we can see from the other documents, she didn't think very highly of Mr Thomson at all. Reading this, your Lordship might wonder why she's being nice about Mr Thomson. She's explained her reasons at <SUR00100479-0001>, where she explains to Mr Russell-Murphy:

"Just in case you are wondering why I am being so nice to Andy, it is because Paul is forwarding this to Andy."

Kerry Graham herself also sends an email to Mr Thomson at <MDR00152523>, where she says: "Dear Andy.

"I understand from John that you are in the process of drafting an AR agreement for Surge, this is welcome news.

"Two years ago, our compliance consultants Thistle conducted a gap analysis, they undertook an in-depth review of the activities that Surge undertakes and made sure we were fully compliant. The conclusion at the time was that we were not conducting any regulated activity.

"Our practices have changed recently, particularly with the advent of the ISA and the proactive calling we have started to do to existing bondholders. We undertook a current gap analysis on Monday and the outcome this time is that we are now conducting activities which are within the spectrum of regulation. Much as you have pointed out, now is the time for Surge to become an AR.

"I don't know if John told you what happened with Alexander David? We are still unsure as to why the application was taking so long ..."

And then:

"We view you as the real expert when it comes to operating a robust and compliant practice. We lean on your advice already and we want to make this a more formal arrangement. We have overcome our original concerns about the interconnected nature of becoming an AR of a client. Thistle provided advice that it is perfectly acceptable so long as we cover off any conflicts of interest with good process and full disclosure.

"In short, we trust in your professionalism and want to come under your wing. We feel a sense of urgency to do this quickly now that we are aware that some of the activities we undertake sit towards the regulated end of the spectrum. Please can you let me know what terms you would like for the AR agreement and what reporting you will require from us on an ongoing basis?" Then I should mention as well, while we are here, this is 6 June 2018. In the final paragraph, she says: "Finally, I know you have said to Paul that you are supportive of engaging with Blackmore, the retail prospectus sign-off is imminent but the brochure and website (not the prospectus itself) will need to be signed off for S.21, can we put this work your way? Would you be able to get the ball rolling with Pat ASAP ..."

My Lord will have seen Mr Careless says that the payment of half a per cent of new bondholder monies to Mr Thomson in 2016 was a consultancy fee for work that Mr Thomson was doing for Blackmore. It seems to us to be a nonsensical suggestion. Why on earth would a consultancy fee for working for Blackmore be half a per cent of new bondholder monies? In any event, this document

here suggests that the suggestion that Andy should do some work for Blackmore comes rather later in the day in terms of the chronology.

But, in terms of the rest of the email, we see more of the same, in terms of Ms Graham flattering Mr Thomson and telling him that she views him as the real expert. We know those are not the real in-house views at Surge. She seems to be flattering him in order to get him on side. They need him to proceed with making Surge an appointed representative so that the breach of the financial regulations issue is cured. It may also be that she was trying to set out in writing some context for the application to create a document that could potentially be relied on in future if anything were to go wrong, if anyone were to ask why Surge didn't become an AR of LCF.

There is certainly a hint of that explanation at <D7D9-0007347>. This is a WhatsApp conversation between Mr Russell-Murphy and Ms Graham. On the next page, she says:

"I know you are sorting AR contract with Andy. Only reason I sent that email just now was for a record of the context for the application."

So, it seems to have been sent in order to provide a record of the context, as she calls it. Mr Russell-Murphy says:

"Okay."

He then asked:

"Did Andy respond to your email earlier?" She says, "No". He says:

"That's a shame, he's quite bad at replying to emails. Let me know if you want me to give him a nudge."

She says:

"I wasn't expecting him to reply quickly (to me) but I'll give him a call tomorrow afternoon. "You've got the matter in hand, the AR contract anyway, and that's the main thing."

He asks:

"Did I miss anything with Paul earlier? Any big changes on the horizon??"

She says:

"The suggestion to sell to a Spencer related company/LCF was discussed and is currently floating around as a good plan. Totally dependent on Spencer coming up with big money. We ask for £50m and accept £30m but must have more than half of it cash up front and rest paid in a timely fashion. No shares in oil or anything just cash.

"Therefore the problem is can Spencer raise that cash.

"The deal makes sense for him because he can control deal flow to Andy and/or LCF don't have to pay away 25 per cent."

Mr Russell-Murphy responds to her comment asking whether Spencer can raise the cash by saying: "I would have of thought so. 2 months worth of LCF money!"

Which is obviously a rather telling comment. Mr Russell-Murphy is under the impression that Mr Golding could just freely use two months' worth of new bondholder money from LCF to do what he

likes, and he assumes that Ms Graham is equally aware of the reality of the position. So, it seems certainly from his perspective that that's a matter of common knowledge between them.

She replies:

"LCF can't use investor money like that (Andy does follow the sentiment of the IM I believe)." Now, either Mr Russell-Murphy's assumption about Ms Graham's knowledge was wrong, and she didn't know that Spencer Golding had free and ready access to new bondholder money at any time; or she did know about that, and Mr Russell-Murphy was right in proceeding on the basis that that was a matter of common knowledge and understanding between them, but she was extremely concerned about him having made a comment like that in writing and wanted to, as it were, correct the record by contradicting what he said, and so she replies: "LCF can't use investor money like that (Andy does follow the sentiment of the IM I believe)." The reason, I would suggest, that the latter explanation is the correct one is because she is, of course, aware of the payment of 1 per cent of new bondholder monies to Mr Golding, as we saw yesterday. There nothing about that in the information memoranda. It is obviously an egregious breach of the terms on which LCF is taking in the monies.

She knows that Andy does not follow the sentiment of the IM. So it seems, to us, that, in responding like this to Mr Russell-Murphy, she is not wanting to leave unanswered, on the record, a comment that would so clearly give the game away.

And he replies:

"It makes sense. Okay, thanks for the update." She says:

"He could lend the money to a company that can provide security and that company could buy." Mr Russell-Murphy says:

"Yes that's what I was going to say. It's possible."

Then over on the next page:

"Lots of food for thought. I like the idea." Mr Russell-Murphy says:

"Its got a lot of potential. I'm not sure how long we have left in the section 21 market. It certainly makes sense."

Ms Graham says:

"Absolutely. Also if they go fully regulated they can't pay high comms anyway. If they go bust we want to be well out of it.

"Leave now on a high.

"Put the money in to all of the other businesses and grow them.

"The staff stay on and carry on as usual. They aren't exposed to the risks that directors are so they will be fine."

Mr Russell-Murphy says:

"If we continue to do the account management without the 25 per cent comms we could still charge basic running costs and yes focus on the other businesses." Ms Graham says:

"The idea was that he [Spencer] takes the staff as part of the sale.

"This will help him get a regulated bond. He has control of the servicing side."

And then they continue having their discussion. Then at <MDR00154892>, this is now almost two weeks later, Ms Graham emails Mr Thomson and Mr Huisamen, copying Mr Russell-Murphy and Mr Careless, with the subject "Urgent" and she says:

"Hi.

"As discussed, we recently commissioned a gap analysis report from external consultants Thistle. Today we received the report and the results are concerning."

I can only assume the chronology is that Thistle visited on the 4th and gave an oral report and then, by this point, the written report that my Lord has seen has been received. She says:

"There are two areas they identify as being regulated activities that we are not regulated to perform, ie:

"1. Completing application forms on the phone with an applicant and sending to them to review and sign. "2. Active selling eg when we contact existing bondholders to promote the ISA.

"These come under 'arranging deals in investments' and 'making arrangements with a view to transaction in investments'.

"The recommended action is that we cease to conduct these activities until we have become an AR. We will of course action this immediately.

"There will be a financial impact as a result of this. I would be speculating to put a figure on it but our fear is that this could be significant and we would like to be up and running again as soon as possible.

"Kobus can we please ask for your assistance to complete the DD today, would that be possible?"

This is a reference to DD that Kobus wants to conduct on Surge before agreeing that Surge can be an AR of LCF. She says:

"Then we could sign the agreement and submit to the FCA. John is available to come to Eridge to go through anything needed.

"All being well, we will be an AR within a week and can recommence these activities. There would have been limited downtime in which LCF would experience a reduction in investment."

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

MR JUSTICE MILES: Yes. Five minutes.

(3.15 pm)

(A short break)

(3.20 pm)

MR ROBINS: My Lord, we were looking at <MDR00154892>, where certainly, if we take it at face value, Kerry is saying that they accept what Thistle has said is accurate. It's a correct analysis of the position under the applicable financial regulations, and they are going to immediately suspend those operations which are found to be non-compliant.

But, as we will see, it is always unwise to take emails that you find in this case at face value. We see at <D7D9-0007397>, in the middle of the page, Ms Graham emails Mr Careless and Mr Russell-Murphy to say, in the second paragraph:

"Ultimately it is a regulated activity whether you add a disclaimer or not.

"Still need a reply to my email saying they have taken advice and because we are contracted to act as if we are LCF, we are indeed covered under their permissions.

"To help them, I will reply to it stating that possibly Thistle didn't comprehend that we were acting as if we were them and this must be the reason for confusion."

Mr Careless first replies and says, "We can discuss this morning."

Mr Russell-Murphy says:

"Kerry, when I'm in Eridge this morning I will get them to reply as noted below by you."

It's obviously not something that Thistle had misunderstood. Ms Graham, as my Lord saw, had explained that Surge's employees would answer the phone, "Hello, LCF" or, "Hello, Blackmore", and that Surge was essentially invisible to members of the public, that Surge acted as if it was the bond-issuing company. But she's suggesting that she needs a reply to her email and that, to help them, she will send an email suggesting it's possible that Thistle have misunderstood the position, and Mr Russell-Murphy says he will get them to reply.

The first reply we see is <MDR000155053>. Mr Huisamen says:

"Kerry.

"I've gone through the report.

"You have not relayed the correct information regarding LCF. If you did, their report would have been fundamentally different. As it is now, their report does not reflect the reality of the operations. Where I can only speak for the LCF part of your services, I can confirm you're not in breach of regulations." Kerry then sends a message to Mr Russell-Murphy, <D7D9-0009137>. This is a long series of WhatsApp messages. Page 5 is the page that we need. About two-thirds of the way down the page, Ms Graham says: "Kobus sent an email saying he confirms we are not in breach of regulations. Whilst that is helpful, he hasn't explained it at all. Would you try and get a bit more info? If the reason we are not in breach is because we are an agent acting as them and that means we come under their permissions. That would be good to know."

So Mr Russell-Murphy does have a go at getting a bit more explanation. Mr Huisamen sends a further email at <MDR00002213>, where he says, just above the middle of the page:

"In furtherance of the email below, just to clarify that you're not in breach:

"1. The investor journey is with LCF and not with Surge.

"2. As a subcontractor Surge is representing LCF, not itself ...

"3. LCF has confirmed this with our lawyers Lewis Silkin in the past.

"4. In addition, LCF is providing compliance oversight ... procedures."

And then, at the top, he says:

"Clarification:

"When an AM is interacting with an investor/client, he/she states that he is calling from LCF and on behalf of LCF.

"This is a representation of LCF as much as any employee would.

"This is why we have compliance oversight of all such interaction."

That doesn't seem really to deal with any of the points made by Thistle which focused on the substance of the activities being carried out by Surge. The reasoning behind what Mr Huisamen is saying is rather difficult to follow. But he's expressing the view that there is not a breach.

Kerry responds to him at <MDR00155397>. She says: "Thank you for the clarification which is most reassuring.

"Based on this we will carry on as we are." So, notwithstanding what she said in the email that my Lord saw earlier about suspending business, she managed to get some emails out of Mr Huisamen saying, "Actually, you are not in breach" and she says, "Based on this, we will carry on as we are". It seems to be another example of "His neck on the line, I'm happy enough" attitude.

The compliance experts, Thistle, have said there is a major problem. The solution seems to be to get a short email from someone at LCF disagreeing and then carry on regardless, the money is too good to do anything else.

We then come back to LCF 2 again at <SUR00106992-0001>. They are discussing, as my Lord can see from the subject, Westminster bond, and Mr Russell-Murphy says to Jo Baldock and Mr Careless: "This will be now a new company and will not be regulated, how does Andy propose offering loans without the regulatory permission? Will he appoint WCF as an AR?

"Whilst the company is waiting to become directly authorised it will need as much creditability as possible, with this in mind we should propose he/you applies for the company to join the NACFB and ASTL." I think those are some sort of trade organisations: "Simon HK said they would consider putting some capital onto the WCF balance sheet ..." This is a familiar story:

"... is this happening, if so how much? "WCF needs to issue a loan to SHK/SG prior to going live and take on some decent security. This way the AMs can talk about XXXX amount of security protecting the investors."

This really is LCF 2 and, my Lord, it reveals an understanding that Westminster Corporate Finance is going to be making loans to Hume-Kendall- and Golding-related entities, just as the original LCF has done. He asks who the new company partners will be. He says:

"Andy is away at the moment ..." and that's why he hasn't responded to the email. So that's in the middle of August.

A couple of weeks later, <SUR00149321-0001>, Mr Russell-Murphy emails Mr Careless and Ms Graham and Jo Baldock about the Westminster bond and says he's spoken to Andy and Spencer to "check we're all on the same page as far as the bond offer is concerned": "The original reason for setting up WCF was to have a back-up to LCF and a second pot for collecting funds. This has evolved and the IM received on Monday night doesn't reflect that.

"I have sent an email to Andy and Spencer with my concerns and with some suggestions to correct the issues.

"The main problem is WCF is pretty much an exact copy of LCF, it has the same director noted at Companies House (Andy) and the same compliance partners -- GCEN, LS, Oliver & Co, GST et cetera. LCF is also the section 21 sign-off partner. "In addition to this, the other director Ian Sands has 17

appointments with other companies which are mainly linked to LCF and have borrowed money from them -- Lakeview, Waterside, Prime Resort Development, et cetera.

"If LCF was to run into problems in the future, WCF is so closely linked I can't see how it will not be affected.

"To continue with WCF, we need to do one of the following -- either set [up] a new Plc which doesn't include Andy and Ian Sands, but with a new board which are not closely linked to LCF. In addition to this we should seek different corporate partners and make WCF more unique.

"Or embrace the fact that the companies have links and make this a positive rather than a negative, ie WCF will be a sister company to LCF and benefit from their success.

"I have arranged to speak with Andy and Spencer later to review the situation and will report back afterwards."

A number of points on this. First, obviously, he is confirming, as I said previously, that Westminster Corporate Finance was, in a very real sense, to be LCF 2 and he's concerned that the similarities would make it practically difficult for WCF to step in and take over if LCF were to run into problems in the future; but, secondly, the email reveals a considerable degree of awareness about LCF's borrowers. Mr Russell-Murphy knows that Lakeview, Waterside, Prime Resort Development, are all LCF's borrowers, and he knows the connections between them. He mentions, for example, that Ian Sands has 17 appointments with other companies that are mainly linked to LCF.

Mr Russell-Murphy forwards this to Mr Barker at <SUR00194334-0001> [sic].

MR JUSTICE MILES: Sorry, can we just stick with that document? Right. Sorry.

MR ROBINS: My Lord can see this is the end of August. Ultimately, Westminster Corporate Finance is not set up and launched in time to take over from LCF when the FCA raid LCF's premises on 10 December. It seems, to us anyway, to have been a pretty madcap scheme from the outset. The idea that those behind LCF just waltz away from disaster in the event of its collapse and move on to a carbon copy doing the same thing without regulatory intervention closing it down immediately does seem rather optimistic. But it is not something that happened. They didn't get their act together and launch it in time, in any event, so it never went anywhere. But it is still an important part of the story. It shows an awareness of the very real risk of regulatory intervention, shutting LCF down, it shows that there were real concerns that LCF had no long-term future and, therefore, there was a desire to have a back-up bond and considerable work was done to that end. My Lord knows that the FCA raided LCF, as I said, on 10 December 2018. On the same day, we see the reaction of Mr Careless and Ms Graham at <SUR00115269-0001>. This is a WhatsApp communication between them. My Lord can see at the top:

"Kobus called to say we have to close the LC&F website ..."

Mr Careless says:

"I can't have even one day off ha ha!!" Ms Graham says:

"I know! Anyway, we can deal with it. All will be dealt with as required."

Then Mr Careless says:

"What do you think has happened."

And Kerry says:

"I have a theory. The retail prospectus put them more on the FCA's agenda. If I was the FCA, I would have a massive issue with only 11 borrowing companies. Then at the same time they have a file on us because they don't understand how much work we do for 20 per cent ..."

She's referring to the Blackmore fee:

"Too much money means they think we are related to Blackmore and now they think the same re LCF and LCF is suspicious because only 11 borrowing companies doesn't look good."

My Lord can see she's talking about the Ernst & Young accounts. That's her comment on the Ernst & Young accounts: the FCA would have a massive issue with 11 borrowing companies, the FCA would be suspicious because only 11 borrowing companies doesn't look good. She thinks that's why the FCA have ultimately gone in and shut them down.

Then Mr Careless says:

"They've mentioned the feeder sites and asked to ensure they are removed."

I think he's talking about things like BSR. She says:

"Remove LCF from them or shut the feeder sites down?"

He says:

"Remove off."

"LCF."

She says:

"That's okay. Already done."

Then <SUR00152773-0001>. This is a couple of days later. It is another WhatsApp exchange between the same two individuals. I think it must be the next page. It is the fifth from the end, next page:

"Assuming LCF come through. We will look at this as a blessing. A controlled, managed exit for bondholders. No more business with people we don't 100 per cent trust or like. New clients, trusted and liked. Onwards. Also a renewed appreciation for the limitations of the market. No complacency. All about the pivot." Mr Careless agrees:

"100 per cent agreed."

It is a relevant comment because it's consistent with the theme we have seen before, she described LCF as "A company we don't trust", she is making the same point here, they have never trusted Mr Thomson or Mr Golding. The final topic to cover today is a self-contained topic relating to Mr Careless, Mr Golding and Mr Russell-Murphy. We can pick it up at <D7D9-0007627>, where Mr Russell-Murphy, on 29 August 2018, is emailing Jerry Eastell of View Property Group and Matt Hodgson of Surge, copying Mr Careless, to say:

"I have just spoken with Spencer and he said the talks with Prime Resort Development went really well and they are keen to include Brading Marsh within their portfolio. He said he will confirm the purchase price to them next week once he has completed his DD. "We now need to secure a purchase price from the vendor ASAP, what time is the agent coming into the office."

So my Lord can see from this that there is some land known as Brading Marsh. Spencer has said that Prime Resort Development want to acquire it. It's in the hands of a vendor and they need to secure a purchase price from the vendor ASAP.

If we then go to <D7D9-0007646>, at the bottom of page 2, we see that Mr Russell-Murphy is asking Matthew Hollywood of Mishon Mackay, who are acting for the vendors, to copy him in to all negotiation communications between the vendor and VPG, which is View Property Group. We can see from this that the person or entity purchasing Brading Marsh from the vendor will be, at this point, View Property Group.

On the left-hand side, Matthew Hollywood of Mishon Mackay says:

"Morning both -- yes, hopefully there is lots we can talk about going forward.

"I've just spoken to the client on the Isle of Wight site and he has said that any offers starting with a 2, based on a swift transaction, will be looked at. He was slightly noncommittal to a figure but I suspect if you make a formal offer [somewhere] in the early £2s then I can convince him to revert with a figure at which he will sell.

"Let me know. But I suspect by the tone of the conversation we can thrash out a figure fairly quickly."

Then, at the top of the page, my Lord can see that Matt Hodgson of View Property Group -- we saw on the previous email he is also of Surge -- is emailing Matthew Hollywood to say he's spoken to Mr Russell-Murphy and they are willing to formally offer £2.25 million unconditionally based on a fast transaction:

"... as stated if possible we would like to purchase the company, if the company has made losses up to this point in getting planning this would also make the purchase more attractive for the balance sheet element." So instead of buying the land, they will buy the company that owns the land for £2.25 million. He says: "We can prove funds on acceptance and we are ready to proceed to completion within a month ..." Then at <D7D9-0007645>, at page 2 in this WhatsApp chat, we can see that Mr Russell-Murphy is keeping Mr Careless up to date on this topic. He says: "Just received an email from Isle of Wight agent, we will definitely get the site for under 3m. Will let you know once we have settled on a price.

"We've just been offered Isle of Wight for 2.75m, it's the first round of negotiation, I will try and get them down to 2.5. At this price we can set a realistic resale and still make a bundle of cash." And my Lord has seen that the purchaser in the resale is envisaged to be Prime. Mr Careless says: "Good news. We can build them an amazing bond if we get the right deal."

Mr Russell-Murphy says:

"Yes definitely, I will make sure SG knows that when I meet him. That way we can guarantee our cut without any funny business. Just had a long chat with Simon HK re WCF. Will update you properly in the morning." Then at <D7D9-0007663>, Matt Hodgson, I think, at the second page, says -- the bottom:

"I have just spoken to John and he has worked hard all day to push them up to £2.5m, so we can put forward that offer."

Then above that, Matthew Hollywood of Mishon Mackay says:

"Morning -- good news the £2.5m has been accepted. This is based on a swift transaction and agreeing terms on the aborted cost element", and so on. Matt Hodgson, on the bottom left, asks for contracts to be made out to View Property Group Limited on an assignable basis.

We can then see the heads of terms at <D7D9-0007796>. It is heads of terms. The property is described as Isle of Wight Eco Reserve Limited, including land at Brading Marsh. The purchaser is said to be Surge Financial Limited -- FAO Matt Hodgson. The price is £2.5 million.

Then at <D7D9-0007753>, there is another WhatsApp exchange. On the next page, my Lord can see that Mr Careless asks Mr Russell-Murphy:

"Mate please tell me we are getting this IOW deal. "I want a 500k heli next year."

And Mr Russell-Murphy says:

"We are getting it! Spencer has been tied up all day. Called him 3 times, he picked up and said everything is sorted and will phone later. Still waiting ... will call him first thing now. Will update you in the morning. This deal is getting closed!!" He says:

"Also St Catherine contract has just arrived!" And Mr Careless says:

"YES."

At <D7D9-0007803>, that's another WhatsApp exchange. On the next page, Mr Russell-Murphy emails Mr Careless to say:

"Just got the price from Spencer, they are putting it through at 5. We make 2.5m."

Then there's a thumbs-up emoji. My Lord can see they are buying the property for the 2.5 million that we have already seen, then onselling it for £5 million, which is why they make £2.5 million, that's the profit on the sale. Mr Careless asks:

"1.25m???"

And Mr Russell-Murphy responds:

"Yes our share will be 1.25m Spencer gets 1.25m." So the profit on the transaction in the sum of £2.5 million will be split two ways -- half to Mr Russell-Murphy and Mr Careless, half to Spencer Golding. Then Mr Russell-Murphy says: "Just getting the budget from Andy for the next few months. We will have to give LCF a big push." That's because LCF is obviously going to be providing the new bondholder money to Prime so that Prime can buy this asset for £5 million. Mr Careless says "YES", and then he says it again, "YES", with quite a lot of exclamation marks. Mr Russell-Murphy says:

"Andy just text to say he is doing the calculations and will send me the figures later today. "I'm not sure if he knows we are involved, best to keep quiet at the moment until SG clarifies. "Spencer is meeting us Monday before we get together with everyone. We will have 30 minutes with him to talk about completing the Isle of Wight deal." After some discussion about Mr Careless being in the bath, four up from the bottom it says:

"Gross figures to cover LCF's current commitments at the end of Oct 7m and Nov 6.5 million.

"We then need to add a further 2.5m + comms for those months to complete at the end of November." So they need to add to the existing commitments of LCF 2.5 million plus comms for October and 2.5 million plus comms for November to complete at the end of November. They need to ensure that LCF raises an additional £5 million net of comms so that LCF can provide that 5 million

to Prime at the end of November so that Prime can buy the property to enable the £2.5 million profit to be split between Mr Russell-Murphy, Mr Careless and Mr Golding. Then <SUR00112146-0001>. Mr Careless is emailing Mrs Venn. She has now changed her surname: "I couldn't reply yesterday as I was driving. "Achieving LCF's short-term goal is our mission. Why? Because it triggers Isle of Wight deal, worth over £1 million to us.

"As soon as Craig/Jo are happy we are on target we will switch back."

My Lord can see what the switching they are talking about involves. It's, as Ryan Holdaway puts it towards the bottom of the page:

"Pushing BIR [Best ISA Rate] traffic to LCF ..." They're trying to give LCF a boost so LCF has more money to pay 5 million to Prime to trigger the Isle of Wight deal. <D7D9-0008032>. We see that John Russell-Murphy agrees. He says that switching LCF, at the top, with BIR sounds like a good plan: "... maximising LCF will also help with the Isle of Wight deal."

At <D7D9-0008034>, we can see confidentiality and exclusivity has been completed.

Then <SUR00114440-0001>. This is an exchange of messages between Mr Careless and Mr Russell-Murphy. Mr Russell-Murphy says:

"Morning Paul. I'm heading to Pulborough first thing to pick up new car, then back to Eastbourne to meet a trader who is taking the old one will then work from Eastbourne this afternoon. My focus as always is the Isle of Wight. Matt is meeting Hamed at 10 to keep him on track. I will speak with Spencer again and make sure we are making daily progress. Shout if you need anything. Catch you later."

Mr Careless says:

"Morning Johnny ... exciting ...

"Isle of Wight is your focus. That's paying the downpayment on my new heli I'm getting. I'm 100 per cent counting on you getting it over the line. "210 leads for LCF yesterday due to our new feeder site design."

Mr Russell-Murphy says:

"Get that heli ordered. I will get Spence on the phone with us tomorrow for an update. You will feel a lot more confident. Catch you later." Mr Careless says:

"When do you think we will complete?"

Mr Russell-Murphy says:

"We are aiming for an exchange by Friday, 14th December. Completion will probably be within 30 days. Spencer might push for a longer completion if we are not hitting the numbers. I keep pushing him on figures but he is always vague. Once we've exchanged we are home and dry. I will do my best to complete mid Jan."

Then <D7D9-0008061>. We see Clare Rooney of Cripps, the solicitors for the vendors, say:

"Our client has heard from the agent that your client would like to exchange on this transaction on 7 December and complete on 14 February." That would be 2019. Then <MDR00192564>. On the bottom of the page, there is an email from Terry Mitchell, and he's saying:

"Hi Alex.

"I have discussed the acquisition with Andy (LC&F) ..."

We can see, at the top right-hand side, the subject is "Brading Marsh, Isle of Wight":

"... and we are hoping to meet the requirements of the vendors to exchange next week with a 5 per cent deposit for a mid-February completion of the purchase price of £5 million."

As I said, Prime are going to be buying this for £5 million, using money from LCF. On the left-hand side, Alex Lee asks Mr Thomson to discuss. He says: "I am assuming they don't need LCAF funding for the deposit? Should we be issuing a term sheet and security requirements alongside enquiries?"

Then at <MDR00193482>, on the next page, we can see that Michael Sheridan, who is acting for Prime, provides a due diligence questionnaire. He says: "This has already been sent to the solicitors acting for SPV5 ..."

That's now the new intermediary. It's replacing what was going to be View Property Group: "... but the answers should come from the solicitors acting for Isle of Wight Eco Reserve Limited who are the company that hold the property. The questions are wide ranging and I anticipate that some of them will be inapplicable."

My Lord can see the names of one of the relevant entities has changed. The property is still held by Isle of Wight Eco Reserve Limited. That company is now going to be purchased by a company called SPV5 for £2.5 million.

Then what is ultimately intended is that Prime will buy SPV5 for £5 million, giving rise to that £2.5 million profit that can be split between Mr Russell-Murphy and Mr Careless, on the one hand, and Mr Golding, on the other.

Then, at <SUR00114868-0001>, on the second page, my Lord can see that Terry Mitchell, on the bottom left, is forwarding an extract from an email from Prime Solicitors. The email says, on the right: "Hi Terry.

"I would confirm that I have received some paperwork mainly relating to title and planning from the seller's solicitor.

"As to the transaction the intention is that SPV5 will acquire the shares in IOW Eco Reserve Limited and that Prime Resort will then acquire the shares in SPV5." I should mention, my Lord, the full name of SPV5 is View Property Group SPV5, but everyone refers to it as SPV5:

"Thus the drafting of the SPA will be firstly for the acquisition of the shares in IOW Eco by SPV5 and then secondly a further SPA for the acquisition by Prime Resorts of the shares in SPV5. As you indicate exchange to take place as quickly as possible (preferably this Friday but I will definitely not be in a position to have finished all due diligence on the papers by then) and for completion preferably in February 2019 both SPAs will need to have a simultaneous contract binding date and a simultaneous completion date. Usually contract and completion take place at the same time ...", et cetera. Then he goes on to say, in the third paragraph from the end:

"Just as a matter of interest the solicitor for SPV5 will not disclose the solicitors for IOW Eco or have the name of the seller on one of the enquiry forms. The only reason I can think of is to avoid us going direct to them and cutting out the SPV5."

Well, yes, obviously, if the underlying asset is available for £2.5 million, and you found someone who will buy it for £5 million, you might not want to short-circuit that. He asks:

"Do you by any chance have an independent valuation of the property you are buying."

MR JUSTICE MILES: It seems as though Mr Mitchell then forwards that advice to Mr Hodgson.

MR ROBINS: Yes, of View Property Group.

MR JUSTICE MILES: Who then sends it on to Mr John Russell-Murphy.

MR ROBINS: Yes. Well, my Lord saw Mr Hodgson also works for Surge. View Property Group was Mr Careless's property business. Matt Hodgson seems to have been one of the principal employees of View Property Group. I think he's since been convicted of being part of a drugs gang. He forwards it to Mr Russell-Murphy.

MR JUSTICE MILES: I'm just thinking about that for a moment. So, Mr Mitchell gets advice from his own solicitor and he then sends it to -- in effect, is this right, Matt Hodgson is SPV5?

MR ROBINS: Yes, the other side of the transaction. So then <D7D9-0008137>. Hamed Ovaisi of SO Legal, who are acting for SPV5, are providing Michael, a Mishon Mackay gentleman, with replies to the enquiries in relation to IOW Eco Reserve, and he says:

"In the meantime, can I have an SPA for the purchase of IOW by SPV5 and SPA for your client's purchase of SPV5.

At <MDR000196065>, we can see Michael Sheridan is now emailing Mr Mitchell with the subject "Isle of Wight". He says:

"I have drafted the SPA apart from the index which I will finish tomorrow ... the first draft is attached as to the sale of the shares from IOW Eco shareholders to SPV5. It should not be too difficult to draft another SPA to transfer the shares in SPV5 to Prime Resorts or whichever group company is going to buy the shares once the SPA is agreed by IOW Eco solicitors whoever they are."

He comments on the agreement. He says in the fourth paragraph:

"As to the basics of the draft it provides for the sale of 1,000 shares by IOW to SPV5 at an undisclosed price. The price is not a concern as the agreement between Prime and SPV5 will indicate the price being paid by Prime. A deposit which I understand will be 5 per cent will be paid by Prime to SPV5 and I anticipate that such deposit will have to be released to SPV5 so that they can fund the deposit being paid to IOW by SPV5."

He mentions loss of the deposit.

Somewhere I seem to recall a reference to Ian Sands. There it is on the right-hand side. Terry Mitchell has emailed him before to say Ian Sands is likely to be the 100 per cent shareholder.

Ultimately, the transaction runs into difficulties because, of course, the day before Mr Sheridan sends this email, the FCA raids LCF's premises and LCF's operations are shut down, to all intents and purposes. But we haven't covered this part of the story in any detail.

Terry Mitchell seems to think, or at least tells people, that Prime is going to be able to refinance their debt with LCF, that they have other investors who will come in. Of course, it never ultimately goes anywhere. The Prime companies go into administration, but for a while Terry Mitchell is telling people that Prime has access to other sources of funding and, in early 2019, he is still saying that he

can go ahead with the Isle of Wight deal and buy SPV5 for £5 million, notwithstanding the collapse of LCF.

We can see some of that, for example, at <MDR00205268>. That's an agenda for a Prime board meeting. It has still got Isle of Wight, in the middle of the page, in the "Pipeline". So Prime is sort of operating as business as usual, notwithstanding the fact that its sole source of funding has dried up and ultimately there is never going to be another one. But it is acting as business as usual at this point and it is still saying it is going to go ahead with the Isle of Wight deal.

At <SUR00117270-0001>, there's an exchange between Mr Careless and Mrs Venn. Towards the bottom of the first page, she says:

"IOW was a massive oversight. I'm furious an SPV was set up with Elten as a director and you as a shareholder. Ridiculous!"

It's not clear what she is referring to because SPV5 was the company that we have seen mentioned. Mr Careless was a director of SPV5. Mr Barker was not a director of SPV5. But the shares in SPV5 had been allocated 25 per cent to Mr Careless, 25 per cent to Mr Russell-Murphy and 50 per cent to Mr Barker as a nominee for Mr Golding to facilitate the anticipated profit share arrangement of the £2.5 million profit. Presumably, that's what Mrs Venn is referring to. Then at <D7D9-0008736>, Mr Russell-Murphy tells Mrs Venn, in the second paragraph:

"Matt and I are meeting Terry Mitchell from Prime Resorts on Friday about the Isle of Wight ..." So it's still thought that it's potentially going ahead. Then at <D7D9-0008767>, there's another WhatsApp exchange. Mr Russell-Murphy says towards the bottom, three up from the bottom:

"Just finishing the meeting with Prime, I've got great news, will call in five minutes.

"So happy about the Isle of Wight. It will really help Surge and take the pressure off."

Mr Careless says:

"It will really help us. Losing 350k is scary. But we will get back when we get these new clients onboarded."

Then <D7D9-0008887>. Can we look at the next page, please?

MR JUSTICE MILES: The last one looks like --

MR ROBINS: Can we look at the next page, please. Here we are. We can see at the top there's been a delay with the promised SPAs. This is Matt Hodgson saying "We are still aiming for completion by the 28th of this month". So he still hopes it can go ahead. At <D7D9-0008849>, and the next page, Mr Russell-Murphy sends a message to Mr Careless three up from the bottom:

"I was on the phone to Terry Mitchell from Prime when you sent this. He said he is pushing his solicitor to complete for the end of the month, bloody good news." Then --

MR JUSTICE MILES: Are there any more documents on this because, as I said before, I have got to rise --

MR ROBINS: Absolutely. I'm happy to --

MR JUSTICE MILES: Let's stop there --

MR ROBINS: -- stop there.

MR JUSTICE MILES: -- because I want to know what the position is about next week as well. You are going to have a bit more time on Monday morning.

MR ROBINS: Yes. I really don't anticipate going beyond the shorthand writer's break.

Housekeeping

MR JUSTICE MILES: Where have we got to with the defendants? Perhaps Mr Warwick can let me know?

MR WARWICK: My Lord, there has been some communication on this side. The current position, as I understand it, is as follows. Allowing Mr Robins from 10.30 onwards -- I wasn't aware that it would be up to the transcriber's break; not that that matters, but that's helpful to know -- then I will open for Mr and Mrs Hume-Kendall. The initial plan was for that to be from 2 pm, to allow time, but I can start earlier than that, for efficient use of time, if Mr Robins finishes early, and to continue into Tuesday morning. I think I need about a day.

Then Mr Ledgister, for the fifth and sixth defendants, needs about an afternoon, and that would be Tuesday afternoon.

I have just been informed -- or recently been informed, anyway, looking back -- that Mr Sedgwick doesn't want to open orally, and would rather rely on his written submissions, and that leaves, therefore, Wednesday for the seventh and ninth defendants to start, effectively in person.

I haven't heard, or those instructing me haven't heard, from Mr Russell-Murphy, though I gather a communication has been sent to him, at any rate, but at least that's a placeholder for now. Being in person, my Lord, one suspects a bit more time may be needed.

MR JUSTICE MILES: My understanding had been, and I may have misunderstood this, that they have not participated in these proceedings for a good long time, including the fact there is no witness statement.

MR WARWICK: Yes.

MR JUSTICE MILES: Did they give disclosure?

MR ROBINS: My Lord is right. They gave disclosure and haven't participated since. There have been no witness statements, no written opening submissions, and, of course, we would have concerns about them subverting the trial process by turning up and giving extensive evidence-in-chief disguised as oral opening submissions.

MR JUSTICE MILES: That's something the court would have to control. But, at any rate, I hadn't understood that they were expected to participate. But, of course, if they want to come and do so, then I will hear them, as appropriate.

MR WARWICK: If I could qualify what I'm saying with that just a little by the fact that I'm mindful, obviously, as a member of the Bar, he is a self-represented person, and I think, quite rightly, an attempt has been made to contact him about this, which I think is only fair to someone in that position. But I know nothing beyond that, I'm afraid, my Lord.

If some of this sounds a little ad hoc, it is because there are quite a few people involved and I'm collating information. But that is something, perhaps, that one or other of us could report to you on on Monday morning, when we have heard more.

MR JUSTICE MILES: That would be helpful.

MR WARWICK: I know that Mr Mayes, or, rather, the Slade -- Mr Mayes himself, I think, wants, as foreshadowed yesterday, his opening to be sort of put back a bit later, to resolve further funding issues, and so, were he to be put in on Thursday, that would complete the picture, I appreciate with the sort of grey shadow of uncertainty about the seventh and ninth defendants still remaining.

I'm afraid, my Lord, I appreciate some of this is a little inconclusive, but I'm pulling together information from multiple sources.

MR JUSTICE MILES: I appreciate that. Your job is to represent your client, but it is helpful to have some liaison of that kind.

MR WARWICK: Yes. At the very least, my Lord, what is known at the moment is that Monday will be Mr Robins, followed by me, and me going over into Tuesday, and then Mr Ledgister on Tuesday afternoon. That may suffice for now, my Lord, until more is known on Monday morning. That's the position as I'm aware of it, as I stand here.

MR JUSTICE MILES: Would you like to say anything at this stage about your client's position?

MS DWARKA: No, my Lord.

MR JUSTICE MILES: I'm not keen for there to be any significant gaps, if it can be avoided.

MS DWARKA: Yes, my Lord.

MR JUSTICE MILES: While, of course, the court will try to be accommodating, it is not really a matter for the parties to turn up when they feel like it, or when it is convenient to them, it is perhaps better to say. So, I would expect your client's opening to follow on from whoever goes before. So, that may well be Mr Ledgister; if there is an appearance by the seventh and ninth defendants, it may be after them. But I wouldn't expect there to be any significant break before I hear from the first defendant.

MS DWARKA: Noted, my Lord.

MR ROBINS: My Lord, I was just going to mention, we will need to prepare an updated version of the trial timetable, which is going to need to be rewritten, in any event, because it includes three days for the evidence-in-chief and cross-examination of the witnesses on whom we were told Mr Thomson would serve witness summonses. We haven't heard anything further about that. As far as we are aware, no witness summonses were ever served. And so we would propose to update the timetable to remove that time.

That is going to mean that we have to look again at the order of our own witnesses because they will now be giving evidence a bit earlier than would otherwise have been the case, and we will have to see exactly who is going to be --

MR JUSTICE MILES: Is that right?

MR ROBINS: Sorry, I have got that wrong. It doesn't affect our witnesses; it affects the other parties' witnesses. So we will have to liaise with them about that to see there are no knock-on consequences.

MR JUSTICE MILES: Yes. The other question was the status of your application concerning third party disclosure, in effect.

MR ROBINS: Yes.

MR JUSTICE MILES: I have seen a letter in that regard from Kingsley Napley.

MR ROBINS: I have seen a letter. I think there is partial consent, partial non-objection, and they make a point about not having served the account holders, but that's not necessary in this sort of context.

MR JUSTICE MILES: Why is that?

MR ROBINS: They are not parties to the litigation. This is an application against the --

MR JUSTICE MILES: So the applications are directed towards the banks?

MR ROBINS: Yes.

MR JUSTICE MILES: I see. Do you have anything to say about that?

MR WARWICK: My Lord, a letter has been prepared by Crowell & Moring and is for despatch imminently. I don't think it will be problematic. There is no objection in principle to it being granted, but there are some points taken on the scope of the orders as to dates and one other matter.

MR JUSTICE MILES: Perhaps that can be looked at and considered by your team.

Sorry, was there anything on that from the first defendant?

MS DWARKA: Yes, my Lord, we confirm that we do not object to the applications.

MR JUSTICE MILES: I have seen your position.

MR ROBINS: We will wait to see what they say. In the meantime, we were going to lodge the skeleton argument tomorrow. I think we are going to have to delay that until we have digested what's being said. We will address it next week.

MR JUSTICE MILES: It may be, if there is not much in issue between the parties, that can be very short.

MR ROBINS: Yes.

MR JUSTICE MILES: I won't need a great long --

MR ROBINS: It is very short.

MR JUSTICE MILES: In that case, it could be even shorter.

MR WARWICK: There is certainly no objection, my Lord, to it being dealt with on papers.

MR JUSTICE MILES: Good. So, we will resume at 10.30 am on Monday.

(4.20 pm)

(The hearing was adjourned to Monday, 11 March 2024 at 10.30 am)

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