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 13 - Monday, 11 March 2024

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

Michael Andrew Thompson (D1) appears in person

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

Elten Barker (D3) settled and is not appearing

Spencer Golding (D4) is debarred from defending the claim

Paul Careless (D5) and Surge Financial Limited (D6) are represented by Mr Ledgister & Mr Curry

Russell-Murphy (D7) and Grosvenor Park Intelligence Investments Limited (D9) appear in person

Robert Sedgwick (D8) appears in person

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

**MR ROBINS**: My Lord, your Lordship had a question last week about what was described as the LCF bondholder repayment and interest account, and, in particular, whether it was a GCEN account or accounts held by LCF with a bank. It is the latter.

If we look at Mr Hudson's first statement <C1/1> page 30, please, my Lord will see in his statement the table "Credits into the LCF bondholder repayment and interest account". The second column from the left is headed "Account number", and that's the same all the way down. That's the account number of the account into which the payments were received. My Lord can see that because, no matter where the payments in come from, that account number is the same.

While we are here, my Lord will see the payments in from GCEN, numerous payments in, but the account number is the number my Lord sees there 53564068. That's the account number of one of LCF's accounts with Lloyds, which we can see at <K2(A)(v)/1>. There's an example bank statement. They're all in this section of the trial bundle. My Lord will see the account number in the top right-hand corner.

My Lord, on Thursday, at the end of the day, I was dealing with the final topic relating to Paul Careless and Surge Financial. We were looking at some WhatsApp messages. I think we might have got as far as <D7D9-0008767>, where, on the next page, we see Mr Russell-Murphy updating Mr Careless in connection with a meeting with Prime. Third up from the bottom, he says:

"Just finishing the meeting with Prime. I've got great news, will call in 5 mins.

"So happy about the IOW, 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 at <D7D9-0008887>, ten days later, on the 11th, on the second or third page, Matt Hodgson, on the right, is now saying:

"We are still aiming for completion by 28th of this month."

At <D7D9-0008849>, on the second page,

Mr Russell-Murphy says:

"Is there any chance of putting through the same invoice as last month? I know we are losing money at the moment. Unfortunately I was relying on the Isle of Wight deal completing in December. Now I've had to make a large monthly arrangement with the Revenue until I refinance."

Mr Careless says, "Yep okay". In the penultimate message on the page, Mr Russell-Murphy says: "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."

So it's thought that the Isle of Wight transaction is still on. At <D7D9-0009086>, in the penultimate message, there's a reference to letting 25 people go, mainly ex-LCF. This is a message from Mr Careless to Mr Russell-Murphy:

"I am putting you to 10k [per month] until we get into profit. The next highest after you is Kerry and Steve at 6.6k. Service Box is bringing in 100k [per month] and Crucial 50k [per month] profit. Surge ... cut now."

There now seems to be some uncertainty about closing the Isle of Wight deal.

At <SUR00117974-0001>, at the top of the page, Mr Careless asks Mr Russell-Murphy:

"What percentage do you think Isle of Wight deal gets done?"

Mr Russell-Murphy is still optimistic. He says 99 per cent. Then at <D7D9-0009048>, another set of pages. On page 3, in the middle of the page, Mr Russell-Murphy says:

"I've just spoken with Terry Mitchell from Prime. He's still on track for a completion on the Isle of Wight within the next two weeks. The reason for the delay is down to LCF [which has of course gone into administration by this point] and getting the financials from the receiver. He said we could complete on the deal sooner if it was separated from the other transactions, ie before the refinancing away from LCF." As I mentioned, my Lord, on Thursday, Mr Mitchell was telling people he had investors who would enable him to refinance so all the LCF debt could be repaid. Ultimately, that's something that, of course, never happened:

"As a single transaction they could complete the moment the legals are done. Let me know what you think."

One final message at <SUR00118626-0001>. At the top of the page, Mr Russell-Murphy says:

"Give me a call when you finish your meeting. I've just heard from Terry re Isle of Wight completion." Mr Careless asks "Good news?", and Mr Russell-Murphy says, "Yep!".

Mr Careless says:

"Steve text me saying Isle of Wight is progressing still but nothing definite."

Mr Russell-Murphy responds:

"Terry called because legals are pretty much finished. He said we will have a completion date on Monday. I discussed completing next week and he said that's very possible and he will notify their funder. This is good news."

My Lord, ultimately, Prime doesn't have any money and isn't able to proceed with the transaction. The final document to look at is a letter, or email, sent by Mr Careless at <SUR00119759-0001>. Clearly, by this point -- this is 1 April 2019 -- there has been some press interest in Mr Careless's connection to Mr Barker via the shareholding in View Property Group SPV5. On page 4, right at the bottom half, we see Mr Careless emailing someone called Peter Tayler of Northern Provident. He is, we see, from the top of the page, the head of compliance at Northern Provident. Mr Careless says:

"Hi Peter.

"I have no problem being transparent, feel free to ask for clarification on anything you need. "Re the Sunday Times, they have exposed the fact that I was connected to Elten Barker via a property transaction, this is correct albeit the transaction didn't ever take place.

"I own a property development company called View Property Group. We do local projects in Brighton & Hove and the surrounding areas. My team came across a piece of land for sale on the Isle of Wight. It was expected to get planning for 60 holiday homes and we could get an option to buy

the land for a good price pre planning. The project was beyond the scope and location of what we could deliver but we did see an opportunity in broking the sale to another developer and taking a fee."

I'm not sure "broking" is the right term. Flipping, perhaps, not broking. The fee he seems to be mentioning is obviously the £2.5 million profit that was expected. He goes on:

"John Russell-Murphy, who originally introduced us to individuals connected to LCF, suggested Elten Barker and Spencer Golding are well connected in property development circles and enlisted their help. They found a buyer [we know Prime] and we agreed to split the broker fees."

That seems a bit of a euphemism. Profit might be more accurate, as we saw on Thursday:

"That was until we discovered that the proposed buyer was a borrower of LCF and I pulled out." Well, that's just simply untrue. We saw Mr Careless and Mr Russell-Murphy talking about giving LCF on extra push, talking about raising an extra 2.5 plus comms for LCF for each of October and November to ensure that LCF could provide Prime with the £5 million that it needed. He then says:

"I pulled out before LCF went into administration." Again, completely untrue. We have just seen all the WhatsApp messages post LCF's administration where he's hoping that the deal can still go through: "The administrator's report now indicates that Elten Barker and Spencer Golding are at fault in the LCF situation and the allegation is fraud. This has come as a shock and I feel fortunate to have pulled out of the transaction. Therefore, I didn't ever buy or sell that land and did not exchange any contact or any money with Elten Barker but we were briefly on the same SPV setup to facilitate the transaction. That SPV was not used and was never funded with any money for the deal." Over on the next page, he says:

"I don't have a relationship with Elten Barker as such. I have met him 3 or 4 times."

Then he says:

"The SFO have written to View Property to say they are investigating Elten and if there are assets in SPV5 not to sell them. There are no assets in SPV5 ..." My Lord sees he has given an account of the transaction which is fundamentally false. The next topic to address briefly, my Lord, is the topic of miscellaneous payments that were made to various of the defendants. I have focused my opening submissions on the principal transactions, the Lakeview SPA, the Elysian SPA, the Prime SPA, the LPE SPA and the LPT SPA, but there is a miscellaneous category that we have set out in our written opening submissions, and I can take it very briefly by reference to our opening submissions.

But before looking at the opening submissions, I should show your Lordship a few documents by way of example. Let's have a look, please, at <MDR00037761>. This is a typical invoice from Mr Golding to LCF for professional services for January, February and March 2016 in the amount of £32,700. This is an invoice that was paid by LCF. It was queried, as one might imagine, by LCF's accountants. We see that at <MDR00050344>. Steven Davidson of

Oliver Clive & Company asks Mr Thomson: "I need a summary either on each invoice or preferably on an Excel spreadsheet of what they were for so we can then work out the capitalisation." Katie Maddock replies to him, that's <MDR00050383>. She says:

"Apologies the scan pulled through the last pages together. Attached is Andy's annotations for your reference and the final two invoices covering the payments to Wealden Consultants & SG Consultants." The attachment is <MDR00050385>, and on page 3 my Lord will see Mr Thomson's

annotation on the bottom two items in the ledger on the right. Those are the payments to Mr Golding. Mr Thomson has written: "Financial services consultancy relating to all bonds."

We have set out various other payments that were made to Mr Golding with the reference "Consultancy". My Lord can see them in our written submissions. If we go to <A2/1/173>. In J2.4, we mention LCF made a further payment to Mr Golding in the sum of £10,000 with the reference "SG Consultants" on 25 July 2016. We mention that on both of the occasions that we have just looked at, in other words, the £32,700 and the £10,000, LCF made matching payments to Mr Thomson, so they were receiving precisely the same amount on the same days. We also deal with invoices that were used to make payments via a company called London Capital Marketing. If we look at <EB0042639>, on the second page -- no, it is the first page. Mr Thomson is emailing Mr Barker: "The details for fundraising and business consultancy services that have been provided are: "London Capital Marketing Limited ..."

And Mr Barker emails attaching two invoices, <MDR00083133>. My Lord can see the attachment is "SG invoices". The invoices themselves are, first, <MDR00083136>. There is the first, an email from SG Consultants to London Capital Marketing, "Fundraising consultancy from June 2016 to March 2017, £30,000", and then another, <MDR00083137>, this time in the sum of £32,700 with the reference

"January/February/March 2016". Those invoices were paid. I don't think we need to go to any documents. We have provided the references in footnote 1532 of our opening written submissions. Just so there can be no doubt about our position, my Lord, we submit that Mr Golding and Mr Thomson were taking monies out in any way they could. In addition to the transactions that we have seen, they were --

**MR JUSTICE MILES**: That's an SG Golding Consulting.

**MR ROBINS**: I'm sorry, my Lord?

**MR JUSTICE MILES**: Weren't we looking at London Capital Marketing?

**MR ROBINS**: The previous invoice was to London Capital Marketing. This one is to LCF.

**MR JUSTICE MILES**: Sorry? The heading on it is "SG Golding Consulting".

**MR ROBINS**: Yes.

**MR JUSTICE MILES**: But we were looking at London Capital Marketing, weren't we?

**MR ROBINS**: That was the previous invoice, <MDR00083136>. That was a company set up by Mr Thomson, funded by LCF. LCF put money in its account and then Mr --

**MR JUSTICE MILES**: Oh, I see, sorry, the invoice was addressed to LCM, it wasn't from LCM.

**MR ROBINS**: There are two invoices from Mr Golding. The first is to London Capital Marketing, which is another company set up by Mr Thomson and funded with monies from LCF; the second is from Mr Golding to LCF itself.

**MR JUSTICE MILES**: How was the payment from LCF to LCM described, or wasn't it?

**MR ROBINS**: I don't know, off the top of my head.

**MR JUSTICE MILES**: Internally.

**MR ROBINS**: I don't know, off the top of my head.

**MR JUSTICE MILES**: Was there an invoice from LCM to LCF or something like that?

**MR ROBINS**: I think monies were paid over described as being fees of some sort from LCF to LCM, but I don't know, off the top of my head.

**MR JUSTICE MILES**: Okay.

**MR ROBINS**: But money was taken out on an ad hoc basis and justified by reference to invoices.

There is a separate category of payments funded by LCF that went through LOG. They're quite substantial. For these, there are no accompanying invoices. We have highlighted some of them in our opening written submissions. If we go to <A2/1/174>, at J2.7, we explain that, on 12 June 2017, LCF paid a little under £602,000 to LOG and LOG then paid £200,000 to Mr Golding and £25,000 to Mr Barker, each with the reference "LOG share payments".

There was also, if we could go to page 181, please, on the next page, please, so 182, a payment on that date £200,000 in J6.3. Just to correct an error, it is not to D10, it is to the joint account. One can see how that error arose. If my Lord goes to the document in the footnote, <MDR00006015>, from the bank statement on page 1, the amount, the fourth down, is the £200,000 on the 14th and it says "Mrs HC Hume-Kendall. LOG share payment" but that's an incomplete narrative. If we look at <A1/6/478>, this is from schedule 2 to the neutral statement of uncontested facts, my Lord will see it is, in fact, common ground that it is a joint account payment.

If we go back to <A2/1/174>, the payment in J2.7, to complete the picture, is £200,000 to Mr Golding, £25,000 to Mr Barker and £200,000 to the Hume-Kendalls' joint account.

We mention in J2.8 that LOG also made substantial monthly payments to Mr Golding, often accompanied by payments to LV Management and Wealden Consultants, and we give some examples.

Then, at J2.12, we point out that he also received payments from LCF via London Group LLP. Over the page, we give some examples.

As with all of these, there is no dispute that the payments were made. They are clear from the bank statements. But there is an absence of any legitimate explanation for them.

I also need to cover briefly the money paid to Mr Golding initially by way of loan. Advances were being made from 27 November 2015. If we could go back to page <A2/1/175> in this -- forward to page 175 -- sorry, the previous page. We were there already. My Lord will see that one of the other biggest sources of payments of LCF monies to Mr Golding related to a loan to him which was later waived when the liability was assumed by a company controlled by him. We explain in J3.2 that LCF began making advances in November 2015. They were paid into Mr Golding's account in the name of Home Farm Equestrian Centre which, as my Lord knows, was his business as a sole trader.

If we look at <MDR00034953>, we can see Mr -- <MDR00034954>. Mr Lee is emailing Mr Thomson on 8 April 2016 with the subject "Loan to Spencer Golding". This is considerably after the commencement of the advances. He says:

"Dear Andy.

"Further to our discussion yesterday, please find attached a loan agreement in draft form. This loan to Spencer deals with the advance of £150,000." He also attaches the charge. The draft loan

agreement itself is <MDR00034958>. My Lord will see the draft loan agreement. It is not signed at this point. There's a further draft sent on 26 May 2016. We see that from <MDR00042151>. Mr Lee says:

"Herewith the draft facility for Spencer." The draft agreement itself is <MDR00042153>. It is a different looking document, dated 2016. But it is still not signed. When we go to <MDR00058885>, we can see that Mr Thomson is asking for an update on the loan doc for Spencer. That's on 22 September 2016. Mr Lee responds at <MDR00060300>. He replies, attaching what seems to be version 4. He says: "Please find attached the new version of the above facility."

So there's been no signed agreement, but during this time payments to Mr Golding have continued. We set them out at <A2/1/175>. My Lord will see J3.3. By 29 January 2016, for example, LCF had advanced £200,000 to Mr Golding. Then, over on the next page, J3.5, there were further advances. At J3.8, we note that, by June 2016, Mr Golding owed almost three-quarters of a million pounds to LCF on a gross basis, but there was still no signed facility agreement.

At J3.10, there was a further payment of over £200,000 in September 2016.

The agreement was ultimately signed at some point after 3 October 2016, but it was backdated. My Lord can see that from the signed version at <MDR00057727>. My Lord can see the date that's been written on the front is obviously not correct, in light of everything we have seen. My Lord will see that the year is actually in typescript.

Page 3 also has the incorrect date. The signatures are on page 18. While we are here, my Lord will note what Mr Golding's signature looks like. We have got lots of examples of it. It is two squiggles. It is not particularly legible.

The payments then continue to Mr Golding under this agreement, but, as we have set out in our written submissions, he was then released from liability to repay these sums. We have described how that occurred in our written submissions at <A2/1/177>. At J3.15, we introduce this part of the story and we explain, at J3.16, that a new company called River Lodge Equestrian Centre UK Limited was incorporated. Mr Golding was one of the beneficial owners of the company. A new facility was prepared between that company and LCF, which was signed on or around 9 October 2017 and that was treated as having repaid Mr Golding's liability. My Lord can see we say in J3.19 that Mr Golding was "thereby relieved from liability in respect of the sums previously advanced to him", which were instead treated as having been "lent [to] River Lodge UK" -- it should say "to River Lodge UK", that's a typo in our written submissions.

At J3.20, Katie Maddock emailed Mr Golding, copying Mr Thomson on 11 October 2017, to say "all loans ... [had] been now repaid in full". Mr Golding forwarded that to Mr Barker, who replied, "Nice". So that brought an end to Mr Golding's liability. He had the money but didn't need to repay any of it.

There is one further episode of money being provided to Mr Golding ostensibly by way of loan, and this, again, involves another company, LCM. LCF had paid sums to LCM which were sitting in LCM's bank account, and then LCM was going to pay those to Mr Golding. We have begun dealing with that at page 178. We explain, at J3.22, that, on 14 November 2018, shortly before the FCA raid, as it happened, Mr Thomson emailed Luke Tofts at GCEN to explain LCM was going to be lending money to Mr Golding. He said that LCM would be transferring £452,000 to GCEN for onward transmission by GCEN to Mr Golding, and Luke said he would "speak to compliance and try to get it signed off ASAP".

LCM then paid the £452,000 to GCEN, as we set out in J3.23.

Mr Thomson then emailed Luke Tofts to ask him to send that money to Mr Golding.

Then, in J3.24, Mr Thomson and Luke Tofts had a telephone conversation in which Luke asked for a copy of the loan agreement between LCM and Mr Golding. Mr Thomson promised that he would provide that to Luke in due course and, in reliance on that assurance, GCEN paid the money over to Mr Golding.

But Mr Thomson couldn't provide Luke Tofts with a copy of any such loan agreement because it didn't yet exist.

On 3 December 2018, Luke Tofts emailed Mr Thomson again to request the agreement, adding, "I put my neck on the line for you with compliance to get these payments made and LCM onboarded in a very short timeframe with no supporting docs, so it looks very bad that I still don't have the docs as they were promised 2 weeks ago?".

After that, Mr Thomson drafted a loan agreement between London Capital Marketing and Mr Golding with the date 3 December 2018. It was sent to Mr Thomson's assistant at the time, Alex Mannering. That's at <MDR00192804>. My Lord can see the subject is "London Capital Marketing Home Farm Facility agreement.docx". The attachment is <MDR00192805>. My Lord can see it says "Facility agreement. Dated 1st November 2018. Spencer Golding trading as Home Farm Equestrian Centre and London Capital Marketing Limited".

On page 23, my Lord can see that this version is unsigned. There is then a signed version that was produced by Mr Thomson's signature at <MDR00193030>. If we go to page 23 of this, we should see that it's been signed by Mr -- page 24, please, signed by Mr Thomson but not by Mr Golding. That was then sent to GCEN, as we explain, if we can go back to <A2/1/176>. I'm on the wrong page.

**MR JUSTICE MILES**: It is on the next page.

**MR ROBINS**: It must be on the next page. Next page, please.

**MR JUSTICE MILES**: And the next one, I think, at the bottom.

**MR ROBINS**: My Lord can see, at J3.28, Alex Mannering sent it to Luke Tofts but, as my Lord has seen, it hadn't been signed by Mr Golding. Luke Tofts spotted this and contacted Alex Mannering, who emailed Mr Thomson to say Alex needed the countersigned version of the facility agreement. Alex reminded Mr Thomson about this again on 5 December, "Document needs countersigning for Luke Tofts".

As we point out in J3.30, a further version, purportedly signed by Mr Golding, was prepared on 6 December 2018 when it was sent to Luke Tofts. That's the version at <MDR00194500>, or that's at least the covering email:

"Hello Luke.

"Please see attached and huge apologies for the delay."

The attachment is <MDR00194501>. My Lord has seen already the backdating to 1 November. The signature page is page 21, and that doesn't look like any other signature of Mr Golding that anyone has seen. That's more legible. It is plainly not the same handwriting. We can look at other examples. Let's look at <MDR00226310>. This is the disqualification undertaking. My Lord sees Mr Golding's signature is the first signature on the page. Particularly, if we look at <D2D10-00038963>, at page 4,

in the declaration of trust, Mr Golding's signature is the second on the page. It looks nothing like the signature on the document that was given to Luke Tofts.

So, the transaction was backdated and had a false signature on it but was given to Luke Tofts to satisfy his compliance people.

There were other benefits provided to Mr Golding in connection with helicopter transactions --

**MR JUSTICE MILES**: The one in J3.31 on your opening, is that just -- that's just a separate amount, is it?

**MR ROBINS**: I'm sorry, can we go back to that?

**MR JUSTICE MILES**: £750,000? That's not covered by the loans; is that right? It is not one of the loans.

**MR ROBINS**: I need to go back to look at it, please, <A2/1/179>.

**MR JUSTICE MILES**: This is all under the heading "LCF's loan to D4", but just looking at the text, this seems to be a separate payment.

**MR ROBINS**: Yes, as we see, and the explanation is identified. There is nothing in any narrative -- explanation in any bank statement or anything like that to cast any light on it. It is just another example of LCF being used as a personal piggy bank. In respect of the --

**MR JUSTICE MILES**: That's a substantial sum.

**MR ROBINS**: Yes.

**MR JUSTICE MILES**: It sort of appears suddenly there.

**MR ROBINS**: Yes. Given the LCM loan shortly before, I wonder whether Mr Golding was buying a property and needed monies to complete. We can look into the timing --

**MR JUSTICE MILES**: Anyway, there it is. That's a separate transaction. Yes.

**MR ROBINS**: Yes. We also deal with the helicopter transactions and, as we set out, it begins with Mr Golding purchasing a helicopter with the registration N766AM for £520,000 using £500,000 from LCF to fund the purchase. He then sold that helicopter to Mr Thomson's company, London Financial Group Limited, for £650,000, and that money was paid to him by LCF. He then bought another helicopter, a Eurocopter, with registration G-MSPT, for £1.65 million, with a deposit of £800,000 and the balance in three instalments, and we explain over the page that that was also funded by LCF. Mr Sedgwick emailed Mr Thomson and Mr Golding on 3 March 2017 to say that the vendor was happy to accept payment from London Capital & Finance Plc without any further due diligence on the identity of the buyer. Then J4.6, on the same day, Mr Thomson transferred £800,000 from LCF's account to the vendor's solicitors and told Mr Sedgwick he had done so. He transferred the first of the subsequent instalments from LCF's accounts to the vendor's solicitors on 16 March 2017 and the second and third instalments were also funded by LCF. We have mentioned in J4.7 it is something that comes out very clearly from the documents that Mr Thomson and Mr Golding used their helicopters to fly around the country, including to various horse events. They retained pilots who were paid for with money ultimately coming from LCF to fly these helicopters for them. We then deal with the other payments to Mr Thomson in our written submissions. We have mentioned some of those in passing, such as, for example, where he received matching payments with Mr Golding. We identify other sums in J5.2. We explain, in J5.3, that Mr Thomson told Oliver Clive & Company that

these sums had been paid to a marketing company called Media GPS which he said had provided marketing and PR services. He provided invoices in the name of Media GPS to support this assertion and to quote what he said in his email, he said:

"As discussed please find attached the invoices from Media GPS that cover the marketing and PR work for our bonds. The work this company has done to date cover all our bonds and we will be using them for the same work on our next series of bonds."

But Steven Davidson of Oliver Clive & Company knew that Media GPS was one of Mr Thomson's companies and that Mr Thomson had filed dormant accounts for Media GPS and he replied, as we set out in J5.4:

"Sorry, can't use these as you have submitted dormant accounts for Media GPS. Must have been a mistake."

So, as we say in J5.5, the attempt to disguise the payments with false invoices was a failure. The payments were instead classified by the accountants as drawings on Mr Thomson's director's loan account and Mr Thomson repaid that money to LCF using monies that he'd received from Leisure & Tourism Development, which of course ultimately came from LCF.

We say that although, therefore, those sums that were paid and repaid do not form part of the claim, the episode remains relevant because it demonstrates a clear propensity by Mr Thomson to take monies from LCF without any proper basis and then to lie about it. In J5.6, we explain that LCF subsequently paid monies to Media GPS which made payments to Mr Thomson. On 25 November 2016, there's £100,000 and then that is paid first to LCF -- by LCF to Media GPS and then from Media GPS to Mr Thomson. Similarly, a year later, 11 December 2016, LCF paid £175,000 to Media GPS, which paid on £172,000 of that to Mr Thomson. My Lord will have seen Mr Thomson's evidence. He says that these were his Christmas bonuses. It seems very much to us as though he was helping himself to money from new bondholders.

We also deal with the other payments to --

**MR JUSTICE MILES**: Did you say they are -- sorry, I had forgotten this -- Christmas bonuses from LCF?

**MR ROBINS**: That's what Mr Thomson says in his evidence. He says that LCF decided to award him Christmas bonuses.

**MR JUSTICE MILES**: You would then expect that, wouldn't you, to be in the accounts of LCF?

**MR ROBINS**: You would. You would also expect it to come from LCF's profit, not from new bondholder money. But if you track this through the bank statements, it comes in from new bondholders and is paid out to Mr Thomson. My Lord, we started three weeks ago with a bar chart, if we could go back to that, please, at <A3/16>. My Lord, we looked at this on the very first day of the trial. Your Lordship has now seen how the money from the bondholders ended up being paid to these individuals under the guise of the Lakeview SPA, the Elysian SPA, the Prime SPA, the LPE SPA and the LPT SPA, among other things.

We have dealt, in our written submissions, with what these individuals spent the money on. If we could go, please, to <A2/1/292>, we explain, at P3.3, that Mr Thomson spent over £2.5 million on the freehold of Clarklye Farm Barn, a country house of over 8,000 square feet, with various amenities. He spent £174,000 on two performance horses. He bought a Rolex watch, a Patek Philippe watch, about

£50,000, shotguns and, as we point out at the end of the paragraph, he's accepted that all of his remaining assets were acquired with funds originating from LCF.

Mr and Mrs Hume-Kendall, in P3.5, spent large sums on travel, including very substantial sums on airfares. They spent a lot of money eating out in restaurants in the UK and abroad. Over the page, please, they bought the yacht Chantella, using over £1 million of monies deriving from LCF and paid 160,000 euros for a berth in Antibes.

At P3.6, we point out they spent quite a lot of money going to Annabel's, they spent a quarter of a million pounds on lifetime membership of Annabel's. They spent a lot of money on visits to the Sloane Club in Chelsea. They also spent money from LCF on school fees for their children and political donations. As a result of the fact they were spending a lot on their lifestyle, a lot of that has obviously already been dissipated and isn't available to be recovered on a proprietary basis, but, as we point out in P3.7, the claimants do seek to trace into all property, jewellery, art and investments which remain. For example, there are the properties, there is 58 Eton Place, which was acquired using over £2.6 million of money from LCF, there is the property at Hook House, which was refinanced, money from LCF was used to discharge substantial parts of the mortgage liability; there is a property at 1 Tetley Mews which was bought for £335,000.

We mention in P3.8 the watches and the jewellery. Mr Hume-Kendall bought diamond earrings costing almost £24,000, a Patek Philippe watch costing over £12,000, a Rolex costing £16,000, another Rolex for about the same amount, and various items of jewellery, including a diamond ring said to be worth almost £30,000. There's a large quantity of gold bullion which they acquired using money from LCF. As we point out, in February 2017 alone, Mr Hume-Kendall spent £135,200 on gold bullion. They have disclosed that they also bought various pieces of art and land in Jamaica.

We mention in P3.9 that they paid sums into investment accounts, including over £1.6 million into St James's Place, which is believed to have funded a pension and life assurance policies. That all came from LCF.

Over the page, we point out in P3.10 Mr Hume-Kendall has accepted in these proceedings that all his remaining assets were acquired with funds originating from LCF. Mrs Hume-Kendall has made the same concession, save in respect of Hook House, where, as we point out, the picture is mixed because what the claimants' investigations show is that over £1.5 million from LCF is traceable into Hook House.

We deal with Mr Barker in P3.11. My Lord knows we have settled with him, but of course the detail of the misappropriation and use of LCF's money remains relevant in respect of the claims of fraudulent trading and the claims against various other defendants like Mr Thomson.

We deal with Mr Golding in P3.12. He received, as my Lord knows, the largest share from LCF of £41.6 million. He bought a number of properties, including Home Farm House, Faircote Hall and land and buildings.

We point out, in P3.13, that he also used monies from LCF to acquire a collection of cars and vehicles, including a Rolls Royce Dawn, a Ford Mustang, two Range Rovers, two Land Rovers, a Volkswagen Beach Buggy, two quad bikes, diggers and trucks, a Harley Davidson motorbike, a BMW, a Porsche, five mobile homes, a hot tub, a series of bronze statues, and so on. He also bought a large yacht and he bought 34 horses with monies deriving from LCF's bondholders.

At P3.14, he also acquired items of jewellery, including a single bracelet worth £150,000, a diamond necklace worth £145,000, diamond rings worth £65,000 and £70,000, and a diamond bracelet worth almost £60,000, and it continues over the page.

He also bought a very large number of enormously expensive watches, like Patek Philippes and Rolexes. As far as we can see, he used money from LCF to buy a total of 32 luxury watches.

We deal with receipts by other defendants in P3.16. My Lord, it really is shocking to contrast that account of what the money was spent on with what we see in the epilogue to our written opening submissions at <A2/1/298> because those houses, fleets of supercars, luxury watches and so on, were bought using the saving pots of real people, many of whom were elderly, many of whom were in poor health, most of whom were people of fairly modest means who entrusted their life savings to LCF.

We have provided a selection of representative comments in the epilogue from various members of the public who were dismayed to find that their monies had gone and that they had been taken in and left with nothing.

My Lord will see, going through those comments, references to people who placed their trust in LCF and entrusted their life savings, money they had worked many decades to build up, modest sums by reference to the expenditure of the defendants. One man's life savings is just a Patek Philippe to Mr Golding. My Lord, it might be said that it is not legally relevant that the court deals with facts and figures, evidence and probabilities. There is a tendency for the bondholders to get slightly lost and therefore, my Lord, we do say this is not just a case about money. The impact of these defendants' actions on real people's lives is something that should not be ignored. My Lord, those are our oral opening submissions.

**MR JUSTICE MILES**: Right. Thank you, Mr Robins. Yes, Mr Warwick? How shall we --

**MR WARWICK**: My Lord, we are just coming up to a moment for a transcriber's break. It might be sensible to take that now, if that is okay?

**MR JUSTICE MILES**: We will take a five-minute break. (11.30 am)

(A short break)

(11.36 am)

# Opening submissions by **MR WARWICK**

**MR WARWICK**: My Lord, in response, then, to the claimants' written opening submissions of 300 pages and some 5,300 documents, insofar as we have been able to review those, and three weeks of oral opening, no, Mr Hume-Kendall is not a participant in fraudulent trading by LCF or indeed any company. He is not a dishonest assistant of Mr Thomson at LCF. The borrowing transactions that he was involved with were not facades, they were not dishonest, they were not entered into for the purposes of concealing bondholder monies, even if that was in fact what they were because the monies borrowed were borrowed from LCF.

In fact, the joint administrators themselves have relied upon the legal validity of the SPAs that form the subject of part of this litigation, and indeed the loan agreements, in order to enforce security over large parts of what's been acquired by those transactions. My Lord, the Hume-Kendalls weren't involved in the running of LC&F. They didn't draft its brochures, they didn't make any representations

to the public, they didn't participate in any Ponzi scheme, nor were they aware of any Ponzi scheme, and nor can it credibly or sensibly be suggested that they could have known about a Ponzi scheme that took the joint administrators months even to plead.

The Hume-Kendalls don't hold monies for which they have to account to LC&F and Mrs Hume-Kendall, who is accused of no active wrongdoing whatsoever, has not received any sums nor is aware of proprietary interest on the part of LC&F in those monies by reason of Mr Thomson's alleged wrongdoing, and it is noteworthy the claimants have not -- or chose not to plead any case to the effect that she was.

My Lord, what the Hume-Kendalls did do, of course, was to operate a distressed asset recovery business which met with, sadly, only mixed success, in large part, it must be said, due to the intervention of the FCA in December 2018, and that business was leveraged by borrowing from LC&F. It is worth, my Lord, pointing out from the start that, of course, loan decisions were taken by LC&F on terms acceptable to LC&F, backed by documentation frequently seen by, or prepared by, its own independent lawyers, Buss Murton against security considered adequate by LC&F. What was successful, for example, my Lord, is that a resort in Cornwall, Lakeview, was purchased in a distressed situation for around £1.6 million months after it was due to be sold for £6.4 million. It was sold by the administrators of Prime in April 2022 for £10.1 million. Even without the benefit of the planning permission for 110 lodges and hotel development that the joint administrators allowed to lapse by not complying with planning conditions over a period of three years, despite being professionally advised that planning was important for supporting best value.

Mr Hume-Kendall was also an investor in an oil and gas business. This is pleaded, my Lord, by the claimants to be a legitimate commercial transaction that was the subject of an offer from RockRose Energy at -- rather, London Oil & Gas's investment in Independent Oil & Gas was the subject of an offer from RockRose Energy in 2019 in the cash sum of £52 million. We understand, though can't confirm, a deferred element was an addition of £10 million, an offer brushed aside by the joint administrators by the making of a counteroffer of £140 million capable of acceptance within three hours in favour of a disastrous share price speculation strategy which has resulted in a £30 million or so hole in the estate of London Oil & Gas.

My Lord, for comparison purposes, the total quantum claimed against the Hume-Kendalls is just over £23 million.

**MR JUSTICE MILES**: Is that right? I thought the claim against them was for the entire deficit of both estates.

**MR WARWICK**: Indeed, but the sum it is alleged, or said, was received by payments from LC&F direct to them is £23.3 million.

**MR JUSTICE MILES**: Oh, I understand that.

**MR WARWICK**: My Lord, I don't propose to deal in any depth with it, but it is noteworthy that the claimants' submissions open with a very emotive prologue and it is true to say it would be impossible for anyone human not to read that and feel saddened by it, but a fair summary might also have included that the joint administrators' most recent report also shows that some £57 million has been spent on this administration, over £11 million in administrators' fees and expenses. About £11 million and professional fees. And, despite large realisations, about £6 million has been returned to, or is available to be returned to, bondholders.

My Lord, in overview, then, I propose to deal with this opening and the substantive parts of it in the following ways, if this is of assistance to the court. First, I would just like to deal with a few matters about the conduct of this trial and which parts of it the claimants -- sorry, Mr and Mrs Hume-Kendall can afford to participate in and in what ways, to assist your Lordship with the case management of the trial and also to highlight to the court at the outset where the evidence to be relied upon by the Hume-Kendalls is found.

And then, secondly, my Lord, deal with some overarching introductory points that really deal with the claim as a whole.

Thirdly, I would like to, as foreshadowed earlier in this trial, deal with the question of the respects in which the claimants have opened their case far in excess of the limits of the pleaded case. That process really only deals with the Hume-Kendalls, I can't speak for anyone else or any element of the claims against other parties in this case, and it will be addressed by way of reference to a table, my Lord, which was furnished to my learned friend's solicitors and I believe is in the process of being lodged. But we have a hard copy here, if it is necessary to look at a hard copy instead. Then, lastly, my Lord, deal with the five corporate transactions that are said to be dishonest transactions -- Lakeview, Elysian, Prime, LPE and LPT. But I suspect all of that would have to be dealt with tomorrow.

Might I turn then, my Lord, to my overarching points about the claimants' case. The first thing to highlight, my Lord, is what there isn't a dispute as to. Mr Hume-Kendall sets out quite a bit about his previous career in his witness statement. I won't take your Lordship to it. But it is at paragraphs 7 to 22. The claimants have devoted, I believe, nine of the 40 pages of their reply to point out respects in which, in the claimants' opinion, his career has come up short. But what is pretty clear is that it is common ground both that, it seems, he operated both in the oil and gas sectors over a period of four decades and also had a distressed asset recovery business, but also, despite all of that, there seems to be no suggestion of any kind he was ever involved in any wrongdoing, despite the lengths the claimants have gone to to dig up anything and everything that can be presented in an adverse way.

Second thing, my Lord, is the oil and gas investments. In the claimants' re-re-amended particulars of claim, it is, in fact, positively pleaded that the LOG investment in IOG and AP was a legitimate transaction. For your Lordship's notes, that's at paragraphs 19 and 20 of the re-re-amended particulars of claim. The bundle reference is <B1/2>, page 23. Thirdly on this, my Lord, although there are questions arising in this litigation about the value of assets -- for example, it is a matter for expert evidence what the value of LOG's investment in IOG was and also what value the investments in the Dominican Republic may have had -- there seems to be no question that assets had value and were the subject of numerous valuations.

So, unlike a professional negligence claim, for example, we are not assessing what things were worth and whether they got it wrong. This is a claim in fraud. The allegation is no lower, my Lord, than suggesting that the asset valuations given effect to by the corporate transactions were fanciful, or so far off the mark as to be consonant with fraud.

Fourthly, my Lord, far from walking away from LOG when the FCA raid occurred in December 2018, as your Lordship will have seen from Mr Hume-Kendall's evidence, and I will point to this in a little more detail a little later on in this opening, Mr Hume-Kendall advanced by way of a loan, or loans, some £4 million into LOG's corporate group, which is not of a piece with someone seeking to walk away and take a profit in the manner described by my learned friend. Also under the heading "No dispute",

Mrs Hume-Kendall. She is not accused of doing anything wrong, or indeed -- actively accused, at least -- of knowing of any wrongdoing. The sole claim against her is receipt-based liability, as your Lordship will have seen from the pleadings and the opening. A declaration is sought that she's to account to the claimants by reason of an alleged constructive trust which arises, or is said to arise, from Mr Thomson's alleged misconduct. There is nothing said to be untoward in what she did. She denies liability on the grounds that she received around £5 million as consideration for sale of her shares in LCCL, in Lakeview Country Club. Whatever has been said in opening -- and the extent to which that aligns with the claimants' pleadings is a matter that I will come to in due course -- it doesn't appear to be any part of the claimants' case that she, in fact, had legal title to those shares. It is not disputed that she owned them. This was all made clear, my Lord, in the Hume-Kendalls' defence.

There has been no attempt to plead a case about why she is said to have notice of an interest on the part of LC&F and, in reply, despite a general join issue plea, nothing has been said of any positive kind about that. My Lord, the second overarching point,

Mr Hume-Kendall was not involved in LC&F's bond selling. He wasn't the maker of any representations, he wasn't involved in the bond-selling process. Your Lordship has seen that he ceased to be a director of LC&F -- at the time known as SAFE -- as long ago as August 2013. The neutral statement of uncontested facts, schedule 1, <A1/5/70>, shows this as uncontested. If one looks -- I believe, due to some amendments, the page numbers may have shifted a little. If we could go back, please, a page -- sorry about this. Rather, if we could go on, that's it. Your Lordship has already been shown the ways in which -- the timings and names used over time in the first section of this chart, but also you will see there details of Mr Hume-Kendall's directorship and his resignation as a director.

As to his involvement since, for all the years of this litigation and the detail to which the claimants have been able to go with their resources available to them, the high-water mark of the claimants' case remains as found in the re-re-amended particulars of claim to which I will briefly take your Lordship. It is at <B1/1>, page 28 -- I beg your pardon, it is <B1/2> page 28. The claimants' case on the participation of Mr Hume-Kendall is this. It says at 25: "Mr Hume-Kendall participated in the said fraudulent trading of LCF. Further or alternatively, Mr Hume-Kendall participated in the said fraudulent trading of LOG. More particularly:

"(1) Mr Hume-Kendall was a de jure director of LCF (from 12 July 2012 to 15 August 2013)." As your Lordship has seen from the information in the neutral statement:

"(1A) Mr Hume-Kendall was in charge of the initial setup of LCF's operations, being the sole person capable of giving approval for the payment to Surge for its work on LCF's brochure and website. More particularly ..." My Lord, I must stress these are the only particulars. There is then a string of numbered sub-subparagraphs dealing with some communications that result in an email chain being forwarded to Mr Hume-Kendall to ask for his approval of a single invoice, and Mr Hume-Kendall replied, "Fine". The third fact relied upon to allege his involvement is at (1B). It details how, on 23 November 2015, when Mr Thomson was looking for new office premises, he sent an email to Mr Hume-Kendall and Mr Barker to update them and tell them he was thinking of signing a 12-month lease for premises at 73 Watling Street. Pausing there for a moment, my Lord, I believe it is uncontroversial that that premises wasn't, in the end, occupied, saying: "The location is good and is within easy reach of most things and we can be in for next week and use the address as soon as we have signed the agreement." So use of the word "we" in an email.

At (1C), on 1 July 2015, the first claimant changed its name to London Capital & Finance Plc: "Mr Hume-Kendall has been involved in numerous companies with names beginning with 'London' including ..."

And there are 14 companies itemised there. Your Lordship might have seen from the schedule to the neutral statement of fact that even that's only a small subset of a large number of companies involved in this litigation. It goes on:

"During his interview with the LOG administrators, Eric Bosshard, a former director of LOG, explained to the LOG administrators (in response to a comment that 'the word "London" keeps appearing everywhere') that Mr Hume-Kendall 'liked London'. The claimants infer and invite the court to infer that Mr Hume-Kendall chose the name London Capital & Finance to reflect the fact that his company would be a capital and finance raising operation for Mr Hume-Kendall's business interests." My Lord, quite apart from the stretch that that inference would represent, these particulars, 1, 1A, 1B and 1C are in fact the only particulars of Mr Hume-Kendall's alleged involvement with LC&F, actively so in this way, because what follows is, at (1D):

"In the premises, Mr Hume-Kendall was closely involved in setting up LCF's bond business in or around 2015."

Your Lordship will see there are some words struck through. It is not immediately obvious why they were ever included but, nonetheless, that is the case of shadow directorship which the claimants sought permission before you to rely upon at an earlier stage in this litigation, my Lord, which they were not granted permission to rely upon.

For completeness, my Lord -- well, I should point out that the particulars that follow that are not particulars of his involvement with LPC, save that, at subparagraph 9 on page 31 --

**MR JUSTICE MILES**: We had better just look at them.

**MR WARWICK**: Yes, of course.

**MR JUSTICE MILES**: Just go over the page. Yes.

**MR WARWICK**: Your Lordship will have seen, at subparagraph 9, it is said:

"Mr Hume-Kendall participated in the circulation of new bondholder monies via certain of LCF's borrowers to disguise the fact that new bondholders' monies were being used to discharge LCF's obligations to existing bondholders."

So far as we can ascertain, that's the only other particular given of a fact, which is a primary fact, which the claimants ask your Lordship to find in their favour in support of the general case that he participated in fraudulent trading. That's it.

**MR JUSTICE MILES**: But aren't 3 to 8 also allegations of participation? Or 2 to 8, sorry. Just as a matter of pleading.

**MR WARWICK**: Well, my Lord, no, because they relate to his directorship of borrowers from LC&F that are said to be LCF-connected borrowers. The nature of the connection is particularised earlier and relates to, other than the involvement of Mr Thomson in having a 5 per cent interest, the connection between the borrowers. This is not a series of allegations that he was actively involved in operating LC&F.

**MR JUSTICE MILES**: That may be a different question.

**MR WARWICK**: Yes.

**MR JUSTICE MILES**: You might well be able to say they're not allegations of active involvement in, as it were, the running of LCF --

**MR WARWICK**: That's it.

**MR JUSTICE MILES**: -- but the question of -- the legal question is participation in the fraudulent trading of LCF, which may be a broader concept.

**MR WARWICK**: Yes, of course, absolutely, that may be a broader concept.

**MR JUSTICE MILES**: I'm just looking at the pleading, but I'm taking it that the pleaded case is that they're saying, one, that he was involved in LCF. Well, you say that's very limited. Two, that, by reason of the various transactions involving what they call the connected borrowers and the various SPAs, that constitutes participation in fraudulent trading.

**MR WARWICK**: Yes, they do, my Lord. Yes, they do.

**MR JUSTICE MILES**: Sorry, I was just picking you up on your suggestion that there was only -- that the only allegations they make of participation --

**MR WARWICK**: In which case, I put that badly, my Lord. It wasn't --

**MR JUSTICE MILES**: -- in fraudulent trading were those.

**MR WARWICK**: Can I correct myself? What I mean to say and what is clear is, that is the extent of his alleged involvement with LC&F itself. Your Lordship will have heard over the last three weeks and seen in writing a variety of different formulations, "centrally involved", "continually involved", "involved throughout", "Mr Golding is the king pin", "Mr Hume-Kendall also consulted and involved". None of that forms part of the claimants' case for which they have permission to rely. It is quite literally on the page here confined to him having been a director, having said "Fine", when asked to approve a single invoice, somebody else using the word "we" in an email about occupying a premises and somebody else saying in an interview that Mr Hume-Kendall liked "London". That is it.

My Lord, the third overarching point, if I may, is about the allegation of a Ponzi scheme and involvement in it, and this is coming increasingly into focus and is fairly central to the claimants' case, that new bondholder monies were used either via a route of being paid to an LCF-connected borrower, as that's defined, and then repaid to discharge liabilities to existing bondholders or, in the latter stages, directly from LCF and back out again to repay existing bondholders. But the difficulty for the claimants is how that can be sustained realistically against Mr Hume-Kendall at all.

First of all, his pleaded involvement in this is, likewise, extremely limited. As your Lordship has seen, there is a bald case made that he participated in the circulation of new bondholder monies. Some colour has been added to that by reference to payments from bank accounts that went ultimately to him and payments coming back. But that alone isn't participation in, still less knowledge of, a Ponzi scheme unless you're privy to the information that would be required to know that at LC&F. As to his knowledge, that's pleaded at 36(4) in the re-re-amended particulars of claim which appear on page 43, if we move on a few pages, please. It simply says at 36(4), which is at the top of this page in green type -- I beg your pardon, it is page 41, please. 36(A):

"Mr Hume-Kendall knew that LCF was making the representations ... He was copied into email correspondence ..."

Sorry, that's the representation allegation. No, I'm sorry, I was right in the first place, I beg your pardon. It is 36(4) on page 43. It says this: "Mr Hume-Kendall knew that, rather than being dealt with as represented to potential bondholders, a proportion of the monies raised from new bondholders was being misappropriated by the first to ninth defendants and that a further proportion was being applied to discharge LCF's obligations to existing bondholders."

It is also said at (5):

"Mr Hume-Kendall knew that the LCF connected borrowers were incapable of repaying their debts to LCF and that LCF would inevitably become unable to meet its obligations to bondholders."

It is not said why. Effectively, taken at its highest, this is a case that, by being paid money, receiving it, and by it being paid back, you know that you're part of a Ponzi scheme. But, of course, he couldn't possibly know, and there are several reasons why not.

First of all, my Lord, it arises from the evidence the claimants rely upon in these proceedings in the form of the witness statement of Mr Hudson. If we could go to <B1/1>, page 1, please. Sorry. <C1/1>, please. This is the first witness statement of Mr David Hudson. It is dated 3 September 2021, over a year after these proceedings commenced. Overleaf, on page 2, Mr Hudson explains that he is one of the joint administrators for the first claimant and he is a joint administrator of LOG as well.

At paragraph 2, he explains he made the statement in support of the claimants' application for permission to re-amend the amended particulars of claim dated 6 April 2021.

Jumping down to paragraph 5 there, it explains -- it sets out in his statement here, at 21A, particulars of the case which the claimants now rely upon. My Lord, in his third witness statement, which appears at <C1/5>, page 1, on page 2 of this second witness statement, Mr Hudson goes to some lengths to explain just how difficult it was for the joint administrators to reconstruct the money flows on the basis of which the application to introduce the Ponzi allegation was being made. He explains statutory powers were exercised to collect in the books and records of LCF, LOG and other companies; he explains the administrators had identified bank statements and other financial information; that in most cases they were in hard copy or PDF; that in order to understand the movements of money in and out of LCF and other connected companies, it was necessary for the joint administrators to convert all bank statements which were in hard copy and PDF into Excel format, in some cases using specialist software. He is candid with the court about instances where he might be wrong but expresses some confidence in his work overall. He notes there are in excess of 30,000 payments in and out of the LCF bank accounts, that each was accompanied by a description which he rightly remarks might be inaccurate because it is entered by a person. He says below he has reviewed thousands of line entries. He accepts there is a possibility he might have misidentified some of the payments. He doesn't think there will be any misidentification of sufficient materiality to invalidate or affect his overall conclusions. If it was the case the claimants had to undertake an exercise of that magnitude in order to introduce a new plea of a Ponzi scheme being in operation, the idea that Mr Hume-Kendall, who was neither a de jure nor de facto, shadow or any other kind of director or manager of LC&F, the high-water mark of the case against him is that he approved an invoice and was shown correspondence about a premises and liked the name "London", the idea that he could have known, without seeing, for example, the full loan book of LCF or other financial information that Mr Hudson was privy to and collated and refers to in these witness statements, the idea that he knew or could have known that this was a Ponzi scheme is fanciful. I should point out, my Lord, it also escaped the notice of auditors who audited LC&F through the period as well. Your Lordship has been shown at least one, I think, of those unqualified audit statements, an example

which I think your Lordship was taken to is at <L1/6>, page 1, but the others were produced by BDO and EY.

**MR JUSTICE MILES**: Is this PwC?

**MR WARWICK**: My mistake, my Lord, it was PwC. BDO is the auditor of LOG who crops up later.

The second problem with this, quite apart from knowledge, is there is actually a lawful explanation for these money flows, an agreed one, because the loans involved here were on express revolving credit terms. I wonder if we could turn to <J1/1>, page 1. This is the first, I think, of the facility agreements that have been put in the bundle by the claimants and that form the subject of this litigation. It is the LCF and L&TD facility agreement dated 27 August 2015. If we turn to page 8, please -- page 9, quite possibly, I beg your pardon, clause 6, 6.1, reads as follows:

"Notwithstanding anything in this agreement, the borrower shall repay any sums (being the gross sums as calculated from time to time) demanded by the lender which demand may be made in the lender's absolute discretion at any time. In the event the lender makes any such demand, the borrower shall repay such sum or sums demanded by the lender within 14 days of receipt by the borrower of such demand."

At 6.2, it goes on:

"In the absence of any such demand by the lender pursuant to any provision of this agreement, the loan (being the gross sum thereof) shall be repaid by the borrower in a single sum on the third anniversary of the date hereof."

Returning for a moment, if we may, to page 2 of this document, please, over to page 3, your Lordship will recall -- I think your Lordship was taken to this previously -- it sets out the parties, and under "Commitment" it explains the gross sum was £25 million minus any amount reduced or cancelled in accordance with the agreement. It provided for a commitment period. If we go over one page, please, and one page more, please, you will see the gross sum is explained there by a process that I think my learned friend took your Lordship to, which essentially accounts for the cost of lending whereby the sums for which the borrower is liable were ultimately gross of those additional costs of borrowing items.

My Lord, the same, or substantively the same, clause appears in all of the loan facility agreements with which Mr Hume-Kendall's companies were concerned. Perhaps just in the interests of time, for your Lordship's note only at the moment, although I'm more than happy to take your Lordship to them, <J1/3>, page 9, and <J1/4>, page 9, are the LOG facilities for 20 million and 25 million respectively and the relevant provision is clause 6. At <J1/20>, page 9, is the 4 December 2017 LOG facility and that is at clause 6. At <J1/24>, page 11, 18 October 2018 LOG facility, there is a like term at clause 6.

My Lord, the third problem with the Ponzi allegation and, in a sense, the wider allegation of one overarching scheme --

**MR JUSTICE MILES**: Sorry, what was the point about that? Clause 6?

**MR WARWICK**: The point about all of this is that there was a legal right, and indeed obligation, to repay sums demanded along the way in a revolving fashion, as revolving credit terms require, so that LC&F could call for sums that were not the full amount at any time in their absolute discretion, and they would have to be paid within 14 days, which means, far from it being unexpected to see smaller

flows of money coming to and fro, far from that being unexpected, rather, it was entirely expected because that's precisely what was agreed could be done and, if asked for, had to be done. So, my Lord, the third problem with this overarching case about a Ponzi scheme and recirculation monies is that, in fact, there isn't any evidence, or at least the weight of evidence is that Mr Hume-Kendall intended to repay the sums that his companies had borrowed, and there seems little, if anything, to suggest anything other than that, and that balance matters in a case in which your Lordship is asked to draw inferences which would be defeated by honest explanations, my Lord. So, I have given one example already, my Lord, which is his loan to LOG made on 17 September. Perhaps if I'm a little more specific, in his witness statement this is dealt with at paragraph 160, which is <C2/2>, page 45. Your Lordship may have seen, from reading this previously, that after -- well, it occurs, essentially, in two phases. In November 2018, originally, even before the FCA raid, Mr Hume-Kendall made attempts to repay. I will come to that second, if I may. This, though, relates to what happened on 17 December, after the raid, where 1.16 million was advanced to LPC on 17 December. LPC passed £1 million on to LOG, which then paid this on to IOG, and that he then loaned a further £4 million to LOG on 4 and 9 January 2019 which enabled further involvement in IOG. The figures are given there. His view is that IOG would have gone insolvent without this.

So, my Lord, far from a failure -- a lack of an intention to repay, I don't believe this is disputed. Mr Hume-Kendall advanced very large sums to keep the investments afloat following the FCA raid and, before the FCA raid, my Lord, Mr Hume-Kendall made attempts to repay other borrowing.

If we could turn to page 31 in the same witness statement at paragraph 106, please. Your Lordship will recall that, under the Prime transaction, the Paradise Beach resort and CV Resorts investment in right-to-purchase contracts in Paradise Beach was not something that the buyers were willing to take on, and this was returned, in effect, into the London Group at that stage. Despite much of the lending taking place during the period of time when the company was not in his own hands, Mr Hume-Kendall made efforts to negotiate a repayment plan.

Of course, he did this in an unguarded moment, before the balloon had gone up on the difficulties at LC&F by the FCA's raid in December 2018. Mr Hume-Kendall negotiated via the solicitor for LCF, Mr Alex Lee, who is not a defendant in this claim, and I don't understand to be the subject of much, if any, criticism by the claimants. But in July 2018, he looked to offer -- he offered a rolling personal guarantee of £1 million and to negotiate a repayment plan of that. This resulted in heads of terms being prepared but prepared only shortly before the collapse into administration of LC&F. A copy of that is found at <D2D10-00057282>. Your Lordship will see that repayment is just below where the bottom hole punch would be: "The borrower shall repay the loan at the rate of £1 million per month out of the proceeds of the redemption of its preference shares in London Power Corporation Limited and in addition shall pay to the lender all sums received by it from CV Resorts Limited and LPE Support Limited."

My Lord, that's a repayment plan backed by a personal guarantee. It is scarcely consonant with the actions of a person trying to misappropriate, or conceal misappropriation of, monies.

The fourth overarching point, my Lord, is the wider question of inherent probability. This is important because Mr Hume-Kendall's involvement in this, alleged involvement in this, is, as might be expected for any claim related to fraudulent trading, an inferential one. But it isn't open for there to be a finding based on an inference of his involvement where there is, in fact, before the court, and accepted by the court, an honest explanation, and Mr Hume-Kendall has put forward in his evidence many honest explanations for these transactions, whatever infirmities they suffered from on their documents, which is a matter I will come to, of course. But there are several reasons why the

claimants' inferential case with respect to Mr Hume-Kendall and, in a sense, Mrs Hume-Kendall, to the limited extent she's said to have been involved, doesn't stack up.

The first is to remark upon the inbuilt tension that exists in the claimants' own case, the inconsistencies in it, because, of course, on the one hand, the claimant is asking the court to accept that the loans that were made primarily to L&TD and to LOG, but all of the impugned loans, were, in fact, only a facade to conceal misappropriation, and also that the transactions -- we'll call them SPAs for shorthand; some of them involve multiple SPAs -- lacked commercial reality and were dishonest ones.

Whereas, on the other hand, the claimants don't go so far as to suggest that the loans were shams so as not to be enforceable or to be void, and, indeed, they have based the operation of the administration and its efforts to conduct investigations and take action, enforcement action, to recover and realise assets of LCF, LOG and all the other associated companies, relying upon the validity of these, and indeed of the SPAs themselves insofar as they conveyed ownership of shares in companies that owned assets that they have since realised.

So, in a sense, my Lord, the claimants are walking a sort of line. They want to say this was a facade based on concealment but not go so far as to say it was all a sham so as to result in a situation where avoidable transactions could prejudice the ability of the administrators to make realisations. Secondly, on this concealment case, it's also never really made clear who these loans and transactions were said to have been put in place to conceal misappropriation from, because each of them is between LC&F and the companies involved in the borrowing and involved in the various leveraged buyouts that take place.

For example, it is suggested in the particulars, the re-re-amended particulars of claim that, for example, changing accounting periods or being late in filing accounts was a device to conceal. But, of course, it's not immediately clear who that would conceal anything from, given the counterparties involved. The third point, though, my Lord, is the involvement of others -- lawyers and accountants in particular. This is all said to have been done under the noses of a very wide range of professionals, including solicitors and accountants and the auditors.

So, for example, LC&F's own professionals were Buss Murton, Alex Lee. He prepared loan documentation, security documentation, and it is common ground as well with Mr Thomson that Buss Murton handled LCF's legal work. That's made clear in Mr Thomson's own skeleton argument at paragraph 6(2). For your Lordship's note, it's found at <A2/3/5>.

As to LOG, the involvement of Mazars, who are corporate advisors and accountants, who produced detailed advice on the LPT restructuring. Lewis Silkin, who was involved in that restructuring by incorporating the new Topco, setting that up, and then also in the latter parts of the transaction before it was interrupted again by the FCA raid. Other professionals who were board members -- Mr Elliott, for example, the CFO of LPC. And, quite clearly, Mr Hume-Kendall was entitled to delegate the legal work and the documentary work involved in these transactions to his solicitor, Mr Sedgwick. It is not only Mr Hume-Kendall's evidence that he did that, but it is also Mr Sedgwick's evidence that that is what he was asked to do and that he was responsible for documenting these transactions. For now, by way of example only, my Lord, Mr Sedgwick admits, at paragraph 26 of his witness statement, that he documented the Lakeview SPA and the SPAs dealing with the increase, for example, to £6 million consideration for the shares. He prepared the documentation for the Elysian SPA, the LPT SPA, the LPE SPA, the LOG call option and, for example, at paragraph 77 of his witness statement, the LOG facility agreements with LPE and LPT.

Much has been made in this opening about backdating of documents, but one has to look to the substance, my Lord. So, for example, in oral opening, for the first time it was alleged that the memorandum of understanding between Mr Hume-Kendall, Mr Barker and others, and Mr Thomson, with regard to Andy separating his business interests off and taking over and running independently LC&F was a late-generated document. I think it was said that there was no evidence of that document existing before the date of the supervisory notice and FCA raid. But what matters, my Lord, is what was, in fact, agreed. I wonder if we could turn to <D8-0036853>. This is a thread of emails, exchanges, during the course of June 2018. If we could go to page 2 of this, please -- it may be that my print is different. If we could go to page 3, please. You will see that it commences here, on 11 June 2018, in an exchange between Mr Sedgwick and Graham Reid, a partner at Lewis Silkin. Quite clearly, advice is being sought about potential conflicts that might arise as a result of Mr Thomson keeping an interest in the companies. Mr Reid, in that email, details some advice. He explains it is a complicated area:

"Ultimately, the shareholding that Andy T holds directly or indirectly in the London Group of companies could be construed as a potential conflict of interest if not correctly handled by both parties. From his perspective, he needs to disclose any potential conflict -- I don't think it is a matter for you as he should be able to carry on the business which he says he can (having the relevant processes in place) and if part of this is to lend to you that's his decision. As an FCA regulated entity this is a key principle. The other side of conflicts is your relationship with him -- any decision that you make regarding his lending should be taken without regard to his holding. The most obvious risk is that by him holding the shares it influences your behaviour. Technically you should be minuting that he does hold shares and the steps taken to ensure this has no influence on the decisions that are being made in relation to his lending -- in essence this is his internal processes in reverse as your behaviour should not influence what he does. At 5 per cent (on a practical basis) it's difficult (if this conflict is clearly minuted and assuming standard articles in a private company) to see this as an issue. Even if it has not been documented in full previously you could now do a ratification minute. We can pick up on this tomorrow."

My Lord will see on the previous page, between the notional hole punches:

"Thanks Graham for that."

This is on 11 June, Mr Sedgwick in reply to Mr Reid: "When it was agreed that Andy would separate out his business which was to become LCAF it was agreed that he would retain a 5 per cent interest in the businesses carried on by Simon and Elten and at the same time it was agreed that Andy would have no influence on the operation of the businesses which Simon and Elten carried on.

"Let's speak tomorrow."

Back on the first page again, Mr Reid replies, on 11 June:

"Thanks -- I think commercially it's clear. In practice these things are always more difficult to document ... Speak tomorrow."

Your Lordship will see from what followed above that there was the possibility of a ratification minute, and so on, and this is passed on to Mr Hume-Kendall. My Lord, this was months prior to the FCA raid and clearly what's happening here is Mr Sedgwick is seeking, and it's being passed on to Mr Hume-Kendall, advice about Mr Thomson's 5 per cent interest and whether or not to document it by way of ratification or otherwise. So, whatever is said about the document ultimately produced, quite clearly, in front of Lewis Silkin, this is being discussed candidly as long ago as June 2018. Lastly, by

way of overarching point, my Lord -- I beg your pardon, there is one further point on inherent improbability and that relates to the work done with respect to these assets.

On the claimants' case, of course, all of this was part of a facade, and yet, what we see, even on the claimants' own forensic documents, is a lot of underlying work taking place on the ground to do with operating these businesses and assembling sites and so forth. I wonder if we can turn to <A1/14/1>. This is a document your Lordship was shown, produced by the claimants I think as part of this litigation forensically. It runs to several pages. What one can see here is a process of acquiring freehold sites in parcels of land at the Lakeview resort and the proprietor, as at April 2022, being the date on which the land was sold out of the administration, is listed in column 3.

What's immediately obvious is that, over a course of years, so there is an entry there of 2013 and if we can go over to the next page, please, one can see a series of site acquisitions on various dates through 2016, the purchase of 24 units as part of compromise with Lakeview Title Limited in January 2017. Going further down, please, further purchases in 2018, 2019. There is one at the bottom there in 2016. Overleaf, please. Again, further purchases 2015, 2016, 2017, and so on. These were all purchases, or many of them, from individuals. You see the third from the bottom there, "Peter William Shea and Maureen Margaret Shea". It would be extraordinary for people of whom it is said all of this was a facade to devote their time and energies over many years negotiating the purchase of effectively a large-scale site assembly at the Lakeview resort of this kind. That is not even remotely consonant with a facade transaction; still less, my Lord, are the routine monthly reports to the board of Lakeview Country Club Limited, which I will take the court to in a moment when dealing with Lakeview for efficiency purposes, it might be a better moment to do it at that stage. My Lord, the claimants' pleadings then and the respects in which their case in opening has gone beyond them, and if I could hope to achieve anything in this opening, it may be to achieve a sort of descent down from the altitude at which the case has been opened to what is, in fact, alleged against the Hume-Kendalls on the basis that it is, in fact, put, and I have had prepared and caused to be put before you a table which itemises points made in opening, both in writing and orally, setting those against the points that were in fact pleaded. I wonder if your Lordship has found that? Does it have a location yet? (Handed).

My Lord, I will be asking the court, if the court feels it is necessary for the proper case management of this trial, to rule, if and to the extent it remains in doubt or the claimants persist in suggesting that some of the points taken in opening are, in fact, part of their positive case, it may be necessary for your Lordship to rule either way as to whether it comes within existing pleaded aspects of the case or not. The reason for doing so, my Lord, is not a sort of stunt or something I'm doing lightly, it is because it actually has very important implications for the shape of this trial and how it is to be handled because, of course, most of the points that have been taken form no part of Mr Hume-Kendall's evidence. Some may do, where he's given an explanation by way of background, but in terms of a positive case against him, it is absolutely important for Mr Hume-Kendall and his representatives to know precisely what the landscape is of the claim against him so he can be properly defended in this trial.

By way of example, you will see on the first page, at item 1, there is a series of additional documents that have been referred to in opening that are said to be dishonestly backdated. It is quite a good example to start with, my Lord, because none of them is pleaded as a dishonestly backdated document in the claimants' re-re-amended particulars of claim. But it is a good example to start with -- and no issue is taken, of course, by the Hume-Kendalls, where something is said to contradict, for example, something that a witness has said or on the question of credit. It is open to a party to cross-

examine and to contradict a witness, of course, if they have asserted something in answer to the claim and the claimants want to contradict that, but each of these points that have been itemised in this --

**MR JUSTICE MILES**: Cross-examination on credit isn't restricted to points where a witness has said something in chief.

**MR WARWICK**: Indeed, sorry. It is a three-way distinction between contradicting something a witness has said, also cross-examining on credit.

**MR JUSTICE MILES**: Right, sorry.

**MR WARWICK**: Those two things are obviously permissible on the material that's available to a party. But what isn't is positively alleging an act of dishonesty that's relied on as a particular in support of a wider case in dishonesty and fraud, and that distinction is important. So, you will see, my Lord, that you may recall in writing the claimants take issue with the facility increase letter from L&TD to LCF, which is dated 20 December. I have had references put in there about where that's found in the claimants' opening. But, of course, nowhere was it pleaded that that was a dishonesty backdated document, nor the accompanying default notification letter, nor the declaration of trust by Mark Ingham in respect of shares in London Group dated 30 September 2015, nor the payment agency agreement dated 19 May, nor, indeed, the LPE SPA itself, dated 21 June 2018 in which Mr Hume-Kendall is interested.

Rather, those that are said to be dishonestly backdated are set out in the claimants' particulars of claim at 17(10), which is found at <B1/2>, page 13. They are enumerated there in subparagraphs (i), (ii), (iii), (iv), (v) and overleaf up to (viii). They do not include any of the documents now said to have been dishonestly backdated. That is, of course, an allegation of dishonesty which should be particularised. Overleaf at 2, my Lord, I have already taken my Lord to paragraph 25 of the re-re-amended particulars of claim and to subparagraphs 1A, 1B, 1C and 1D, which are the only particulars of Mr Hume-Kendall's alleged role in LCF's business, if I can put it that way. In order to be sure about this, Mr Hume-Kendall's solicitors made a Part 18 request in February 2022 to which I have had a reference inserted in this note to ask for confirmation about whether the invoice referred to in paragraph 25(1A) is the only one relied on for the purposes of that allegation, and the response, response number 23, was to confirm that, yes, that's right, it was the only invoice referred to.

So, your Lordship might well regard that, then, as a closed list of particulars of primary facts from which it is suggested that Mr Hume-Kendall was in charge of the initial setup of LCF's operations or had involvement in LCF's operations, as such. But yet, in Cs' written opening we saw -- and I wonder if we can go to <A2/1/35>, please, at C4.5 on this page, we see this: "... both D4 and D2 continued to play a central role in LCF's business."

Then, in apparent contradiction to that, it says: "D2 played a less central role in LCF's affairs. He was consulted ...", and so on.

This goes on in section C4 in other places which I have summarised in this note or had extracted and put into this column of the note, but obviously C4.20 also speaks to an alleged continued role. C4.35 also speaks to a continued role.

Of course, this matters because that role is one of the facts that's said to be relied upon to support the inference that he was involved in fraudulent trading. So that is exactly a primary fact of the Three Rivers kind which one has to particularise and has to prove in order to support that inferential case. It seems that the claimant is not satisfied with your Lordship's ruling that he couldn't be pleaded to

be a shadow director and have gone with something halfway there, a sort of central or continued role, but it is not a case that's found in the pleadings. Is your Lordship content to go on in this fashion? Because, of course, there are other ways to approach it. But it seems convenient to continue.

**MR JUSTICE MILES**: Yes.

**MR WARWICK**: Overleaf, item 3, involvement with Surge. The same particulars are given. Really, it is only Mr Hume-Kendall replying, "Fine", when asked about one invoice, my Lord. But at C2.11, if we can go to page 26 in the document that's on the screen at the moment, we see reference to meetings, and so on, and over at C2.22 to 24, emails and other communications. Of course, it is possible that these are background facts that a witness might be asked about. We just don't know. But coupled with the earlier plea about involvement with LC&F, one rather wonders whether this is morphing into an unpleaded further case of involvement with the activities of Surge as well. Again, we just don't know. Of course, it is axiomatic that a defendant should know the case he has to meet. My Lord, overleaf, number 4. This relates to the plea at paragraph 18(a) of the re-amended particulars of claim by which the Lakeview SPA is impugned. It's said to be a dishonest transaction, but not for the reasons found in the first column, which is an excerpt -- contains excerpts from the claimants' written opening at E2.19 to E2.21 which commences on <A2/1/60>. Here, a case of sorts is made. It is not immediately clear from my learned friend's oral opening whether this is persisted in, in fact, but actually it seems it is being suggested that Lakeview Country Club Limited didn't, in fact, own the Lakeview resort because it was transferred on 27 July to LV Resorts, as your Lordship may recall, and then later onwards to Waterside Villages. Whether that's a case available to the claimants at all is a matter I will come to when dealing with Lakeview, since, quite clearly, it was a transfer in the hands of the purchaser's side of the transaction. But here it is being used to suggest that, with effect from 27 July, Lakeview was insolvent on a balance-sheet basis, with reference to its indebtedness, and that also it didn't have any land to sell.

Again, those are not facts pleaded as primary facts to be relied upon to infer that the Lakeview SPA was a dishonest transaction.

My Lord, item 5, perhaps, before the short adjournment. Here we see, my Lord, in opening, written opening, the claimants making a new and different attack on the Elysian SPA. The respects in which that is said to be a dishonest transaction were pleaded at paragraph 18B of the re-amended particulars of claim. What they don't include is what is found at F1.7 of the claimants' written opening. If we can go to page 89. The new allegation, new primary fact, not pleaded in support of fraud was that it was not an arm's-length purchaser, its directors were Mark Ingham who had worked with D1 and D3 on the Sanctuary scheme and who had helped D1 and D2 set up SAFE, and so on. A suggestion he was given a beneficial interest and that Mr McCarthy was promised a commission, and so on. All of that is new, my Lord.

Item 6, my Lord, overleaf, which is page 7 of my note. Again, new and different attacks on the Prime SPA. Again, the case, and only case, as to why the Prime SPA was said to be a dishonest transaction, relied on in support of a case of fraud, is found at paragraph 18C in the re-amended particulars of claim. None of it included what was found in the claimants' opening at G2.1 to 2.2 and onwards. If we could turn to that, page 113, please. Here we see a new case about the ownership, beneficial ownership, that is, by Mr Terry Mitchell. The single sentence, contention for emphasis that Mr Mitchell is a fraudster. Your Lordship was shown details of his sentencing at Southwark Crown Court. Again, on a little later, on page 118, to pick it up there, at G7.1 to 7.2 and onwards, this is used to -- as well, alongside this, rather, a suggestion it is not an arm's-length transaction. That wasn't pleaded

either. There are details given of fees paid to Mr McCarthy and Mr Ingham, a fee of £1 million to Mr Mitchell for his participation. Further on, commission payable to Zectrade of £1 million. My Lord, the names Mr Mitchell and Zectrade appear nowhere in any of the claimants' statements of case. It may well be some of this is part of the body of evidence or body of documentation that my learned friend intends to put to witnesses, and so on, but, as particulars of fraud, none of these are pleaded.

I have given some details at 7 overleaf on page 8 of my note, my Lord, of some further alleged involvement which Mr Hume-Kendall. I will place less emphasis on this because it is not quite clear to us where it is going or whether it is said to go specifically to any particular part of the claimants' case, but, again, we don't know, and we are entitled to. Paragraph 25 of the re-re-amended particulars of claim makes clear one respect at (4) in which it is said to be fraud because, of course, it is said that he caused the connected borrowers to borrow monies from LCF and it gives an example of signing facility agreements with Support companies, and so on.

Yet, at G8.14 and elsewhere in G8 there are other allegations made about the borrowing limits and allegations that Mr Hume-Kendall was involved to do with payments in excess of borrowings limits and so forth. Again, this might be something that my learned friend wants to explore with the witnesses, but it is not a particular properly pleaded of fraud and we just don't know.

My Lord, I see the time.

**MR JUSTICE MILES**: Yes.

**MR WARWICK**: I wonder whether this is a moment to break for the short adjournment and pick the matter up after lunch?

**MR JUSTICE MILES**: Yes. We will come back at 2 o'clock. Thank you.

(12.58 pm)

(The short adjournment)

(2.00 pm)

**MR WARWICK**: My Lord, before the short adjournment, we were looking at the respects in which further details had been given of alleged involvement by Mr Hume-Kendall in the activities of LCF that are unpleaded. Before picking up further at item 8, which is on page 9 of my table, I just wanted to supply a reference -- I think it is right that I do. I mentioned in my overview earlier the costs of the administration fees and so on. So your Lordship has it, a reference to the most recent joint administrators' report of LC&F is <H1/10>. It was put up a few days ago because it relates to the period concluding on, I believe, 29 January, and details of the expenditure of the administration and realisations and dividends to date are found on pages 27, 28 and 29, for your Lordship's note.

On another matter of organisation, I think I foreshadowed also dealing with the Hume-Kendalls' representation at trial and the evidence they rely upon. I propose to take that at the end, since it is a sort of mop-up of dealing with things going forward. Returning then to unpleaded allegations, including unpleaded allegations of fraud, page 9 of my table, my Lord, item 8. This concerns the alleged knowledge on the part of Mr Hume-Kendall of the Ponzi scheme, the alleged Ponzi scheme. I took your Lordship briefly to where that is pleaded, which is on page 43 of the re-re-amended particulars of claim, which is at <B1/2>, page 43. Your Lordship will recall that it is alleged:

"Mr Hume-Kendall knew that, rather than being dealt with as represented to potential bondholders, a proportion of the monies [et cetera] ... was being misappropriated ... and that a further proportion was being applied to discharge LCF's obligations to existing bondholders."

There are no particulars of why Mr Hume-Kendall is said to have known that, and I have addressed how that is impossible, my Lord. But here we find, in the claimants' written opening, some more facts that appear to be particulars of knowledge which are not found in a pleading anywhere.

If we could go to <A2/1/53>, please, your Lordship will see, at D1.7 to D1.8, it is now said by the claimants:

"D1 and D2 both knew that it was wrong to use new investors' monies to pay returns to existing investors. This is clear from their dealings in respect of the bond issued by Lakeview UK Investments Limited ('LUKI'), a company which had used the Lakeview resort for the purpose of raising monies through a bond issue." Again, my Lord, if that's relied on as a primary fact to support the contention he knew this was a Ponzi scheme, that's certainly not found in any properly pleaded part of the claimants' statement of case. Overleaf, my Lord, on page 10 of the table I have put before you, my Lord, at items 9 and 10, I don't propose to dwell on these at any length but your Lordship may have seen that the re-re-amended particulars of claim contain a closed list of other payments that the Hume-Kendalls are said to have received. That's at paragraphs 68 and 70 of the re-re-amended particulars of claim. And at 9 and 10 of this table, I have itemised for your Lordship, and where they are found, allegations of further payments. Perhaps more --

**MR JUSTICE MILES**: Sorry, which amounts are they?

**MR WARWICK**: They are in the following amounts, my Lord --

**MR JUSTICE MILES**: 20, 24 --

**MR WARWICK**: They are apparently of an indirect nature. At H3.24 of the claimants' written opening [<A2/1/136>]: "London Group LLP made a further payment on 13 April 2018 in the sum of £60,000 to D2's company LV Management, again with the reference 'Pref share adv'."

And I have given the other example at J6.1 [page 181]. £20,000 per month and £24,000 per month is alleged there, and, at J6.3 [page 182], a payment of just over £600,000, £601,750, to LOG, which paid £200,000 to D10 just two days later. The reference was "LOG share payment". Nothing can be found to explain or justify this, it is said. If that was so, my Lord, then --

**MR JUSTICE MILES**: Wasn't that the one that we looked at this morning --

**MR ROBINS**: Yes.

**MR JUSTICE MILES**: -- where Mr Robins said it was to a joint account?

**MR WARWICK**: Yes, it is alleged to be to the joint account. The joint account payments, my Lord, are found at re-re-amended particulars of claim 73, which is <B1/2>, page 61.

**MR JUSTICE MILES**: This particular point, is this one about whether it was a joint account or to her -- on her own, or is it more than that?

**MR WARWICK**: Your Lordship will see on screen, under the heading "Mrs Hume-Kendall", it details one payment to her of £5,161,900, and then, above that, to the Hume-Kendalls both, to a joint account. You will see at 70 -- you can see it appears at the very top of this page, a series of payments made there. At item (1) it says:

"At least £200,000 belonging to LCF from LOG." I'm afraid it is not immediately obvious how the two things connect, but the 600,000 now referred to at J6.3 could be a reference to that. It is not immediately obvious.

**MR JUSTICE MILES**: Well, it is 200,000, because it's monies paid to LOG and then 200,000 is paid --

**MR WARWICK**: Yes. It is possible that that squares that circle, but it is not immediately clear. Quite clearly, the claimants will want to put before your Lordship a complete list of the payments but nevertheless this is a document that has been prepared to identify unpleaded elements of what's argued, and your Lordship has those.

**MR JUSTICE MILES**: I understand that. I was just thinking, on that particular one, it looks as though it may have been pleaded, but it's pleaded as a payment to a joint account rather than to Mrs Hume-Kendall on her own.

**MR WARWICK**: Yes, that appears so.

**MR JUSTICE MILES**: Yes.

**MR WARWICK**: Perhaps more importantly, overleaf on page 11, item 11, your Lordship will have read in section M22 of the claimants' written opening and M28, again, that's something that's styled "LCF 2", which was an alleged plan to set up another new lender. I can say with confidence this is found absolutely nowhere in any statement of case prepared or filed and served by or on behalf of the claimant. So it is a brand new case. Whether it is part of the background facts that the claimants want to ask witnesses about is not clear, but if this is relied on as a particular of facts which your Lordship is going to be asked to find to take account of to support the inference of a wider fraud, then that's impermissible on the claimants' pleadings as they presently stand.

12 and 13 are other matters. Again, they really are only included for completeness. One suspects that they are included by way of background so I won't emphasise those orally with any weight.

Over on page 12, my Lord, item 14. This section of the table deals with points developed up still further orally by my learned friend in opening. 14 is a collation, a sort of bringing together, if you like, of all the points made about the company Sanctuary, which is a Guernsey protected sale company involved in investments that form no apparent part of this case at all. Some reference was made to Sanctuary by the claimants in reply, but only on the question of whether there was a connection or at least the extent of connection between Mr Hume-Kendall and Mr Thomson. It seems to form no operative part of the case. But, yet, in oral opening a good deal of time was spent on it, and it appeared to be suggested that this was part of the case and the respects in which it was so suggested I have set out in a table.

So, for example, reference was made on Day 1 to Mr Hume-Kendall's roadshow. An allegation was made that he led clients to believe certain things which induced them to pay £3 million into the project by way of additional deposits. It was submitted by the claimants the additional deposits weren't used in any way to fund the development. That is, of course, an allegation of at least a false representation, if not a fraudulent one.

On Day 3, the claimants referred to a "special offer" made to potential SAFE investors -- I should point out, of course, SAFE investors aren't claimants in this case, my Lord -- where 110 per cent would be repaid and it was said for the claimants this, my Lord -- the reference appears in the table:

"One cannot help but notice the similarity with the Sanctuary deal, where the original buyback deal in the Sanctuary scheme was that Sanctuary would repay 120 per cent of the deposit ... which Mr Hume-Kendall ... increased to 150 per cent ... so there is an obvious parallel."

Now, whether that's an observation or an invitation to your Lordship to draw that parallel in support of the wider case of fraud made against my clients is not clear.

Under the heading "Observations", I have set out all of the places we can ascertain where Sanctuary appears or doesn't, or ought to, in the pleadings. For example, Sanctuary is not pleaded as a connected borrower; Sanctuary and SAFE loans form no part of the allegation made that some loans were put in place to create a facade. Paragraph 18 of the re-re-amended particulars of claim where particulars are found of alleged dishonest transactions they don't include "Sanctuary" or indeed "SAFE".

In paragraph 21, the Sanctuary investor payments are not part of -- as a result because it refers back and up to the earlier part of the pleading, they are not part of the alleged LCF fraudulent trading allegation either, my Lord. They are not part of the Ponzi allegation in 21. I'm afraid -- I could go on with the negative. I'm not sure it will help an enormous amount. But, essentially, the only place where it is found -- I'm going overleaf now, my Lord, to page 13 -- is in the amended reply at paragraphs 18(3)(v) and 20(2)(iv). It is on the question of -- or pleading back to the suggestion -- on the point of the extent of connection between Mr Hume-Kendall and Mr Thomson only, and no operative part of the claim.

While on page 13, my Lord, you will see, looking back across to the second column, that, on Day 3, it was suggested, of course, that there was a symmetry here, in essence, because new investors, it was said, were paying old investors from the very beginning, the obvious implication being that that's something from which the court should draw a parallel of that kind. It was also alleged that this was all put in place to create a veneer of legitimacy for third parties. My Lord, this sort of prejudice has no place in this case. My client has not had the opportunity to answer that case, if it is a case at all. There may be all sorts of different explanations. I won't speculate. But it is certainly outwith the scope of what's before you, my Lord. If it is said in support of a case of fraud, impermissible on authority of at least 20 years standing at House of Lords level.

Overleaf on page 14, my Lord, at item 15, it's really the same point as was made in writing. Again, orally, an allegation of a continued or central role in LCF after setup was made. My learned friend referred to an email involving a member of the House of Lords and alleged that Mr Hume-Kendall was rolled out as an impressive bigwig and so on. I think the allegation made was that he was to soft soap people into handing over money. That appears also to be an allegation of doing something nefarious at least.

Item 16, my Lord, if I may. Please do say if I'm rolling over too fast.

**MR JUSTICE MILES**: No.

**MR WARWICK**: Item 16 relates to what was said in oral opening about Mrs Hume-Kendall. This is important, of course, because the scope of the pleadings with respect to Mrs Hume-Kendall has not only been clear since close of pleadings, but it's also been explored, insofar as those instructing me are concerned, unanswered correspondence as long ago as September. It was said for the first time orally by my learned friend for the claimants on day 3 -- I have given a reference, it is page 60, lines 19 and onwards:

"We say the registration of the LCCL shares in Mrs Hume-Kendall's name is a nominee arrangement." Well, my Lord, that's not a pleaded case. There are -- the case against Mrs Hume-Kendall, found in the re-re-amended particulars of claim, at page 61, paragraphs 73 and 74 -- I think it is on the screen at the moment. It says at 73:

"Mrs Hume-Kendall received the following monies belonging to LCF or the traceable proceeds thereof and received and holds the same or the traceable proceeds thereof on constructive trust ..."

And they are itemised as the £5.16 million she received for the sale of her shares in Lakeview Country Club. But then, at 74, it simply says this: "Further or alternatively, Mrs Hume-Kendall received the same as a nominee of Mr Hume-Kendall and received and holds the same or the traceable proceeds thereof on constructive trust ...", et cetera.

My Lord, this was denied in Mrs Hume-Kendall's defence and, again, the claimants chose not to plead back to that denial, other than a general join issue plea in the amended reply.

If we could go to <Q5/2>, page 4, or, rather, if we could start at page 1 but dart back to page 4 so that I can explain this document. At page 1, it is a letter dated 15 September 2023 from those instructing me to Mishcon de Reya, acting for the claimants, and it deals with numerous matters, principally the claims made against Mrs Hume-Kendall. You will see those are explained at the bottom of page 1. Over on to page 2, please. Again, it refers to paragraph 65. At item 6 there, it details the extent of the claim against Mrs Hume-Kendall. At 6(a), the constructive trust claim, to which I have just taken your Lordship, and then the nominee claim.

If we can go over, please, to the nominee claim, I believe that's on one more [page 4], it explains this: "The nominee claim is entirely unpleaded save as set out in bare assertion caped in paragraph 74 of the RRAPOC.

"Quite properly, our clients do not seek to impugn Mrs Hume-Kendall's initial acquisition of her shares in LCCL.

"The amended reply does, at paragraphs 68-79 take issue with the mechanism of Mrs Hume-Kendall’s disposition of her interest in LCCL, the Lakeview SPA." That's of a piece, of course, with the primary plea about that as a transaction, my Lord:

"However, your clients make no effort to advance the position that Mrs Hume-Kendall held her shares in LCCL as a nominee for Mr Hume-Kendall."

My Lord, as I understand it, this letter has gone unanswered. Yet we hear a case being developed orally about the registration of shares being a nominee arrangement and why. That's an unpleaded case, my Lord, and one that, there could be no argument, lacked particulars at close of pleadings and as at the date of this letter, which were specifically invited. That invitation not followed up.

Overleaf, at page 15, item 17, my Lord. This is really the same point as I've made already by reference to the written opening about Mr Mitchell and Zectrade and the Elysian and Prime SPAs. But if the position in writing was left at all in doubt, my learned friend put it beyond doubt by specifically asking your Lordship, inviting your Lordship, to draw an inference, and I have quoted that, that there was a longstanding intention to enter into a transaction with Terry Mitchell. Well, again, my Lord, that's not an inference that the claimants ask the court to draw by their pleadings, and it is an inference that appears to be relied on in support of a case in fraud, that this is a dishonest transaction. Again, on House of Lords authority, that's impermissible.

At page 16, my Lord, item 18. On Day 8, page 58, line 17, the reference is given there, a case of sorts was made that the draft minutes for the meeting of the board of directors of LPC, which took place on 14 June 2018, was changed, it was said, effectively, to introduce a valuation at £20 million. I have had the full quote put in there, my Lord. It says: "So, in the same week that Mr Barker is said to have signed the version of the LPE SPA containing a £20 million price and saying that £18.9 million of that had been paid already, the minutes of the meeting that had taken place on 14 June were altered to imply that the board had approved a price of £20 million. That's not something that had been mentioned in the original version of the board minutes. If it was done in an attempt to justify the LPE SPA by suggesting that it had been approved by the board of LPC, then it doesn't work ..."

I fully appreciate, my Lord, the word "if" appears in that sentence, but as an implication that that's the case and that that's what the claimants are saying, it couldn't have been stronger, my Lord. I have put under "Observations", in the final column, what we say about that. The first point is, it's not even really that clear that that's a point that's available to the claimants at all, given that the 14 June board minutes were, in fact, reviewed and approved by the board at the subsequent meeting on 7 August, and that the subsequent board minutes specifically record that the directors had had an opportunity to review the draft minutes and provide the company secretary with any amendments thereto. But, in any case, if it is an allegation of interfering with the record of the proceedings of the board of LPC and its minutes so as to imply approval of £20 million, that is an extremely serious allegation and it is found absolutely nowhere in the claimants' re-re-amended particulars of claim.

My Lord, overleaf on page 17 is item 19. Your Lordship will be pleased to hear this is the last item. Further allegations were made orally about the memorandum of understanding and share purchase agreement and about their dishonest backdating. I'm afraid, with the resources available to us and time, I have not found it possible to verify what was said about whether there were earlier versions predating the FCA raid, but, again, the idea that this was done to create a false impression or with the particular objective of explaining Mr Thomson's receipt of 5 million, that's not found either in the claimants' pleadings.

**MR JUSTICE MILES**: On that, for example, those agreements were actually pleaded by you --

**MR WARWICK**: Yes, understood. So, there is --

**MR JUSTICE MILES**: -- as part of your positive case. So, how does the court deal with that kind of situation, if there is then -- I will put it no higher than this -- some evidence that, to call into question the dating of those documents, how does that --

**MR WARWICK**: Well, as I understand it, there hasn't been any notice of the kind one sees challenging the authenticity of the documents.

**MR JUSTICE MILES**: So what's the position on that? That's another procedural point, is it?

**MR WARWICK**: Yes, it is an additional procedural point that sits to one side of this. I can see how that is a point that might be taken to contradict what's said about the authenticity of the arrangement. But the specific allegation that a document has been created and backdated to create a false impression and that it had the objective of explaining something away, effectively dishonestly, is an allegation of dishonesty which is not founded in statements of case.

And, of course, my learned junior very helpfully points out we have made clear the position in the pleadings as well. In the second column, penultimate paragraph, we explain, in the case of D1 and D3, at least, the claimants don't plead back to this, and for Mr Hume-Kendall they merely say that it

is denied that Mr Thomson ceased to be involved in Mr Hume-Kendall's businesses; it is denied that Mr Hume-Kendall and Mr Thomson had an entirely commercial, arm's-length relationship.

My Lord, in my overview at the outset --

**MR JUSTICE MILES**: Sorry, I'm just thinking about this. So, going back to my question, your clients -- or, sorry, Mr Hume-Kendall has said these agreements were entered into in July 2015.

**MR WARWICK**: Yes, my Lord. Yes.

**MR JUSTICE MILES**: Supposing that the claimants seek to challenge that in cross-examination, what then? Are they able to do that?

**MR WARWICK**: Well, this rather straddles the approach we have taken to pleading and rules of evidence about handling witnesses and putting allegations of dishonesty to them. I think it is right that, if they are going to allege dishonesty, it has to be put to a witness. But it is still -- I suppose a distinction is to be drawn, my Lord, as to whether this is an operative part of the claimants' case. So, if the claimants are relying on that alleged false impression and that alleged dishonest objective in support of an inference of fraud they ask this court to draw and conclude, then that is unpleaded and impermissible. The objection taken here is that it is a new and additional allegation of dishonesty and the fabrication of documents that are made for the first time orally and are not found in a pleading where they could have been. That's the nature of the objection. I think I can't put it any higher than that because, of course, it is open to the claimants to ask questions about the genesis of that document in cross-examination. I can't dispute that.

**MR JUSTICE MILES**: What would that cross-examination be for? Credit or what?

**MR WARWICK**: In answer to the defence that an agreement was reached at that time.

**MR JUSTICE MILES**: Yes.

**MR WARWICK**: Of course --

**MR JUSTICE MILES**: How does that tie in with the procedural rule about documents?

**MR WARWICK**: Yes. Well, from memory, my Lord, there is a deemed admission of the authenticity of the document, unless challenged at the time witness statements are served by the usual notice.

**MR JUSTICE MILES**: So, are they stuck with -- are they then stuck with that or --

**MR WARWICK**: On the rules at present, that deemed admission would apply. I pause there, my Lord, because it's not something I would want to speak too hastily on. I wonder whether I could pick that matter up following a brief pause -- sorry, following the next adjournment, when I have had a chance to just double-check the position?

**MR JUSTICE MILES**: It could potentially -- well, anyway, I will let you think about that. It could potentially lead to a slightly unsatisfactory position for the court where, if it's -- if there is evidence that it wasn't a contemporaneous document and it's being relied upon by a witness, the cross-examiner may not be able to say anything about that, and that seems a slightly surprising outcome. But it may be that's the law. So I'll let you --

**MR WARWICK**: May I reflect on that and come back to the court on the point once I have had chance to do so, my Lord? I wouldn't want to get that wrong. My Lord, that completes my review on the pleadings. There are obviously various different ways in which your Lordship could deal with this

problem that the claimants have created, and I am in your Lordship's hands. Obviously, one approach to this may be so as to narrow the position. It could be that some of these matters are matters which the claimants, despite everything they have said, do not rely upon as evidence -- sorry, as facts in support of fraud, or they do not say, "Actually, this was a dishonest act" or it's something that's within the scope of their pleadings -- or, rather, it is a further particular of something that should have been particularised, rather, it is something they simply want to ask a witness about and why. It may well be that, with the claimants giving that indication with respect to each of these items, your Lordship may be able to look at this document afterwards and see whether a ruling would assist. I would invite the court, my Lord, to make a ruling on the extant points.

**MR JUSTICE MILES**: It does slightly depend on what the -- first of all, whether your analysis is right, obviously, because there may be a dispute about that.

**MR WARWICK**: Yes.

**MR JUSTICE MILES**: But, secondly, about what any cross-examination might be concerned with, whether it was concerned with questions that are going to credit or questions going to facts from which an inference of dishonesty is sought to be drawn.

**MR WARWICK**: Yes, my Lord.

**MR JUSTICE MILES**: It is sometimes one, sometimes it is both, sometimes it is the other.

**MR WARWICK**: Yes, my Lord. I would add, my Lord --

**MR JUSTICE MILES**: As I understood your submissions, you weren't generally saying that the claimants were precluded from asking questions about these points.

**MR WARWICK**: As a matter of principle, if it is a point that genuinely goes to credit -- I say "genuinely" because there is a scope for a sort of Trojan horse type approach in that -- or if it is a point that contradicts something a witness has said or an aspect of their case in particular, then I don't have a principled objection to that being said. The difficulty is, my Lord, how it appears in writing at present and how it was delivered orally very much appear to be a positive case. I should be completely clear: the only sort of ruling that I would invite the court to make relates purely to the Hume-Kendalls. I can say nothing about the case --

**MR JUSTICE MILES**: No, I understand that. But even in relation to them, is the ruling that you are seeking about the ability of the claimants to rely on these matters in your table as facts from which inferences are sought to be drawn, or are you asking for something broader, which is that there should be no cross-examination on these matters?

**MR WARWICK**: Well, my Lord, the first answer is, yes, to proposition A because it simply would not be open to the claimants to do so, and, indeed, a finding to that effect can't be made unless it has been specifically pleaded, the point.

On proposition B, that's a harder question to answer because one doesn't know precisely how my learned friend would wish to deploy a point like that, and until one sees -- equally, it is not satisfactory for your Lordship's trial to have one party in real time policing questioning in an interventionist fashion either. So, it might be that seeing what my learned friend says in response to this drives the answer to the second proposition.

But certainly the most important thing to the Hume-Kendalls, and I venture to say for your Lordship's case management of this trial, is having the answer to the proposition A in your Lordship's question

there, which is what is in and what is out the case. Anticipating that your Lordship may ask about other defendants, I have to say that, having looked back at the table, other than the first item, which concerns backdated -- dishonestly backdated documents, it is not immediately clear to me that any of the other matters upon which a ruling is sought with respect to the case against Mr Hume-Kendall is a case of general application to other remaining defendants in this case. Although I will stand corrected on that if others, notably my learned friend, identify that some aspect of what I have pointed out is not properly pleaded against Mr Hume-Kendall is also a common fact that relates to a claim against somebody else, but we have sought to identify really only points that relate to the Hume-Kendalls, because that's all I'm here for, my Lord, although I do recognise that the dishonest backdating of other documents may be something that affects other defendants, but, of course, I wouldn't, and won't, seek a ruling as relates to other defendants in this case, my Lord.

**MR JUSTICE MILES**: Right. Okay.

**MR WARWICK**: My Lord, I was going to turn to the five transactions in overview, the first being Lakeview. I am going to approach this, if I may, and with some regret, on the slightly caveated basis that Lakeview occupied a considerable period of time in oral opening for the claimants and is the subject of a good deal of the claimants' written opening submissions, and I couldn't possibly hope, in the time available to me, to cover off each and every one of the points that has been taken and all of the contextual background that has been set out by my learned friend in writing and orally about it. But what I can do, my Lord, is provide your Lordship with an overview of it and the respects in which we would say Mr Hume-Kendall -- sorry, Mr and Mrs Hume-Kendall, as concerns both of them in this transaction, say that this is a genuine transaction and answer, in particular, the key points made about it by my learned friend regarding pricing revisions in particular, alleged backdating and also come on to some points about inherent improbability of the case in fraud that is made, my Lord, if I may.

Unfortunately, this does have to start with a short piece on versions of the SPA. Mr Robins, and I'm grateful to him for his thorough overview of the documentary parts of this deal, took the court to several versions of the SPA, but I think it's easiest if I take your Lordship, I think, to three, because they show the movement of what's happening in this over the period of time in which successive versions of this SPA were concluded.

I wonder if we might turn, please, to the document at <D8-0001462>. Your Lordship will see that this is an email with no written text in it, but it is to Mr Hume-Kendall from Mr Sedgwick, and it contains an attachment. Those instructing me explain that the attachment is the next numbered document, namely, <D8-0001463>. Your Lordship will see that the email is dated 22 July 2015, and it attached the unsigned and undated version of the SPA, which appears to us to be the earliest in time to come into existence. As your Lordship will see from page 4 of that document, the parties there, which your Lordship has already seen, naming the buyer London Trading, and you will see that the company to which the Target Co, defined as "company" in this SPA, to which the SPA relates is Lakeview Country Club Limited, as defined there, and then overleaf on the next page, please, the purchase price, the definition there cross-refers the reader to clause 3; "Sale Shares" of course deal with 10,000 ordinary shares in the company, all of which have been issued, et cetera. If we can go over one page, please, you will see there, my Lord, it was -- contains the agreement for the seller to sell and the buyer to buy, and your Lordship will see in clause 3 the purchase price. So the original purchase price was the £2,105,263.15 figure to be satisfied by the issue of loan notes. In the subparagraphs that follow, the document has yet to include the price revision mechanism which your Lordship was taken to by my learned friend. But then, slightly oddly, and this may be something that Mr Sedgwick needs to be

asked about, if we could turn, please, to the document at <D2D10-00066343>, your Lordship will see that this is a chain of emails between 14 July and 20 July 2016. You will see that there was an agreement there to increase the sale price to £6 million there and, around 20 July, it appears that this might have been signed because there was a request made for it to be printed out and put in Simon's car. Then, in between those dates, however, your Lordship will see at <EB0005582>, further versions were exchanged, and it seems as long ago, though, as 19 August, following discussions, the Lakeview SPA was already being amended to include provision for an uplift in price in the event of successful settlement of the Telos matter or the timeshare lease matter and that clause 3.4 was inserted. The version then being discussed and attached to that is found at <EB0005583>, again, a familiar first page of the document, and then over to page 4, and over to page 5, the sale shares are the same, and page 6, your Lordship will see that the purchase price was, in August, still at £2,105,263, the loan note requirement, but over one page, please, at 3.4, your Lordship will see that the price revision mechanism had been inserted within weeks of the original version of the agreement being concluded, or at least we have seen it in unsigned form.

The £6 million consideration version is found at <MDR00225500>. This is a document that's said to have been backdated. It is dated on its face, though, 27 July 2015.

If we go to page 7, we will see by now that that £6 million figure has been included and at clause 3.4 the price revision mechanism has been also amended to include the Magante asset, the Telos claim and the timeshare claim. Your Lordship was taken to the definitions of those things helpfully by my learned friend in opening.

Then, at <D2D10-00031907> is a variation agreement dated 16 August 2017. Over on page 3 of that document, please, as your Lordship has already seen, the parties agreed to value those assets in the figures set out there: Magante, £4,250,000; the Telos claim, £1 million, and the timeshare claim at £3,010,000. The total is given at £14,260,000 in substitution for the original purchase price of £6 million, and there is a division between the sellers and buyers shown.

At <MDR00225505>, your Lordship will see a document headed "Further variation agreement". It is given the date February 2018. On page 4 of that document, your Lordship will see it is signed. On page 3, your Lordship will see, at 2.1, there has been a variation of the apportionment between the parties. What is said against the Hume-Kendalls is that these price revisions were not real, they were the reverse engineering of payments that were being made to them, made to Mrs Hume-Kendall. I will come to why that isn't a case that works in a moment.

I want to first deal, though, with a little bit about the ownership of shares in the company. Your Lordship may recall that the property was acquired ultimately for £1,609,268 on 5 April 2013 in a transaction where the vendors were represented by Osborne Clark, and that it is Mr Hume-Kendall's evidence, on which Mrs Hume-Kendall relies, that, after that, there was considerable renovation and refurbishment works. This is summarised, for ease of reference, my Lord, in the Hume-Kendalls' written opening submissions in section E4, for your Lordship's note.

There were new lodges added. There was work on planning conditions which was work carried out by Mr Thomson, particularly satisfaction of planning conditions for the removal of electric pylons which bisected the site, the installation of underground power lines, and so on. Efforts to raise money from others. It is the Hume-Kendalls' case that it is for this reason that Mrs Hume-Kendall and Mr Thomson were the equity holders in Lakeview Country Club Limited and, further, the means that Mrs Hume-Kendall -- or the lengths Mrs Hume-Kendall went to to offer security for borrowing for the acquisition gave her a financial interest in entitling her to that interest in Lakeview. This is detailed in

the Hume-Kendalls' written opening submissions at paragraphs 68 to 69 on page 21. But an example of Mrs Hume-Kendall giving security can be found by way of a personal guarantee that she gave. This is found at <MDR00012403>.

Your Lordship may recall that a loan was obtained from Ultimate Finance, later refinanced by Ortus. Your Lordship will see here that reference is made to a guarantee for the whole or part of the liabilities of Lakeview Country Club Limited to Ortus. It is a document dated 5 April 2013.

Overleaf, next page, you will see the version signed by Mrs Hume-Kendall.

There was, similarly, a guarantee given to Ultimate Finance before that. A copy of that is at <MDR00013516>. That's a personal guarantee given by Mr Hume-Kendall, but if one turns to page 15, there appears a document -- an instrument by which Mrs Hume-Kendall gave a personal guarantee to Ultimate on account of Lakeview, if one turns overleaf, and again, please. You will see the operative parts of that document.

From recollection, this may have been a document that my learned friend took your Lordship to already, so the purpose of taking your Lordship to it is to flag that that is, on Mrs Hume-Kendall's case, one of the reasons she acquired equity in Lakeview Country Club Limited.

At the Hume-Kendalls' written opening submissions in the section I referred to a moment earlier, paragraphs 68 to 69, it explains that she was also, by reason of her controlling interest in a company known as Lamberhurst Holdings Limited, in a position to give instructions to Buss Murton to give an undertaking to apply sale proceeds from any sale of Hook House towards the repayment of borrowing from Mr Hunt and Mr Banks, who were former directors of Telos, which was also finance used for the purchase, meaning that her security underpinned, effectively, significant aspects of the acquisition of the site and, as a result, she was a shareholder in the company that owned it. Secondly, my Lord, I think a point was taken about the transfer of the Lakeview resort on 27 July 2015 to LV Resorts and then to Waterside Villages, less a sliver of land known as the development land.

I think, to complete the picture, I took the court to two particular documents. One, the TR1 by which a transfer was effected. It's found at

<D2D10-00013422>. Sorry, it is TP1 because of the retained sliver/part. Your Lordship will see the title numbers there and the name of the property, "Lakeview Country Club". The date of this document is 4 September 2015, which was well over a month after the Lakeview SPA in initial form, and it is -- Lakeview Country Club Limited is the transferor and the transferee is LV Resorts, so it was put into the hands of LV Resorts. The point is, my Lord, that is a transfer that took place after the Lakeview transaction, and the point taken at one time -- I'm not sure of the extent to which the point is maintained, but the point at one time taken by the claimants that the Lakeview transaction took place at a time when Lakeview Country Club Limited didn't own most of the land is, I'm afraid, not a good point.

There is also another document, an addendum to the certificate of title, which appears at <MDR00032280>. Could we go over to the next page, please. That's correct, yes. It's a document dated 11 January 2016, and it is signed on behalf of Buss Murton Law LLP. Rather than read it out, your Lordship may wish to read the fourth paragraph, the largest -- the paragraph that would be between the hole punches about charges, and so on.

**MR JUSTICE MILES**: Sorry, which one?

**MR WARWICK**: I beg your pardon, my Lord, it is a little further on. It says:

"Subsequently, the development land was charged to LUKI as security for money lent ..."

Then it says:

"LV Resorts Limited transferred to Waterside Villages Plc all its interest in the property together with its right to buy the development land subject to paying the balance of the loan due to LUKI." Well, Waterside Villages was a company in the hands of the buyer's side in that transaction, and that happened subsequently.

**MR JUSTICE MILES**: Sorry, you will have to explain that to me.

**MR WARWICK**: So, what happened, my Lord, as one saw from the TP1, is that, after the Lakeview transaction, the land was sold by Lakeview Country Club Limited, which by then was in the hands of the buyers in the Lakeview SPA, to LV Resorts, and then, subsequently, as this addendum shows, transferred from LV Resorts to

Waterside Villages, the point being that all of that occurred after the Lakeview SPA, meaning that the suggestion made that Lakeview Country Club Limited didn't own the land at the time of the Lakeview transaction is not a good point, my Lord. So, my Lord, on the pricing revisions, for the case on this made by the Hume-Kendalls in more detail, it's set out in writing in the Hume-Kendalls' written opening submissions at E3, which is paragraphs 74 to 79. For your Lordship's note that's at <A2/4> page 23 to page 26. And then also in Mr Hume-Kendall's evidence in writing, in his witness statement, paragraphs 72 to 83, that's <C2/2>, pages 20 to 23.

A summary of the position is as follows, my Lord. The first thing to say is, what's quite clear is that, by October 2015, so a couple of months after the Lakeview SPA, the loan notes hadn't been paid, meaning that the purchaser was in default of the SPA, the terms of the SPA.

Mr Hume-Kendall makes clear that Mrs Hume-Kendall had only received a payment of £5,000 by October 2015. I can take your Lordship to where that figure appears, and will do so in a moment.

Mr Thomson, as explained in paragraph 72, had received nothing, other than the £5,000 paid to him by Buss Murton, and Mr Golding £195,000, and, overleaf, please, on the next page, Mr Hume-Kendall makes clear, at paragraph 74, that the parties understood that they needed a complete reset of the bargain. To inform what that reset looked like, on what was known and understood by those involved at the time, a second reason for the price revisions, though not itself a price component in the contractual mechanism, is what was understood about the value of Lakeview at the time.

If we could turn, please, to the valuation prepared by GVA on 11 April 2015 at <MDR00016310>, your Lordship has seen this document once during my learned friend's opening. It is dated April 2015. If we turn over to page 3, please, where the summary of values is given, it says this:

"Our valuations are summarised as follows. "Market value as a trading concern £7,150,000. "Market value -- assuming the proposed business plan will be achieved in full and without delay £12,400,000." If we could shed some light on what the business plan was and what this was in terms of development land, because it was development land in RICS terms, and I will come to that in a moment, but if we turn to page 26, please, the valuer at GVA set out some of the planning history. It was summarised there, taken from Cornwall Council's portal, and the most relevant permissions are as scheduled below. So there was a certificate of lawfulness with a number given, confirming that operations undertaken had been lawfully carried out in accordance with the earlier permission, which is PA10/05936, granted on 29 October 2013. The certificate confirms that the planning permission PA10/05936 has been implemented. That permission is below that. It was a permission

authorising an extension of time for the erection of a 105-room distinction spa hotel and 36 golf lodges, related landscaping and water management, and that was approved on 9 September 2008, with conditions 25/11/10, with a period leading to its expiration in three years' time. Below that, planning permission with the number given for the erection of a 105-room distinction spa hotel and 36 golf lodges, related landscaping and water management, et cetera. At that time, permission not implemented.

If we turn over to page 56 of the valuation, we see more of what was intended. The section headed "Proposed business plan", it says this:

"Your proposed business plan is to buy back both the let lodges for refurbishment and resale on a fractional basis. You also intend to develop the 36 lodge pitches at the earliest opportunity for sale on a similar fractional basis followed by development of the 105-bedroom aparthotel also for sale fractionally. We have had sight of the previous draft business plan and the report prepared by EcoResorts on sales prospects and pricing attached at appendix VI of the Moore Stephens report. You have provided us with a cash flow model setting out your expected income and expenditure from the development scheme, a copy of which is attached ...", and so on.

It explains more about what form of fractional ownership was envisaged, the kind of fractional ownership known as "oyster fractionals", which effectively worked by the number of weeks one is entitled to, and it explains more overleaf on page 57. The proposal was:

"... to build 36 lodges, extend and improve the central facility building, build the 105-bedroom aparthotel ... estimated build cost of £27.5 million excluding design and disposal fees. The scheme is similar to the project costed in 2010 by Manns QS Services."

So a QS had been involved at that stage: "... in the sum of £23.5m although the current proposal includes allowance of £2.1m for furniture and fittings. We have assumed that the £27.5m cost is reasonable."

There are details given of the value of each of the fractionals/lodges and then expressed as fractional by amount of time and the value of each of those. It says below that:

"We have run a development appraisal using your project sales and build costs and attach a copy of appendix 9."

Then, over four bullet points, they explain some of the inputs, my Lord: acquisition costs being SDLT at 4 per cent, agent/surveyors fees at 1.5 per cent and legal fees at 0.25 per cent; professional fees on build at 10 per cent on cost; disposal fees being sales fees at 20 per cent and legal fees of 0.5 per cent. The nature of the product being sold will lead to significant costs of sales. So they must have taken that into consideration. Then all importantly, my Lord, "Finance on land purchase at 10 per cent". That's important, my Lord, as it is a necessary component in the analysis in order to residualise the gross development value that this analysis would give rise to: "In arriving at a residual figure for the site, we have allowed for developers profit at 25 per cent on cost, £15.7m, which we consider to be appropriate given the high-risk nature of the development. The residualised value for the land is £12,426,000." My Lord, that is a proper development land valuation that, so far as the Hume-Kendalls are concerned, we say --

**MR JUSTICE MILES**: Is it a Red Book valuation?

**MR WARWICK**: The important point --

**MR JUSTICE MILES**: I seem to remember that where it is a Red Book valuation, the valuer has to say it is a Red Book valuation. I may be wrong about this. But I thought under the rules --

**MR WARWICK**: Yes, in the section entitled "Reporting the valuation" --

**MR JUSTICE MILES**: I think it has to say in terms --

**MR WARWICK**: -- I believe that's right. But what certainly we can say about this is that this is compliant with the basic model of residualised valuation. I can take your Lordship to it very briefly, if I may.

**MR JUSTICE MILES**: Sorry, just on my narrow question, is it a Red Book valuation or not?

**MR WARWICK**: I don't recall it saying in this that this is a -- it says on page 4 of this, if we can turn to that -- it explains:

"Our formal valuation has been prepared in accordance with RICS valuation -- professional standards January 2014, incorporating the international valuation standards 2013."

So that's the standard it complies with. Anyway, in terms of achieving a then present-day number properly residualised, this follows the basic approach. Rather than being a full DCF analysis to produce an NPV using cash flow analysis and discounting over time, this follows the basic approach, which is to build the discounting element into the developer's profit and the finance on land cost. So much is clear, my Lord, from the RICS professional standard relating to development land, which I have asked to be included in the trial bundle. It is <R1/9>, a document with which the court has, no doubt, some familiarity.

If we turn over to page 2, your Lordship will see that this is the current October edition. So, I have to make it completely clear that I have not put before the court the edition from 2014 at the time. I will, of course, make clear if, so far as I am aware, there is a difference. I'm not aware of a difference. But, of course, this is the current version.

But if your Lordship -- if we turn, please, to page 16, your Lordship will see, at 1.5, an explanation of what development property is. Of course, it is also defined in the IVS at IVS 410 as:

"Interests where redevelopment is required to achieve the highest and best use ..."

Well, my Lord, we say development was required in order to achieve the highest and best use and was always intended as such. That's what planning was obtained for:

"... or where improvements are being either contemplated or are in progress at the valuation date and include ..."

And there is a list of circumstances like the construction of buildings or previously undeveloped land which is being provided with infrastructure, and so on. It makes clear, at 1.7, that of course developments can vary widely.

Then if we could turn, please, to page 20, this contains a very familiar overview of the valuation approaches to be taken by RICS valuers. Obviously, it is the market approach, an income approach or a cost approach. Then, at 2.3.3:

"In the case of the valuation of development property, valuations are normally undertaken in two ways:

"The market comparison approach and "The residual method."

My Lord, there is more detail on the residual method. If we can go to page 29, it explains in rather basic terms, my Lord, the concept of a residualised valuation, which I'm not sure I need to trouble this court with. But 6.1.1 is clear in explaining it is based on the concept that the value with development potential is derived from the value of the property after development minus the cost of undertaking it but also including a profit for the developer, and a basic way of putting it is set out below. But it describes different ways that this can be done. So at 6.1.3, it explains:

"The residual valuation method is complicated by the fact that the development takes time, while the valuation is at a single time point. Because of this, two different applications of the method have been developed: discounted cash flow [DCF] and a more basic application of the residual method."

At 6.1.5, below that, it explains the level of detail supporting each will depend on the role of the valuation, the timing within the development process and the type of asset:

"The basic residual method might be used for less complex assets or indeed early in the development process [more importantly, my Lord] to consider optimum development; a discounted cash flow method may be used for more complex assets with phased construction or disposal where the timing of events needs to be fully accounted for in the valuation."

And then it commends to the reader use of proprietary software, et cetera.

Overleaf, in the grey box, that's summarised, if it is in any doubt. And then, if we can turn to page 51, please, there is an explanation of the basic method, treatment of inputs. I think it should be headed "B2". The internal page number is 47 at the top. But I have it as PDF 51. I might be wrong.

**MR ROBINS**: It is PDF 52.

**MR WARWICK**: Oh, sorry, PDF 52, please. It explains here: "The basic residual valuation method is a more simplified representation of the expected revenue and expenditure from a development."

A formula is given. I really don't need to trouble the court with that, but it does say this at B2.1.1 and B2.1.2:

"In the basic residual valuation, the GDV is normally an estimate of the value of the completed development at current prices. It is not normal to adjust the GDV for any increase or decrease in values over the development period or to discount the GDV back to the valuation date."

It goes on to explain that the reason for that is the development costs and financing costs achieve that effect. That's set out at B2.2. It says: "It is not normal ... to incorporate expected construction cost changes ..."

B2.2.2, "Interest or financing costs". It says: "In a basic residual valuation, finance is assumed at 100 per cent of both land and building costs. "The development property/land value finance costs are included by reference to the residual value being discounted by the borrowing costs over the development period."

My Lord, the GVA valuation, to which I have taken the court, of April 2015 is a RICS-compliant valuation of development land at £12,426,000, and that's the figure that the parties to the SPA knew valuers were giving to it in a properly residualised way. My Lord, I see the time. Is it a moment for a transcriber's break?

**MR JUSTICE MILES**: Yes. Five minutes.

(3.17 pm)

(A short break)

(3.22 pm)

**MR WARWICK**: My Lord, the third basis upon which, and reason why, the consideration for the shares in Lakeview Country Club Limited and the Lakeview transaction were derived was because of the price revision mechanism contained in the agreement itself to which I have taken your Lordship already. It had three components: Magante, Telos and timeshare. If I could take each of those in turn.

I should say, first of all, my Lord, that the Magante asset, that is to say The Beach, forms the subject of expert evidence, and it will be a question for resolution based upon having heard that expert evidence, you know, what the value of those assets in the Dominican Republic can now be said to have been. But one document that is contemporaneous --

**MR JUSTICE MILES**: I thought there was a point taken about the meaning of that phrase, but that's something you may want to come back to?

**MR WARWICK**: The meaning of the phrase "Magante asset".

**MR JUSTICE MILES**: Yes, which wasn't the value of the land but was to do with something else.

**MR WARWICK**: I think it can only ever mean the value of the interests --

**MR JUSTICE MILES**: Well, what does it --

**MR WARWICK**: -- that there were in the land.

**MR JUSTICE MILES**: -- what does it say? It was in the version which is the £6 million version, with clause 3.4. It may be a point you don't want to address at this point, so I'm not going to ask you to do so because I don't want to turn this into closing submissions, but it is just that I thought that it wasn't about the value of the asset, it was to do with a separate arrangement in relation to it.

**MR WARWICK**: Yes, that point is taken. I wonder if I could return to that, having just checked where the point was left following oral opening, and come back to the court on it, if I may.

But what we do say, though, is, it is relevant to note what those involved in this SPA might have thought the potential for a development -- or two developments in the Dominican Republic would be worth at the time, because, of course, the £4.2 million figure that was put in there and served as a consideration increasing the price was the product of a negotiation between those involved.

So it matters what they agreed. Even if points can be taken at this remove of time about it, what matters is whether that genuinely was their agreement. And of course --

**MR JUSTICE MILES**: When you say it was a matter of negotiation, is there evidence about that or is that just your --

**MR WARWICK**: Yes, Mrs Hume-Kendall relies upon Mr Hume-Kendall's evidence about the negotiations of the transaction.

**MR JUSTICE MILES**: What does he say?

**MR WARWICK**: His witness statement deals with this at paragraph 73 onwards. So that's page 20 of his witness statement, which is <C2/2>, page 1. It is page 20, please.

Your Lordship will see in 73 the point I made earlier, that it appeared to those involved most unlikely that the loan notes would be met by the end of the year so that revised terms were considered,

taking into account events that had occurred since. He explains the point about Mr Golding no longer wishing to continue with his agreement about dividing up the Lakeview resort:

"There were further discussions regarding how to account for other assets that had not been separately valued for the first Lakeview SPA, and we agreed to extend the sale until a time when funds could be raised to meet the obligations. These other assets were the Magante asset, the Telos claim and the timeshare properties and it was agreed by the parties that provision for a price adjustment should be included if the assets ultimately accrued to LCCL by the time of the payment of the consideration."

At the top of 74 is the point made earlier about a complete reset being needed. The third sentence of that paragraph also explains:

"So, it was agreed by all parties that the purchase price would be reconsidered and decided to explore what a fair price would be, and what in addition to the purchase price value previously considered should be provided in reference to the assets which hadn't previously been valued in the original SPA. Various discussions resulted in new agreements being drawn up by the lawyers with various purchase prices. However, these were ultimately not able to be settled upon." He goes on to take it in stages between the various revisions, and that goes through to 78 which goes over on to page 22. So, yes, that's his evidence on the discussions that there were at the time. I can't say that his evidence covers between whom precisely and on what dates, but that is -- clearly, this is a PD 57AC trial witness statement which has been prepared in accordance with the guidance on best practice and, as such, it is not necessarily to be expected that it would contain such a finely-ground, day-by-day review of who was discussing what and his recollections at this remove of time. But that's a matter he can be asked questions about when he gives evidence, my Lord.

But one document that is relevant to what developments in Dominican Republic might have been thought to be worth as part of those discussions appears at <MDR_POST_00001239>. This is a valuation document. It has on its face "November 2016", but your Lordship will recall that that's prior to the version of the SPA which included the full and final values for the additional price revision mechanism assets. It includes the following. It was prepared, if we turn to page 3, by somebody known as Rafael Oviedo and it relates to Playa Magante Properties land appraisal. Then there follow several individual letters or statements that set out the individual valuations, but they are brought together in one place on page 13. It says: "The only goal of this appraisal is to determine the real value of this property to this day, primarily, and then by the time the non-objection motion is approved for its ulterior development, and later, once developed. There are three values to be determined. "The value has been determined pursuant to the existing values of the zone of development of Puerto Plata for projects of touristic features. "First value: as it is currently ..."

My Lord, you will see the gross area figure given, 258,000 metres squared and a price of US$45 is given, giving rise to a valuation of US$11,610. It is supposed to be $11.6 million, I understand. The second value, with non-objections for its development, $16.77 million. The confusing element, no doubt, is the use of commas for the decimal.

The third value, with all of the project approved, including infrastructure, substructure and approvals, $25.8 million.

So, there was an appraisal carried out within the London Group of the position also within the period during which the price revisions were negotiated. If we could turn that up, it is at <D2D10-00039601> My Lord will see this is a document that bears the London Group Plc logo. It is called "Dominican Republic overview and feasibility considerations". Over on page 3, it identifies the

Magante site and Atlantic Hills Project, El Cupey. If we could turn to page 10, please, it summarises there the position with respect to the land. For Magante, it says this, at the foot of that page --

**MR JUSTICE MILES**: Sorry, it doesn't on that page.

**MR WARWICK**: I beg your pardon, my Lord, I'm sorry.

**MR JUSTICE MILES**: There we are.

**MR WARWICK**: Yes, it should be PDF page 10, please. It will say internal page 11 on it. If we go on one page, please, thank you. At the bottom, it records here: "Title purchase for the site is currently ongoing and the site has no objections approval in place for Tourism Town Hall and Environment (subject to specific conditions relating to the site). Building approval from the Ministry of Public Works has not yet been submitted. It does not have a Deslinde and this process will take at least 12 months after which resort development may commence."

So the contemporary understanding of those involved was that it was at the "no objection" stage, meaning, on Mr Oviedo's valuation, $16.8 million was the US dollar figure thought to be the value of the land, at least. Your Lordship will see overleaf, on page 11, the sort of development that was envisaged in terms of design. And then, again, overleaf, on page 12, some computer-generated imagery and a plan for the sort of development this was to be.

It is Mr Hume-Kendall's evidence that this was a genuine investment opportunity and thought to be at the time. So, whatever might latterly be said about, you know, huts and photos of cows and trees and so on, quite clearly, those involved and who are giving evidence orally in this trial viewed this as a genuine development opportunity at the time.

Secondly, my Lord, the Telos claim. Your Lordship will recall that £1 million was put on this within the late version of the SPA, but it is a matter of common ground that the lost deposits were some £1.9 million. That's investors' deposits paid to the company. And those were 30 per cent of the purchase price. Your Lordship may recall being shown a presentation I think by Moore Stephens which set out a purchase price intended at the time of around £6.4 million. I think a point is taken about the difference between claims against the company and claims against the directors. It is common ground that it was claims against the company from the investors that were assigned. I'm more than happy to take your Lordship to the assignment document, but having seen it already once, I'm not sure it will add much.

But, of course, the point was that, by the time of the insolvency of Telos, the insolvency practitioner intended or I believe actually was even bringing proceedings against the directors, and of course it would follow that recoveries and realisations made against the directors would result in funds against which Telos investors in the company would have a claim and those claims had been assigned to Lakeview Country Club.

Well, the precise ins and outs of what that is worth is one thing, but the fact that the parties valued it at £1 million is the evidence, and that is clearly not consonant with a fraud in circumstances where the lost deposits alone were £1.9 million.

The last item, my Lord, was the timeshare claim. A point is taken against the Hume-Kendalls by reference to invoices showing that unpaid service charge and other items totalled sums in the hundreds of thousands, somewhat below obviously the £3 million sum. But this does overlook an important point, which is that the settlement agreement reached after the initial lengthy transaction was a holistic one involving not only the timeshare club but also Waterside Villages. I wonder if we

might turn it up. It is <EB0033879>. This is a document your Lordship has seen before. It bears a date from December 2016. I can't recall whether this is the one where we focused in on the date and couldn't make it out, but I don't think much turns on the precise day that it was signed.

As your Lordship has already seen, it is between Lakeview Country Club Limited, defined as LCCL, Waterside Villages Plc, which was by then the lessor of the titles in respect of which Lakeview Title Limited was the lessee and Lakeview Title Limited was also party to the agreement.

Your Lordship will see, at clause 4.1 on the second page, it was a broadly drawn release "in full and final settlement ... of (1) the matters in dispute, and ... any and all claims ... which LCCL or WVP ... and/or LTL ... may have against each other". So it was an all-claims settlement.

The substance of it was, as one can see from clause 4.2 that "WVP will accept a surrender of and LTL will surrender (1) the leases" -- this is the 24 additional lodges -- "and (2) any other property or other interest". At 4.3, the consideration given for those surrenders of those leases was the deposit of the sum of £762,500.

Well, my Lord, if one turns now to the claimants' forensic document again, which itemises the site acquisitions over time, which is found at <A1/14/1>, and if we go over to page 2 of that document, please, your Lordship will see, on the left, itemised, are all the title numbers -- from the row that begins with lodge number 8 in the third column, all the way down to lodge number 59 there, all of the titles acquired by that settlement agreement, and the claimants have put under the column heading "Price paid" 31,750, because, of course, that's the £790,000 divided by the number of lodges. My learned friend spent some time on this document showing your Lordship the sorts of sale prices achieved for some of these lodges when they were purchased from individuals who had been title holders. Obviously some were low. One can see figures as low as 82,000 on this page alone. But, of course, many were above 100,000 or around the 95,000 mark. So, quite clearly, what was done here was a three-way settlement which resulted in Waterside, the new lessor, acquiring title to some 24 lodges, but also, importantly, commercially, seeing off the timeshare company so that it held the titles to all those sites previously operated as a timeshare within the overall site.

I think I can't contradict that the discount that that transaction reflects when added up cumulatively across all 24 lodges plus the invoices that were unpaid for service charges comes to 3 million. That is maths that doesn't work, and I have to admit that's the case. But, in the end, what was agreed is that £3 million would be paid for the commercial value of that outcome. And that was consideration added to the transaction in the later versions of the SPA. Again, not consonant with a dishonest transaction; rather, a deal to acquire 24 lodges from the timeshare company and see that enterprise off from the operation as a whole. My Lord, a further point is taken about backdating of agreements and of backdating of the SPAs. On that, Mr Hume-Kendall's evidence is clear. At paragraph 77 of his witness statement, which is found on page 21 of it, at <C2/2>, page 21, he explains this:

"I believe the SPAs were dated with the 27 July 2015 because this was the date the LCCL shares were transferred to London Trading, which I understand would have been the relevant date for HMRC purposes. However, I did not date them with this date as Mr Sedgwick would have been responsible for dating the documents." So much is also clear from Mr Sedgwick's evidence. He explains that he was responsible for drafting and handling these documents, and that's at paragraph 26 of his witness statement, which is found at <C2/5>, page 7. At paragraph 23, starting there:

"Once the shares in LVCCL [Lakeview Country Club] were purchased by LTDG, I drafted the necessary documents to transfer the site at Lakeview to LV Resorts Limited in consideration of the issue of 6,750,000 shares."

But then it appears, at paragraph 24:

"... I was instructed that the 4th defendant had settled his differences with the 2nd defendant, so the transfer of the manor house and the lodges was not to proceed. Although there was no talk of reversing the sale of the shares? LVCCL, it was acknowledged that the price was not correct but that the correct price would be agreed when it was clear that there was sufficient funding to pay the consideration. At that time, I sent an email suggesting that the price be amended to £3,500,000 but this was not acted on as far as I can remember."

There is a point made about name change, and so on, and then, at 26, he says this:

"I was instructed in July 2016 that the parties had agreed to vary the price for sale of the shares in LVCCL to £6 million but with an additional provision to further vary the price dependent on the value of certain assets which could not then be fairly valued. I therefore redrafted the share purchase agreement." So this was his draft, my Lord:

"I cannot now remember why it was decided to date the revised agreement with the original date of the 27th July 2015. My recollection is that this was what I was instructed to do and it certainly reflected the fact that the shares were all transferred on that date."

Well, my Lord, there is a point in there clearly that witnesses may be asked about, especially Mr Sedgwick, but one thing is clear, this is his legal work, including the dating of the document.

**MR JUSTICE MILES**: He says he did it on instructions from someone.

**MR WARWICK**: He says he did it on instructions. Mr Hume-Kendall's evidence is that he didn't date it and that Mr Sedgwick was responsible --

**MR JUSTICE MILES**: That will, no doubt, have to be explored.

**MR WARWICK**: Indeed, my Lord, yes. Could I deal, finally on Lakeview, then, with a point about inherent improbability and a difficulty with the claimants' case and about the work done.

Your Lordship has seen, and I have taken the court to, the site assembly document. This was a project that required years of work, clearly, negotiating the purchase of titles to assemble a larger site for the purpose of giving effect to a plan valued as development land at over £12 million by GVA in a RICS-compliant valuation. But there is plenty of evidence of other work taking place there too.

Reports were prepared for the board of Lakeview monthly. I wonder if we could turn one or two of them up. If we could go to <D2D10-00011407>. My apologies. That's a later one. I have jumped ahead a little. If I could go, please, to <D2D10-00010242>. This is a board report prepared in January 2015. It is prepared by Richard Yeo, chief operating officer at Lakeview Country Club. If we go over on to page 2, please, your Lordship will see, at item 2, a whole series of items of CAPEX, expenditure for approval by the board: creation of a spa garden, estimated cost £8,000; family golfing facility, subject to cost benefit analysis; removing a wall; reflooring; installing a floating ceiling; new conservatory; lodge refurbishment, budget approval; there's also, at the last bullet point, driveway resurfacing from main entrance to the car park. If we could go over now to <D2D10-00010431>, the following month board report, also prepared by Mr Yeo and somebody called Mr Rousseau, I think. His name appears elsewhere in the document. Over the page, please. More CAPEX for approval. For example, agreement of terms to lease a large lake for wake boarding; a quote obtained to create a cycle hub and trail; more on the restaurant works. It also notes, at the penultimate bullet point, Mrs Hume-

Kendall commencing work on lodge refurbishments at the end of April 2015; the driveway crops up again. If we could jump forward, please, to

<D2D10-00011407>, early part of the summer now, July 2015. If we go to the next page, please, I believe in there there's a reference to a television personality, Gregg Wallace, MasterChef, and whether -- his continued offer of support to the group, confirmed attendance at a family fun day, and so on. On page 3, further CAPEX matters for approval there, including a water system now installed. It also updates on the lodge refurbishment programme. About 20 bathroom floors replaced, carpets dealt with, white goods installed. Investment in the gym, a further £7,000 agreed going forward there.

Perhaps jumping forward again to <D2D10-00024749>. This is the end of the following year. Page 2, please. CAPEX review again. I may need to glance to recall where it's located but I recall it explains about lodge ownership and the number of lodges, which is a matter I know your Lordship was addressed on. I think it is in the first bullet point it says this:

"Out of 69 lodges, Waterside directly owns 64 and this is an increase of 57 lodges since 2013. Furthermore, the average price paid per lodge is £87,000 ..."

It explains, below that, about transformation of the former country house hotel into a seven-bedroom holiday let. There are plans for improving interior decor. Continued work is mentioned here on development land, including connection to the water supply and the underground works there to bury the main power lines and further development of facilities and activities including football, golf and a possible ski slope. My Lord, the idea that this site was acquired in a dishonest transaction and that, you know, this was simply a scheme to hide money is not tenable. This was an ongoing holiday resort with potential development land, highly valued, on which a lot of work was being undertaken and expenditure spent on it, reported to the board on a monthly basis.

There is also a question that arises about the credibility of the overall case about reverse engineering of the price revisions to accord with sums that had been borrowed. Your Lordship will recall that it was as long ago as August 2015, specifically 19 August 2015, when Mr Sedgwick circulated the first revised Lakeview SPA at £2.1 million or so, including the price revision mechanism, at the time only Telos and timeshares, but nonetheless including a mechanism for revisiting the price. That's at <EB0005583>. If we turn to page 7, at clause 3.4 there, your Lordship has seen, already by August 2015, so very early on, talking about revising -- price revision mechanism based on the value of other assets, and so on. This was circulated -- I believe I've taken your Lordship to the email by which this was circulated previously, but it was circulated on 19 August. Your Lordship has seen that already. It is <EB0005582>.

What's being suggested here is reverse engineering. So, in other words, the sums drawn down under loan agreements were taken and reverse engineered by this paper means by the documentation -- redocumentation of an SPA agreement in a way that was meant to conceal money, but the difficulty for the claimants is that, at the time, the sums received from L&TD by these defendants were negligible. We know this because there is a document prepared about the payment history by the claimants and it appears at <A1/6/183>. Now, <A1/6>, my Lord, is a schedule to the neutral statement which details -- it is a very long document detailing a lot of the payments and some of this is work that's been carried out in adding up at our end. But what you can see on the page here -- I beg your pardon. If one goes over to page 191, the total payments that went from the LCF bond account to L&TD's Metro account, by the end of 2015, add up to £1,660,000. It might be on the page prior to that. It is the sum total of all the payments down to that point, 31.12.2015. I believe they

commence on the page before that. Possibly the page before that. It is this section of the table and the sum total down to that end of year figure is £1,660,000. You can see the total that went to Mrs Hume-Kendall during that period as well. If one turns to <A1/6>, page 101, this is in the section entitled "Payments from L&TD to Helen Hume-Kendall", and your Lordship can see straight away, by looking at the first entry, that in 2015 Mrs Hume-Kendall received £5,000, a single payment, on 9 October 2015.

If we look, my Lord, again, at the graph that your Lordship saw earlier, prepared by the claimants, at <A3/16>, please, page 1, this is the claimants' estimation of the net amounts received or sent by D1, D2, D3, D4 and D10, 1 March 2015 to 31 December 2018. So, the date upon which the first SPA for Lakeview was signed is the fifth dot, I think. Obviously, this is quite a -- by reason of the scale, it is quite a flat line at this stage, but it is, I think, the fifth dot along, July 2015. Then one can see, my Lord, that by the following month, the sixth dot, August 2015, the monthly amount is so little that it scarcely appears as a blip in this.

Your Lordship will see that, by the end of December 2015, again, negligible totals had been received by Mrs Hume-Kendall and other defendants. This is a period of time in which it is suggested by the claimants that the defendants were taking sums that they'd been paid and re-engineering documents, such as, for example, the version of the SPA to which I took your Lordship a moment ago containing a price revision mechanism for the purpose of concealing monies. The difficulty for the claimants is, the monies didn't exist. Months go by with negotiated price revisions based on the honest explanations that they have given, with all but negligible sums being paid. I'm afraid, my Lord, once the clock strikes 13 on this argument, it really doesn't work. That's not reverse engineering, because there is nothing to reverse engineer.

My Lord, in the 20 or so minutes remaining, I think it might be time efficient for me to commence the Elysian transaction. So, the Elysian transaction took place in April 2017 and the relevant documents that relate to this, and the Hume-Kendalls' evidence on it, so your Lordship has it for your Lordship's note, the relevant section of the Hume-Kendalls' skeleton is F1, paragraphs 106 to 116, and Mr Hume-Kendall deals with this in his evidence at paragraphs 92 to 100, which is <C2/2>, pages 25 to 28. The SPA itself, which is dated 29 April 2017, is found at <D2D10-00028009>. Without doing violence to the detail set out in Mr Hume-Kendall's evidence and in the written submissions which I defer to on this, a summary of the background would be as follows, that there was, of course, financing from LC&F after the Lakeview SPA and the 27 August 2015 LCF and L&TD loan facility appears to be the first. Mr Hume-Kendall accepts that that must be backdated, but his evidence is, and this is at paragraph 87 of his witness statement -- perhaps we can go to that. It's <C2/2>, page 24. He says this, halfway through that particular paragraph: "The claimants allege it was signed and backdated in March or April 2016 and, having been shown documents disclosed in these proceedings [he refers to them] in the course of preparing this statement, I accept that this was the case. I recall that I signed the agreement in undated form (as is typically the case), but I am not sure who entered the date or when exactly this was done. I would have trusted our legal team to ensure that all such points were in order."

Your Lordship will recall that there was a corporate reorganisation of sorts anterior to this insofar as the London Group Plc company was renamed GRP, Global Resort Property Plc. Its company details are in schedule 1 to the neutral statement of uncontested facts at page 41, unless a late change to the document has put that reference out. I wonder if we might check. Page 41, please. It should be <A1/5>, page 41. No, that seems to still be right. Your Lordship will see the name change appearing there.

Mr Ingham and Mr McCarthy formed the Elysian Resorts Group Limited company whose details appear on page 104 of this document in advance of the transaction. Let's see if that is still right. It appears it isn't. Could we go on one page, please? Yes, I think that's right. It was renamed at a later date Waterside Cornwall Group Limited. But your Lordship will see, under "Changes of name", it was at the time called Elysian Resorts Group Limited. The date of incorporation was 28 April 2017. Mr Hume-Kendall's evidence is that Mr Sedgwick and Jo Marshall, the solicitor who worked in to him, drafted the documents, and that, obviously, the first stage of it, which the claimants describe in their submissions, was the reallocation of debt liabilities within the group. To shortcut this to some extent, my Lord, since my learned friend took you in some detail to how that happened, I wonder if I could ask to be brought up a chart that was prepared by the Hume-Kendalls' team. It is <A3/20>. If we could go to page 3 of that. I should make clear that this isn't an agreed document, as such, but I'm not aware, and I don't think those instructing me are aware either, of the particular respect in which its content is objected to. But suffice it to say, for clarity, it is not an agreed document.

But your Lordship will see that what happened was -- and the references in yellow below each of the companies on the right-hand side are references to the neutral statement of uncontested facts, meaning that they are, in effect, common ground. What happened was a total of £25 million of L&TD's liability to LCF was allocated to the Waterside Support, CV Support, Costa Support and Colina Support, and £16 million to LPE Support, known as LPE Support Limited, which was formerly Atlantic Petroleum Support Limited.

As your Lordship will recall, this is because this deal was structured in a way that effectively amounted to a leveraged buyout but without the existing indebtedness, which was kept insofar as the Support companies within LG LLP's group were to remain indebted, but, of course, LG LLP was to receive the consideration for the transaction as seller's receiver, meaning that it was, in effect, to be encashed by just over £82 million and, therefore, clearly able to service that existing indebtedness.

Turning over one page, please, in the same document, your Lordship will see, and this is familiar because it is broadly, I think, as my learned friend Mr Robins described it, although I don't want to imply that what you see on the page is specifically agreed, but I'm, again, not aware of any difference between us necessarily on it, but GRP, so renamed, whose subsidiaries ultimately included the entities identified on the left-hand side there, shares in GRP were all transferred to Elysian RGL such that GRP and its subsidiaries came into Elysian's group structure. The consideration for those shares was £100 for its ordinary shares, but where preference shares in Elysian RGL were to be provided, redeemable preference shares -- sorry, in GRP to LG LLP as the seller's receiver. That was the nature of the transaction. Of course, LG LLP, as one saw on the last slide, was the holding co for the series of Support companies and therefore responsible -- they were responsible for the existing liability to LC&F. That's the structure of the debt, my Lord. Now, a question arises about the adequacy of security given by the Support companies with respect to the existing indebtedness, and I wonder if we could turn then, please, to the debentures that were granted by the Support companies to LCF to support that lending. An example is a Waterside one. That is at <MDR00005270>. This is a document headed "Deed of debenture". It is dated on its face 29 April 2017 between Waterside Support Limited, chargor, and London Capital & Finance Plc, lender. Over on page 3, please, your Lordship will see that it refers -- the parties are identified as shown on the front page: Waterside Support Limited, chargor and London Capital & Finance Plc, lender. It is recited that the lender has agreed to make available a loan facility to the chargor on the terms and conditions set out in the facility agreement, as defined below. My Lord, you will see that definition in the first of them:

"'Facility Agreement' means the facility agreement entered into on the date of this deed between the chargor as borrowers and the lender as lender." If one turns over two pages, please, to the operative clauses -- I beg your pardon, three pages, please, you will see that, at clause 2.1, there is a covenant to pay:

"The chargor covenants with the lender that it shall, on demand by the lender, pay and discharge all the secured obligations when due (together with all interest, fees, costs ...", et cetera.

The secured obligations are defined earlier, on page 4, please. It is effectively the all monies kind, insofar as it says this:

"'Secured Obligations' means all present and future obligations and liabilities (whether actual or contingent, whether incurred alone ...", and so on, "... owed by the chargor to the lender under or in connection with the finance documents."

On the page before, under the facility agreement finance documents is defined as the facility agreement and all security documents entered into in connection therewith.

So the Support companies each, and the remainder of them are footnoted in Mr and Mrs Hume-Kendall's written opening so that your Lordship has a complete list, they are at -- footnoted to paragraph 109 of that written opening. But the Support companies each gave a debenture, and obviously it was intended, at least, that this would be back to back with a debenture given by the asset holding companies. An example of that is found at -- of one of those is found at <D2D10-00028138>. Your Lordship will see it is a document headed "Deed of debenture", dated 29 April 2017. This one is between CV Resorts Limited as chargor and Cape Verde Support Limited as lender. Over on page 3, those parties are named as such. It says this in the recitals:

"The lender has the agreed to make available a loan facility to the chargor ..."

Then, at B, it says:

"It is a [CP] to the availability of the loan facility that the chargor enter into this deed ..." Well, my learned friend takes a point on a dysfunction that arises from this agreement because this is a debenture document that contains an obligation, a covenant to pay, that refers to secured obligations and that the secured obligations were in effect such lending under that lending agreement referred to there.

Now, quite plainly, my Lord, questions may need to be asked of Mr Sedgwick as to why, in his legal work, he appears to have used, as your Lordship will see from what appears in the remainder of this document, and from that page onwards, a precedent document that was intended to back lending, whereas what was plainly intended was a debenture over all of the property companies' assets of the "all monies" kind so that it could be called upon by the Support company so as to back the debenture given to LC&F. But from whatever infirmities this suffered, clearly that's what was intended and that is, again, something that might need to be explored with Mr Sedgwick in his handling of the paperwork in this transaction.

But either way, my Lord, these were also guaranteed lending transactions as well. If your Lordship could turn -- sorry, if we could turn, please, to the document at <MDR00005228>, this is a document dated on its face 29 April 2017, a guarantee and indemnity between the parties named herein and LC&F Plc. Turn over to the second page, please. It might be the third if there is an index. Could we go to the third, please. You will see that the guarantors under "Parties" is the companies listed in the schedule at Part I, and the lender is London Capital & Finance.

What you also see below that, my Lord, under "Agreed terms" and "Interpretation" is that borrowers is Colina Support Limited, one of the Support Cos, and "Guaranteed Obligations" is defined there, and your Lordship will see the familiar wording of the "all monies" kind when it comes to guarantees, but you will also see, my Lord, below that, "obligor" is a borrower or a guarantor. Then if one turns over, please, to the next page, and, again, one further over, please, you will see the guarantee and indemnity is given in 2.1 and at 2.2: "Each guarantor as principal obligor and as a separate and independent obligation and liability ...", and so on, "... agrees to indemnify ..." We need to jump to the schedule to that. Please forgive me if I don't have the page number at my fingertips for it. But if we go to the back of the document, it should be there. You will see it is executed. There we have it. The guarantors are LG LLP, but it also names Cape Verde Support, Waterside Support and Costa Support. Your Lordship will recall that those guarantors were within the definition of obligors, meaning that they were all guaranteed by this document. I appreciate the way in which this document works might not be how all lawyers in this room would have documented this, but, nonetheless, it is operative and it functions by catching within the definition of "obligors" --

**MR JUSTICE MILES**: That doesn't give security over the trading companies.

**MR WARWICK**: No, but that gives security backed by London Group LLP over the -- indebtedness of the support --

**MR JUSTICE MILES**: It gives a guarantee, but is there a debenture by London Group LLP in favour of the Support -- effectively in favour of LCF in respect of the Support companies?

**MR WARWICK**: Not to my recollection, my Lord. Although this is an all-monies guarantee for all indebtedness of the Support companies to LC&F.

**MR JUSTICE MILES**: Yes, but it is an unsecured --

**MR WARWICK**: But it is unsecured to that extent. Yes. As your Lordship has already seen, London Group LLP was to receive £82 million in value under this transaction, so it was to acquire the redeemable preference shares to the tune of £82 million, and, in turn, guarantee the payments of its subsidiaries in this way, my Lord. There was also a further guarantee given by London Oil & Gas and LPC in favour of LPE Support's debts, and that is found at <J2/13>, page 1. This document is dated on its face 29 April 2017, "Guarantee and indemnity", again, same form, "The parties named herein and [LC&F]". Can we turn over the page, please, probably two, because I think there is an index. You will see, my Lord, this operates in the same way. So the guarantors are the companies listed in the schedule again. The lender is London Capital & Finance Plc. This time the borrower below is Atlantic Petroleum Support Limited. The guaranteed obligations are the same. So is the definition of "obligor". If we turn to the back page, perhaps one in from it, you can see that the guarantors are London Power Corporation Plc and London Oil & Gas Limited. So, at the very least, LC&F had guarantees from LPC Plc, London Oil & Gas and LG LLP, who was to receive £82 million in value to support all of the existing lending.

My Lord, this might be a suitable moment before I turn to another topic to finish and resume in the morning, if that fits?

**MR JUSTICE MILES**: Yes.

**MR WARWICK**: I'm grateful, my Lord.

# Housekeeping

**MR JUSTICE MILES**: How long are you going to be?

**MR WARWICK**: I think until around lunchtime, my Lord.

**MR JUSTICE MILES**: And then it is your go?

**MR LEDGISTER**: My Lord, yes.

**MR JUSTICE MILES**: How long are you expecting to be?

**MR LEDGISTER**: I expect the remainder of the day, my Lord.

**MR JUSTICE MILES**: I'm just wondering about the position in relation to what might be called the pleading points and how that should be resolved, because obviously I will have to hear from the claimants about that.

**MR WARWICK**: Yes. A suggestion may be as follows, my Lord, if this fits, because I have given it some thought so as not to interrupt the timetable with this. But one suggestion may be for the claimants to indicate on the document prepared by my team with respect to each item whether that is within or not within the scope -- they will say was within or not within the scope of their case, and that will narrow down to what is said to be within the scope of the case which the Hume-Kendalls say is not, and perhaps it might depend on the time estimates for others making oral submissions, but I understand Mr Sedgwick doesn't intend to make any oral submissions and the question mark probably still hangs to some extent over Mr Mayes and how long Mr Mayes wishes to take. There was an update on that sent, I think, during the course of the afternoon yesterday. There is some hope of release of funds, I gather -- I can't really speak for Mr Mayes or his team, but I gather there is some hope for release of funds in short order and he may be here, but, if that is so, there would probably still be room in the week, my Lord, for this to be returned to to mop up the ruling point on Thursday. That may be a way of approaching it, my Lord, that's least disruptive to your Lordship's timetable.

**MR JUSTICE MILES**: I think what we will do is carry on hearing the defendants' openings as planned for the time being, and then, at the end of that, I will then hear from the claimants simply in relation to what might be called the pleadings points.

It may be of assistance, Mr Robins, to have some sort of indication of your position in relation to the table that's been produced. I think that might be helpful. 10.30 am tomorrow.

(4.29 pm)

(The hearing was adjourned to Tuesday, 12 March 2024 at 10.30 am)

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