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 14 - Tuesday, 12 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 WARWICK** (continued)

MR WARWICK: My Lord, dealing, if I may, with two matters raised by your Lordship yesterday by way of questions to me, your Lordship will recall asking about the matter of notices to prove or notices to admit documents and the effect of failing to serve those with respect to documents said to be dishonestly backdated or produced inauthentic in various ways, and also the related question of cross-examination on the question of credibility.

As to the first of those elements, your Lordship will no doubt be familiar with the rule in 32.19, but so that we have it, it is at page 1038 of the current edition of the White Book, and, as thought yesterday, there is, in 32.19(1), a rule that deems a party to admit the authenticity of a document that's been disclosed unless notice is served that he wishes the document to be proved at trial, and 32.19 sets a deadline, as your Lordship will recall, of the latest date for serving witness statements or within seven days of disclosure of the document, if later. My Lord, the effect of that is that the claimants are deemed to admit the authenticity not only of the memorandum of understanding, about which there was some discussion yesterday, the separation agreement, but also the further documents that I had identified in item 1 of the table produced to your Lordship yesterday, the five items in respect of which there is no plea of inauthenticity or dishonesty in their production in any way, and also no service of any notice to prove in timely fashion.

My Lord, in looking for a reference source to illustrate the effect of this, I have, this morning, alighted upon the summary of the position that's found in the Civil Fraud textbook edited by Mr Grant and Mr Mumford. It is in the process of being produced electronically to the court and the parties and put in the trial bundle. It has been selected because it is a very neat and short summary of the position, which has its virtues. I do have it in hard copy form, if I may ask for those to be handed out and up, if that is okay with you, my Lord. (Handed).

There are two authorities to which that summary refers, which I have also asked to be included. As your Lordship will see, this is from the current edition, the first edition of the Civil Fraud textbook, a Sweet & Maxwell publication, and the excerpt is under the heading, "Authenticity of Documents". The editors summarise, at 34-014, that, of course:

"... a party [under the rules to which I have taken your Lordship] is taken to admit the authenticity of any document disclosed unless a notice requiring the other party to prove the document at trial is served ..." It recites, of course, the deadline for doing that: "For obvious reasons, the authenticity of documents is an issue which often arises in fraud cases." Then it deals, at 34-015, with the position with respect to a failure to serve the requisite notice: "... [it] leaves a party unable to challenge the authenticity of a document unless the court grants permission, applying the principles of relief from sanction. While, following ..."

Might I pause for a moment, my Lord? I don't think my learned friend was given a copy immediately. Resuming, my Lord, at 34-015, it makes reference to Denton itself on the question of the principles to be applied on the relief from sanctions application, and it makes further comment that.

"... the adumbration of the 'three-stage test', relief from sanction is more readily given than previously, it cannot be guaranteed that relief will be granted simply because a party overlooked the requirement to serve the requisite notice." My Lord, the claimants have overlooked the requirement to serve any such notice with respect to each of the documents to which I referred a moment ago,

and, as a result, they are deemed to admit their authenticity, unless they apply, satisfying the court on Denton principles, that relief from that sanction should be given.

The commentary that I have supplied, my Lord, also goes on to describe the concept of authenticity, as to its ambit, which is also helpful:

"... [it] runs more widely than might be expected ... It does not merely refer to whether the document disclosed is a 'genuine' document, in the sense of one that has not been doctored or concocted. [Indeed] any issue that goes to whether the document is what it purports on its face to be can be seen as an issue of authenticity. So the date on which what was alleged to be a diary note [this is by reference to a case, I think] was on its face created could not be challenged without proper service of a rule 32.19 notice. Perhaps more obviously, a notice must have been served in order to permit the contention that a signature on a document was not a genuine signature."

It goes on:

"However, while necessary, mere service of a notice under rule 32.19 is not sufficient if a party intends to allege deliberate forgery: a notice under 32.19 does not transfer the burden of proving that a document is not a forgery onto the party relying upon it. Nor will it be sufficient, to advance and establish a case of forgery, simply to criticise the evidence of authenticity adduced in response to a notice. A clear and distinct pleading of forgery, supported by appropriate evidence satisfying the evidential burden, is required."

It goes on to deal with a recent case.

My Lord, on the related point of cross-examination, the commentary that I have produced is similarly helpful, and it refers to an authority which I will take your Lordship to in a moment. I think the excerpt that's been produced contains that under the heading "Ambush cross-examination".

It is paragraphs 34-054 onwards, and it commences with a discussion of the slightly different position, where documents are produced that were not within the scope of extended disclosure, but at trial, solely on the question of credit and what the implications of that are.

But, for our purposes, 34-056 is useful and informative, my Lord. It explains:

"Similarly, there is generally no requirement to have pleaded a general challenge to the credibility of a witness before mounting that challenge in cross-examination, where the matter goes only to credibility and not an issue in the case. However, it has been said that where it is intended to advance specific allegations of dishonesty based on particular facts in cross-examination, as a matter of fairness these allegations should be pleaded even where not part of the claim being made."

Your Lordship will see, turning over briefly, that the authority cited is a first instance decision in a case, Baturina, and it is a judgment of, then, Mrs Justice Carr. I will come to that in a moment, my Lord:

"So, in the case in question [the authors are referring to that case] where a claim in deceit, but not in conspiracy, was made against the defendant, allegations that the defendant conspired to defraud the claimant, which were advanced in cross-examination of the defendant as part of a 'general attack' on his credibility and as the 'theory' behind his dishonesty, should have been pleaded, so that the defendant had a proper opportunity to explore how he might wish to rebut them. It is not obvious why the question of whether forewarning should be given of an intended attack on a witness in cross-examination should be answered differently when it is pleading rather than disclosure that is in

issue (not least because the scope of disclosure will often be closely tied to the issues identified in the pleadings); and it may be that the observations in this case can be explained on the footing that the relevant issues were not purely ones of credit, but went to the allegation of dishonesty that was an issue in the case."

That's the distinction to which I think your Lordship was alluding in the question asked of me about this yesterday. It is important that I make clear, my Lord, that there has been an addition, an addendum, to this text, and overleaf, I think, in what I have passed up by two pages, it makes an addition to the end of footnote 73 where Baturina was cited and it says this:

"At the end of footnote 73, add:

"C.f. Grove Park Properties Limited v RBS Plc [citation given] per [as he then was] Males J at [54]. The effect of the decision in Grove Park may well be to limit the scope of any perceived requirement to plead matters going to credit arising out of the decision in Baturina, and confirms that such a plea is generally not required."

My Lord, that's not quite the end of the matter. If one turns over a copy of Grove Park, which has been produced, from the first page, your Lordship will see it arose on the question of a strike-out application and also in the context of a case about interest rate swap agreements, but I don't think that has any material bearing on the point decided.

At internal page 11 in the report, there is a subheading that immediately precedes the judge's conclusion in the case which deals with "Notice of the case to be put in cross-examination", and it says this:

"Finally the claimant says that it is required and therefore entitled to give notice in its pleadings of the case which it proposes to put to the bank's witnesses. It cites in this connection the judgment of Carr J in Baturina ..."

Full citation given. Then there is a quote from the judge's judgment at paragraph 126:

"'I accept the submission on behalf of Ms Baturina that there is an extent to which it is permissible to pursue unpleaded general challenges to credibility. But where it is intended to advance specific matters of dishonesty based on a particular set of facts, such matters should, as a matter of fairness, be pleaded'." Mr Justice Males, as then, went on at paragraph 54: "In my judgment there is no general principle that notice of cross-examination as to credit must be given in a party's pleading when it is proposed to challenge the honesty of a witness's evidence. If there were, pleadings would be unacceptably cluttered with unnecessary and irrelevant material and, because witness statements come after pleadings, a whole series of amendments might be necessary once witness statements had been served."

But, my Lord, importantly, he adds this: "Nor was Carr J suggesting otherwise. She was concerned with an unpleaded case of deceit which began to emerge for the first time in the claimant's written opening submissions and which was then elaborated in the claimant's cross-examination when the claimant gave evidence about a meeting which had not previously featured in the pleadings or evidence. This version of events was then put to the defendant by the claimant's counsel in cross-examination. It is not surprising that this was found to be unfair. The unfairness consisted of advancing in this way an entirely new and unpleaded case of deceit which was not open to the claimant." My Lord, that is exactly what's going on here. As your Lordship will have seen from the table which I took your Lordship through yesterday, here we are seeing a whole slew of additional points being taken that fill out, if I can put it that way, factual voids in the claimants' pleading.

So, for example, on the question of whether Mr Hume-Kendall was involved in the running of LC&F -- and I recall taking your Lordship to the very brief and light-touch particulars given of that, which are confined to its initial setup in operations -- what we see is an attempt, by written and oral opening, to fix him with a central role. Now, why that matters, my Lord, is because that role is pleaded as a fact from which the claimants ask your Lordship to infer dishonest participation in a fraud.

My Lord, the judgment to which I have just taken your Lordship in Grove Park provides a very useful guide as to where the dividing line lies. If it relates to a case in dishonesty, it is not something that can be pursued for the first time in cross-examination if unpleaded, and here we see, my Lord, as explained yesterday, a series of allegations that are being leveraged in order to support a case in dishonesty and, as such, being unpleaded matters, those are not matters which -- on the approach which was taken by, then, Mrs Justice Carr and, then, Mr Justice Males in those two cases was found to be unacceptable and impermissible and unfair.

My Lordship, this rests on your Lordship's power to control the evidence that's heard in this trial, and I would commend to the court an approach which controls it by ruling that the matters I have identified in this table, my Lord, are not matters which go merely to credit and, as such, can be put to a witness, because they are, in fact, an attempt to create by the back door an unpleaded case of dishonesty or furnish further facts to add to the limited facts that are pleaded from which the claimants ask your Lordship to infer dishonesty and participation in fraud.

My Lord, the second matter about which your Lordship asked me I can deal with more briefly. It concerns what's known as the Magante asset, which was one element of the contractual price revision mechanism found in versions of the Lakeview SPA, and I asked your Lordship for time to look at it.

Having refreshed my memory of the challenge that was made with respect to that -- and, in essence, the challenge, my Lord, is this: in writing, in the claimants' written opening submissions, it's found at <A2/1/85>, and this was a point amplified orally by my learned friend on Day 6 -- I will just give the reference for the transcript -- at page 47, line 24. The point, essentially, is that nothing happened between July 2015, when Lakeview was initially agreed, and the end of the period in 2017, when a number was put or a figure, a value, was put to the Magante asset as defined, for the purposes of the purchase price to be paid for the shares as revised.

But, of course, the difficulty with that is that what had happened is, the parties had attempted to value that asset in the intervening period. Your Lordship will have seen from Mr Hume-Kendall's witness statement, at paragraph 59, which is at <C2/2>, page 16, and at the end, he gives some background there about International Resorts Group Limited and its incorporation, in 58, which was set up to be a holding company for the Dominican opportunities. Then, at the end of 59, he explains that what happened was that various valuers, architects and planning consultants were engaged and the local management team, and that LCCL acquired a financial interest in Magante by providing additional funding to invest in those assets on behalf of IRG.

IRG -- this is prior, obviously, to the first -- in 2014, prior to the first version of the Lakeview SPA, but, in 2014, IRG came to be within the beneficial ownership of the shareholders in LCCL, of Mr Thomson and Mrs Hume-Kendall.

If we turn to the document at <D2D10-00006762>, this is a letter, my Lord, dated 15 April 2014 from Buss Murton Law LLP to Mr Thomson -- Mr Thomson of, in this instance, International Resorts Group Plc and it confirms the following:

"I confirm as one of the directors of Buss Murton (Nominees) Limited that the one shares which we hold in International Resorts Group Plc is held by us as bare trustee for yourself and Helen Charlotte Hume-Kendall to the intent that the two subscriber shares one of which is in your name are jointly held on trustee for yourself as to 76.25 per cent and as to 23.75 per cent for Helen Hume-Kendall."

So, my Lord, there were two shares: one held by Mr Thomson; the other one by Buss Murton Law LLP for Mr Thomson and Mrs Hume-Kendall. As a result, IRG was beneficially owned for the two of them. Your Lordship has already been taken to the sale and purchase agreement by which the shares in the Dominican company, Tenedora, were transferred to IRG. So IRG came to be within the ownership of a company beneficially owned by the two vendors in the Lakeview transaction, and what had changed is that the value of its interest in the Dominican asset hadn't been valued and, during the intervening period, was valued. I took your Lordship to, I believe, a valuation which was produced during the course of 2016, in November 2016, yesterday. So, my Lord, that is the change which gave rise to a value being put on the asset in the final version of the Lakeview SPA.

MR JUSTICE MILES: My question was a different one, I thought, which is that -- to do with the definition of "Magante asset".

MR WARWICK: Yes, my Lord.

MR JUSTICE MILES: I seem to recall it was concerned with some arrangement to sell, but I might be wrong about that.

MR WARWICK: Well, my Lord, if we could turn that up, it is -- by reference to the version of the Lakeview SPA which is the final full version -- it was varied twice afterwards under the price adjustment mechanism, but so that all the terms are there, it's found at <MDR00225500>. This is the £6 million purchase price version but with the full price revision mechanism in it and the price revision mechanism, as your Lordship will recall, is at clause 3.4, which is found on internal page 7. But the definition of "Magante asset" is found on page 5. It is internal page 2, but the PDF number is page 5. I'm sorry, I think that seems -- could we have the PDF page 5, not the internal number page 5, please. That's it, thank you.

It refers to an agreement with Sanctuary PCC, that's the former owner of The Beach, whereby the company agreed -- "the company" is defined here, of course, as Lakeview Country Club Limited:

"... the company agreed to fund the development of a site at Magante in the Dominican Republic in consideration of share in the proceeds of sale of that site."

So, that definition is of a piece with --

MR JUSTICE MILES: What does that mean, on your case?

MR WARWICK: On Mr Hume-Kendall's case, that is the arrangement by which Lakeview Country Club Limited participated by funding some of the initial steps taken in the development of the Magante asset in return for a share in the proceeds of any sale for that site.

MR JUSTICE MILES: It seems to be talking about some agreement for a share of the proceeds of sale.

MR WARWICK: Yes.

MR JUSTICE MILES: On your case, is there such an agreement?

MR WARWICK: On my case, there isn't a written agreement which I can produce to the court, but Mr Hume-Kendall's evidence is of that agreement being reached and, obviously, the documents, to

which I have taken the court, show how the asset came into the ownership of IRG, which was beneficially owned by the vendors under Lakeview, and this document itself is evidence that there was such an agreement, and by that agreement Lakeview Country Club Limited became entitled to a share in the proceeds of sale of Magante. That's Mr Hume-Kendall's case on it, my Lord.

MR JUSTICE MILES: No doubt it will be explored in evidence. I won't ask anything more about it.

MR WARWICK: Resuming then, my Lord, where I was yesterday with the Elysian transaction, where the matter was left, my Lord, just to recap very briefly, was on the question of security given with respect -- sorry, for the Support companies' existing lending. We went to the debenture agreements and I showed the court further guarantee agreements and your Lordship rightly observed they're not security in the sense that a debenture or other form of security of that nature would be regarded. But I would add the further point that, of course, the security to be taken for the lending was a matter for Mr Thomson to satisfy himself of, as director of LC&F and the person authorising LC&F's entry into loan facilities that were secured in the manner -- to be secured in the manner it's alleged he has represented to bondholders or in line with the policy of that company, and not a matter for Mr Hume-Kendall himself to satisfy himself as to, and, in addition, the security documentation was a matter with which we have seen Mr Lee of Buss Murton was concerned on occasion. I am anxious to draw that dividing line because, of course, your Lordship is quite right that guarantees would not be security of the kind that LCF necessarily would want to have for that level of borrowing, but, nevertheless, that's a matter for LC&F, and I explained again to your Lordship that of course LG LLP, as the vendor's agent, was to receive £82 million in value, making the guarantee that it gave a realistic and useful instrument for LC&F to have.

Moving from there, my Lord, on to the Elysian SPA itself, my learned friend took your Lordship to the SPA, but there is one further matter I would like to mop up from it. It is found at <D2D10-00028009>. It is dated 29 April 2017. Your Lordship has seen the parties to it. The particular element that I think a complete review should also dwell upon is the post-completion matter. Your Lordship has already seen from this on page 2 -- sorry, page 4, the parties to it. If, my Lord, I hesitate in this directing of the court and the caller to specific pages, your Lordship might notice that the trial bundle contains no pagination at all, so one is dealing with having to align PDF numbers and page numbers. Your Lordship will have seen the consideration payment which appears on page 5 of the PDF version, the consideration shares being the redeemable preference shares; and overleaf, on page 6, the definition of redeemable preference shares; the sale and purchase clause on page 7; and, on page 8, the obligation to issue the redeemable preference shares, and so on. But it is at page 9, "Post completion matters", to complete the picture, that we should look.

This deals with, or meets, at least, the claimants' argument about the way in which money was to be raised to pay the purchase price in the forms that have been seen, my Lord, and, as your Lordship will see, it was left as follows by the contractual arrangements. Clause 5.3 explains:

"Each of the sellers undertakes ... to use all reasonable endeavours to assist the company or a subsidiary of the company to raise funds for the purpose of enabling the company to fund its regular activities and to develop the properties ..." So there is a requirement to develop the properties, its assets, and also fund the company:

"... and to redeem the redeemable preference shares."

This is defined as "corporate finance". So, for all of those purposes:

"The corporate finance may be secured by such security as may be advised or required, over the assets of the company or its any of its subsidiaries (other than the excluded subsidiaries)."

Then at 5.5, this:

"Until the seller's receiver has confirmed in writing to the company that the redeemable preference shares have been repaid in full ..."

So pending full payment:

"... all monies raised by the issue of any corporate finance or otherwise received or realised by the company or the subsidiaries shall be applied in the following order ..."

The first in that order is:

"(a) general and administrative expenses and working capital in a sum to be agreed between the parties from time to time between £1.2 million per annum and £1.6 million per annum, incurred by the company in the ordinary course of business."

The second, my Lord, in rank order is:

"(b) coupon and interest payments due and payable with respect to the corporate finance." And only then, my Lord, afterwards:

"(c) equally [between] (i) costs associated with the development of the properties", and only then, my Lord, "(ii) repayment of the redeemable preference shares, provided that this order of priorities may be waived or amended at any time, upon request of the company, subject to receiving the prior written consent of the sellers' receiver such consent not to be unreasonably withheld or delayed. The parties will co-operate to agree the distribution of the monies raised by the corporate finance subject always to the conditions imposed by those advancing the corporate finance."

It goes on overleaf, my Lord, on PDF page 10, at 5.7. There was an obligation here as between the sellers and the sellers' receiver to use their best endeavours to novate and take over the full responsibility for the payment of the debts. In case "the debts" are not a defined term that your Lordship was taken to previously, that definition is found on page 5:

"Any debt or liability owing by the company or its subsidiaries as at the date hereof in respect of the loan agreements or due to the Telos investors or to LVI Recovery Limited, Lakeview UK investors Plc, the bonds issued by Waterside Villages Bonds Plc and the money due to El Cupey Limited."

So a definition capturing all likely debts of the company.

Returning back to page 10, please, it goes on: "To facilitate this, the buyer and the company will allow novating subsidiaries to take security over the asset subsidiaries ..."

That's the matter to which my submissions were addressed at close yesterday and I picked up on just now:

"... to cover the novating subsidiaries' liabilities of £24 million to London Capital & Finance Plc for novating the loan from LC&F Plc to Leisure & Tourism Developments Plc."

There follows, at clause 6, a clause headed "Expert determination". 6.1:

"If either party serves on the other a notice requiring any dispute to be referred to expert determination then provisions of this clause 6 shall apply.

"In this clause 'expert' shall mean a member of an independent firm of chartered accountants of repute appointed in accordance with this clause to resolve any dispute arising between the parties.

"The parties shall use all reasonable endeavours to reach agreement regarding the identity of the person to be appointed as the expert and to agree terms of appointment ...", and so on.

6.4:

"If the parties fail to agree on an expert and their terms of appointment within 10 business days of either party serving details of a proposed expert on the other, then either party shall be entitled to request the President for the time being of the Institute of Chartered Accountants of England and Wales to appoint the expert ..."

My Lord, there is a clause in a commonly seen form, but requiring expert determination with a default reference to the president of the Institute of Chartered Accountants of England and Wales is scarcely a term agreed by parties who are trying to create a dishonest transaction between them to misappropriate and conceal misappropriated monies.

My Lord, after the date of the agreement, there were of course new finance agreements entered into. These post-Elysian loan facilities are addressed in the claimants' skeleton argument and the flows of monies under them in some detail.

But the key point is that this was after the Elysian transaction. So the drawdowns and sums and how they were applied were made by the new owners.

MR JUSTICE MILES: Were any of the monies that were drawn down used for the development of the properties after the date of this agreement? You have just shown me a clause which says that 50 per cent after certain deductions will be used for development of the properties.

MR WARWICK: Yes. Well, the difficulty, my Lord, for Mr Hume-Kendall is that, of course, Mr Ingham and Mr McCarthy are not here. They are not party to this dispute. As a result, accounting for what happened during their tenure is difficult for him to do. So, I don't have at my fingertips source material to point to how those monies were applied.

Of course, shortly after this transaction, the asset-owning companies came into the ownership of Prime and, of course, the joint administrators do have access to all the records of Prime because they are also joint administrators, or some of them, at least, of Prime. So, my Lord, one of the principal issues taken with the Elysian transaction is the question of the sums that added up to the total consideration of £82 million or so, and, of course, those were detailed in an internal document to LG LLP dated 18 July 2017, and that's found at <MDR00007516>. Your Lordship will recall, no doubt, seeing this.

I think it's been suggested that not only was the Lakeview property not worth -- or the interest in Lakeview not worth what it's said to be here, so, too, was the criticism made of the Dominican assets' valuation for the purposes of this document and also Paradise Beach.

Again, my Lord, the Dominican assets form the subject of expert evidence, but, of course, it has to be remembered that this is a figure being agreed by the parties to the Elysian transaction. As your Lordship will have seen on looking at this document, there are US-dollar-per-square-metre figures given against Dominican Republic El Cupey and Dominican Republic Magante. So that your Lordship has the source of where those came from, there were valuations produced. I think one, possibly two, of which were shown to your Lordship by my learned friend but which were validated by Moore

Stephens sometime before this, in 2013, but, nevertheless, the figures align and clearly this is what was had in mind.

I wonder if we can turn, please, to <D2D10-00005336>. This is an email exchange between a gentleman, Paul Sayers of Moore Stephens, and Mr Hume-Kendall. If we go to page 2 of it, Paul Sayers, whose sign-off is shown on the right-hand side as a consultant in restructuring and insolvency at Moore Stephens, and what Mr Sayers had been asked to do, the assignment "with reference to our [agreement] as discussed", was to consider the values of The Beach and The Hill by Santiago Beras Lopez, defined here as "SOBL"; that because they are basic to the project going forward, that he wanted them reviewed by an independent local specialist as well. Essentially, what he's doing here is providing his comments and his verification or review of not only Beras Lopez but also the specialist whom we identified as being somebody known as Julio Cesar Pena, "JCPP", to comment on the methodology. As to The Hill, your Lordship will see below he summarises the position that JCPP had pointed out some typographical and minor errors in the production but commented this didn't undermine the competence; pointed to the discrepancy about which there has been some discussion in this trial to do with the area registered in forming the title; and opining that the title covers the lesser area of just over 1.3 million square metres, as opposed to just under 1.5, and that he would want to understand the difference, given time.

But that they agreed that a reasonable time to market and sell the land, would expect to realise US$16.69 per square metre, and a total price is given there.

As to The Beach, overleaf, my Lord, in the second page of this document, towards the end of this email, he again points to some sloppy production work in the SOBL valuation, as with The Hill, but Mr Cesar, as with The Hill, opined that the errors do not undermine the final conclusions and confirmed agreement of the value of US$329 per square metre. So, my Lord, that is the source from which those per square metre figures are derived.

So, certainly, while an issue arises upon which the claimants wish to rely on expert evidence as to what now, with the benefit of hindsight, the value might have been at the time, plainly, on an allegation of fraud, what matters is what was in contemplation at the time; and, clearly, in contemplation at the time was locally-produced valuations giving rise to those per-square-metre figures, verified by another independent local valuer and commented upon by Mr Paul Sayers of Moore Stephens LLP in 2013. My Lord, as to Lakeview, your Lordship was taken to a series of valuations produced by Porters. Those are found in the bundle at -- it is probably easiest to take your Lordship to the summary of them that Mr Spacey of Porters produced. That's found at <D2D10-00038652>. With a fair amount of, perhaps, hyperbole, this was criticised as being fantastical in its approach, but, in fact, that doesn't withstand scrutiny because, of course, he had endeavoured to value each of the component parts of it in a way which is appropriate. I will come to the question of the number of lodges in a moment and what effect that might have. It comprises two parts. Essentially, what he's doing here is he's looking ahead and valuing as development land on the basic development land appraisal approach, on a residualised basis, the development site as was then envisaged and then also putting a present value to lodges based upon the capital sums for each of those shown.

On the residualised development appraisal of the value of the land looking forward, the underlying appraisal is found at <D2D10-00038653>. Your Lordship will note this was prepared for London Capital & Finance. It concerns the development site. Overleaf -- it is dated 13 December 2016 and the valuer is Mr John R Spacey, a fellow of RICS.

Overleaf, on page 2, he produces a market value of the freehold interest, and then, on page 5, summarises the results of his planning enquiries in preparing this report. Again, he refers to the planning consent for 36 lodges and a 105-bedroom hotel. There's a reference to an indication given by the planning officer, but I don't think much store can be put by that. Then, on page 7, he discusses the consent further for a 105-bedroom spa hotel and 36 detached lodges, and he explains his methodology was to estimate on a residual basis the final market value less cost of the development. Again overleaf, on page 8, he sets out his analysis. Of course, a high figure -- I think some criticism was made of the high figures used for a new lodge, but of course it's not quite the same as the existing A-frame lodges. What was envisaged was the construction of new lodges. So there's an apples and oranges point there.

But of course you will see, my Lord, again below, underneath the figures to be deducted to reach his residual site value, he deducts, again, finance and developer's profit. As your Lordship will recall, under the development land RICS standard, that is a method of creating a net present value from the gross value, and, as a result, he produces a current market value of the 36-lodge site with planning consent at £30,000 per plot and gives a figure for that, and he does add hope value, as he suggests the 30 lodges in place at the hotel site plan.

My Lord, essentially, whether or not -- whatever criticism is now made of that, quite clearly, the parties to -- or at least Mr Hume-Kendall and certainly Mr Thomson, insofar as the lending side of this was concerned, knew of the existence of the valuation at that time supporting future values and also supporting the existing value of what existed on the site. If I may come to that, because, of course, what's said about that is that Mr Spacey had inaccurate information at his disposal about the number of lodges that were to be valued there, and this was based upon a forensic document produced by the claimants. I wonder if we could turn that up again. It is at <A1/14>, please.

My Lord, like a bad student, I haven't set out my working, but I have caused to have some calculations made from these numbers which I can produce to the court in a table or spreadsheet, if that assists, but I suspect, since some of this is by way of estimation, it might not matter very much. But the point is that, as at the end of 2016, it appears that some 25 -- that is to say, around the time the Porters valuations were produced, around 25 lodges were within the ownership of the company. But the point is that, as at 29 April 2017, the date of the Elysian SPA, in fact 55 lodges were owned. The claimants' own analysis shows that some 23 lodges had been acquired as part of the timeshare acquisition, although we all know, from having seen the settlement agreement, that it was, in fact, 24 and actually the claimants' calculations of producing -- if we go over one page, please -- the 31,750 number is, of course, based on there being 24. So I think it ought to be common ground that there were 24 acquired that way, meaning that the total was 55 owned as at the date of the Elysian SPA. It is said rightly, then, that Mr Porter's -- sorry, the Porters' valuation of Mr Spacey refers in error to 62 lodges, generating a 9.36 million number. Now, it's difficult, of course, to dig into the precise division -- I think this is a difficulty which my learned friend referred to as well -- of that number by the type of lodge because, of course, there were two- or three-bedroom lodges. But, for the sake of estimation, and I put it absolutely no higher than that, if one takes the average of his two- and three-bedroom figure, you generate 151,000.

MR JUSTICE MILES: Sorry, weren't there a lot more of two-bedroom ones than three-bedroom ones?

MR WARWICK: I think that's probably right.

MR JUSTICE MILES: I thought there were relatively few three-bedroom ones, but I may have misremembered that.

MR ROBINS: My Lord, it's the subsequent John Spacey valuations where the number of two-beds shrinks and the number of three-beds grows, not the valuation that my learned friend is making submissions on.

MR JUSTICE MILES: But, just in terms of the numbers, I thought there were fewer three-bedroom ones.

MR ROBINS: There were 18 three-beds.

MR JUSTICE MILES: There we go. Out of the total of --

MR ROBINS: Of the 69, my Lord.

MR WARWICK: My Lord, it may well be that the level of granularity that I'm seeking to achieve by this overview is not such that it matters very much either way because, essentially, the point is this: if one takes the average sale price used by Mr Spacey and then adjusts for that by the true number of lodges that were known to have been acquired -- it appears common ground were to have been acquired -- by the time of the Elysian SPA, the numbers are not that far off in any case, because a £150,000 figure average price would generate, as at the end of 2016, some 3.8 million, but as soon as you add the 24 lodges in January 2017, that would go up to 7.4 but, as at the date of the Elysian SPA, 55 lodges on that estimation would be 8.3 million, and adding the 8.3 million to the residualised valuation that he includes in this summary for development land would generate a total NPV of some 13.9 million.

MR JUSTICE MILES: I thought it was one and a half. Sorry, have I misunderstood that? I thought the one you just showed me had a value of 1.5 million? Sorry, I may have misunderstood you.

MR WARWICK: Far from it. If one looks back at the sheet at <D2D10-00038652>, the residualised net present value for the development is, as your Lordship says, 1.53 million, but of course there's the central amenity block added in, and of course a figure for the manor house. So, if one removed all of the value for the lodges and replaced it with a figure based on 55 lodges on an average of 150,000, the total would be 13.9 million. Now, obviously, Mr Hume-Kendall doesn't argue that that figure precisely matches, of course, the full Lakeview figure which drove the £82 million consideration, but what can be said from this is --

MR JUSTICE MILES: Sorry, what was that figure again, just remind me?

MR WARWICK: It was £18,745,000, my Lord. But of course that number is the product of negotiation. I don't think anyone is suggesting that this deal was to be done by commissioning a valuer to produce a market value and simply adopting the figure generated.

To the extent of a difference between the two, no doubt Mr Hume-Kendall can give his evidence explaining what happened in that negotiation.

Lastly, my Lord, the Paradise Beach asset. This is described by the claimants as a -- the claimants put forward in their written and, indeed, oral opening submissions a premise which is that it was effectively an opportunity to incur a loss; the sort of thesis that that's so. That was based upon a 40-million-euro valuation produced by Savills in November 2015. But I'm afraid, my Lord, that's not accurate because a range was not given by Savills. Two different valuations were. I wonder if we can turn to it and have a look at what was in fact said there. That is found at <D2D10-00012769>. This is a document entitled "Report & Valuation. Paradise Beach Resort, Sal, Cape Verde", with the Savills logo, dated November 2015. Over on page 3 is the covering letter. The date of issue is 30 November

2015. The valuers are Mr Alan Plumb, a fellow of RICS, and Ms Madeleine Uren, a member of RICS. The comments in the covering letter is they have inspected the property and made enquiries sufficient to produce this opinion of value. An executive summary commences on page 7 of the document. Overleaf, on page 9 -- I have not skipped text, my Lord, there is a blank page in between. There is a photo of the resort which was, at the time, partially complete. Then overleaf, please, on page 10, the numbers are given in summary.

At the bottom of that table, "Approach to valuation" explains:

"The property has principally been valued using the residual method."

And two valuations, plural, are produced: market value, EUR40. 55 million; and worth value, EUR56.72 million.

As your Lordship may be aware from generally, of course it is not usually open to a RICS valuer to produce valuation as a range. The Red Book requires valuers to produce single values for properties or, if a range is used, explain very clearly why that is done. This is not a range. It is two values.

Your Lordship may also have some familiarity with the concept of worth value or investment value, as that is understood by RICS valuers. A copy of the RICS Global Standards Red Book is in the trial bundle. It is at <R1/10>. Again, I should flag this is the current edition, not the edition current at the time this report was produced. I'm afraid it is material not to also drown the court in a great deal -- a number of successive revisions to these rules and I don't think anything will turn on the date at which this is produced, as this is a well-known and established definition, but we will see that in a moment. If we turn to page 69 of that document, please, your Lordship will see, of course, the bases of value, as set out in VPS 4. At paragraph 2.2, these are also defined, of course, in the IVS standards and IVS 104, and most are in common use and a series of bullets follow. Obviously "market value" and "market rent", but also "investment value (or worth) (see section 6 below)".

If we turn over to page 72, please, investment value is defined there:

"Investment value (worth) is defined in IVS 104 paragraph 60.1 as:

"'the value of an asset to a particular owner or prospective owner for individual investment or operational objectives'.

"As the definition implies, and in contrast to market value, this basis of value does not envisage a hypothetical transaction but is a measure of the value of the benefits of ownership to the current owner or to a prospective owner, recognising that these may differ from those of a typical market participant. It is often used to measure performance of an asset against an owner's own investment criteria."

My Lord, explanations in like terms also appear in the RICS development property document to which I took your Lordship yesterday. I don't think there is any need to be repetitive and take my Lord to that again. But, essentially, what Savills were doing here is valuing the worth of Paradise Beach to its then owner, or a prospective owner in like position, at 56.72 million. Essentially, 57 million.

MR JUSTICE MILES: How do they do that? How do they reach that value?

MR WARWICK: My Lord, if we turn then to the report on valuation, part of the report, which starts on page 48, the quirk with this particular one, my Lord, is that what was envisaged was, of course, fractional ownership.

MR JUSTICE MILES: Sorry, you need to go back to the document.

MR WARWICK: I'm so sorry, it is <D2D10-00012769>. If we could go to page 48 of it, the analysis is set out there with respect to "Worth Value -- Fractional Basis". It says this:

"You have requested that we provide you with an opinion of worth value on the basis that you are able to sell the residential units on a fractional basis, in a similar way to The Resort Group at Dunas Beach." That is a comparator:

"This is not market value and provides an estimate of potential worth to the developer in the event that the project proceeds entirely as per the business plan." Pausing there for a moment, my Lord, what's important about that, of course, is that the plan was in the very nature of this asset, it was a phased development that another developer was building in which the company, CV Resorts, had acquired rights to purchase. So it was being developed in accordance with a plan for the development of the Paradise Beach site. It says:

"Our understanding of the Resort Group operation is that units are purchased by investors or owners and they are permitted to use the unit up to 5 weeks per year. The remaining weeks are used by the hotel and a guaranteed 7 per cent gross return paid to the owner/investor. We are advised that the net return after costs is circa 3 per cent.

"We have made the same assumptions above ..." So, they have followed a similar resort: "... with the following exceptions:

"We have increased net sale rates to the following ..."

And it sets out a series of unit sale rates, average per square metres are given, and then, in further bullet points, it explains the other respects in which they have adjusted this analysis from what might be observed about the comparator to which they refer: "We have increased the marketing fee for phases 1 and 2 to 10 per cent of GDV to reflect the increased marketing costs required to sell the units at the higher price and to sell the investment product. "We have assumed that the hotel and facilities are built and commissioned."

Of course, that was a contractual requirement of the developer:

"We have assumed that there is a gross rental guarantee of 7 per cent paid on any sums paid from the time the deposit amount is paid."

Jumping over one bullet point there:

"We have assumed that the project will be developed out to completion and the developer will sell all units on an individual basis without discount and the development will not be offered for sale at any interim point."

Then the final one is:

"Apart from the land value, we have not attributed any net income from the hotel or any other operational element of the property."

My Lord, overleaf, on page 49, your Lordship will see the traditional market value is given at EUR40.5 million. Then overleaf again, on page 50, the worth value reflecting this fractional basis, as intended:

"Having carefully considered the property as described above we are of the opinion that the current value, on the basis specified below, of the local equivalent of the freehold interest with the benefit of

full vacant possession, with the exception of the residential units already sold, is EUR57 million." That basis is set out in the bullet points that follow. Some of them are fairly generic in nature -- good condition, et cetera; unencumbered local equivalent freehold title; permissions; rights of access; services and infrastructure costs are accounted for; no additional on or offsite costs, and so on. My Lord, as your Lordship has seen, this is a series of foreign rights in land, and my vocabulary may not be spot on, but, essentially, the strike price, as we would understand that, for purchase of all of the units was EUR57 million.

So, rather than being an opportunity to incur a loss, it was a break-even proposition and Mr Hume-Kendall's case is that Mr Ingham, who had been involved in this for some considerable period, went into this with his eyes open. He may well have felt, of course, that he could better that. But an opportunity to incur a loss on the basis of Savills' residualised investment value valuation, it was not. It might also be said that this was a development a particular feature of which was the fractional basis on which ownership was to be offered, and that is something which is worthy of a special assumption of the kind that effectively drives giving a worth value on a fractional basis in place of a normal market value.

My Lord, those are my points on the Elysian transaction, and I see the time. We are coming up to a break for the transcriber. I wonder if that is a suitable moment.

MR JUSTICE MILES: Yes. I have got to rise at 12.50 pm today. How are you getting on? There is no hurry, because you've got time.

MR WARWICK: I'm roughly running on time, according to what I had.

MR JUSTICE MILES: Do you think you will have finished by then? It doesn't matter, because you can go over, but --

MR WARWICK: Yes, I might. I can certainly try and aim to, and it would be a neat moment to do that. But I'm afraid I can't promise, because, of course, there are many subsidiary points, and so on.

MR JUSTICE MILES: Five minutes.

(11.40 am)

(A short break)

(11.47 am)

MR WARWICK: My Lord, the Prime transaction. As your Lordship will recall, this essentially took place in two stages: the first, a period of negotiation that took place in the autumn of 2017 that resulted in what's been referred to as the combined SPA, dated 21 November 2017. A copy of that is found at <EB0066393>. This is a document your Lordship was taken to. So that I have dealt with its timing, this was circulated, signed by Mr Sedgwick himself, on that date. So it is not a document I understand to be alleged to be backdated in any way. That email is <EB0066391>. This is an email from Robert Sedgwick, head of legal, et cetera, to Mr Hume-Kendall, Mr Barker, Tom M and something called "Platingham".

MR JUSTICE MILES: That's Mr Ingham.

MR WARWICK: Understood, my Lord, thank you. It says: "Here is the signed SPA.

"Completion will take place next Tuesday, 28th November when all ancillary documents will be signed and the matter finally completed", and so on. So I think there is no controversy about its

timing. Turning back to the SPA itself -- if you are able to just go back one, if that is a function you have. Thank you. Your Lordship was taken to this in some detail by my learned friend. I think it is worth also completing the picture by dealing with post-completion matters again in the same way. The relevant clause appears on page 11 of the document -- PDF, that is; it is internal page 7. My learned friend took you to this, but the point again here remains that there is a mechanism in here for ensuring that corporate finance obtained is applied in certain ways that include the establishment and running costs of the companies, and so on, and paying interest and other liabilities on the corporate finance. Your Lordship sees that at clause 6.5, that corporate finance shall be fully utilised as available to them from London Capital & Finance up to the facility level, or any other corporate finance available to them. So this is not an obligation that requires you only -- you, the purchaser, only to make use of LC&F's facilities. It admits of the possibility you might obtain corporate finance from elsewhere. This obligation causes the purchaser to pay the establishment costs, which are defined below, and finance costs, which are defined in (b) below, and also deal with the balance in two halves divided equally between repayment of the loan notes and the preference shares applied towards the capital costs. Overleaf, on page 12 of the PDF, clause 6.6: "Upon receipt of the corporate finance by the security trustee, the trustee will invite the buyer to submit within 5 working days details of its finance costs and capital costs together with such supporting evidence as the security trustee may reasonably require. The security trustee shall disburse the corporate finance in accordance with the provisions of clause 6.5 to the accounts notified to it by the buyer and sellers."

So, of course, it was always envisaged that the sellers would be able to direct or provide details of accounts to which payments were going to be made. To that extent, they were involved. But, of course, the matter was in the hands of the trustee, security trustee, which, as your Lordship will recall, was Global Advance Distributions Plc, and the definition of that is found on page 8 of the document.

My Lord, the background to this is dealt with in Mr Hume-Kendall's evidence. His evidence on this, so your Lordship has it for your Lordship's note, is in his witness statement at paragraphs 100 to 106, which appear at <C2/2>, pages 29 to 31. If I may summarise, essentially, Mr Ingham and Mr McCarthy had a change of heart insofar as they didn't want to carry on operating these property-owning companies and wanted to onward sell them to Prime Resort Development. But, of course, the point here is that there had been an earlier approach to which Mr Hume-Kendall refers in his evidence from a gentleman known as Mr Woodward for himself, Mr Sands and Ms Isbell, to whom reference was made, obviously, during my learned friend's opening in 2016. In essence, the negotiations were a revivified version of that later in 2017 with Mr Sands, whom he met on behalf of the purchasers generally.

Mr Hume-Kendall's evidence is that the documentation and the negotiation was handled by the lawyers, namely, Mr Sedgwick and Jo Marshall, a solicitor then employed by London Group entities, and that Jo Marshall prepared the main Prime SPA dated 21 November. His recollection is that Mr Ingham and Mr McCarthy took the lead in negotiating the Prime terms.

He explains that, of course, the key difference from Elysian is that Prime would take control of the Support companies as well, not CV. They didn't want to acquire the Paradise Beach element. I will come to that in a moment. But the rest of the Support companies were to be brought under the ownership of Elysian and then transferred into the Prime Group with Elysian as their Holdco.

The result of that would mean that all the assets and liabilities, with the exception of the Cape Verde assets and liabilities, would come into the ownership of Prime as a whole.

The important point to stress, which is dealt with at paragraph 105, which I believe is overleaf, please, the key point is that in Mr Hume-Kendall's estimation -- this is midway through that paragraph -- at around that time, only around £9.5 million of the Elysian purchase price had, in fact, been paid, and so what was happening here was that, of course, Prime was taking over in the process of paying that, though of course it had to be calculated differently because it was to be net of the indebtedness, and, as a result, LG LLP was also a party to it because it was to continue to receive the payments.

That understanding is clear from those involved. If we could turn, please, to <D2D10-00057281>, we see here some email exchanges in a chain commencing on Wednesday, 21 November 2018 just after noon. There it is explained in an email from Mr Alex Lee, the solicitor from Buss Murton, the solicitor for LC&F. Mr Lee explains: "Hi Robert.

"Something has just occurred to me. I seem to remember that the proposal for dealing with this is to have the monies received from the sale to Prime to be paid through to LCAF. That would require the recipient to sign up to the agreement in some form given that it isn't CV. Can you confirm who the party to the SPA is that receives these funds. Not exactly sure how I am going to do this but will give it some thought. "I seem to remember that you had a deal sheet at the meeting at LCAF last month. Could you possibly email that over as well please?

"Best regards.

"Alex Lee."

Mr Sedgwick replies a little later:

"This was the term sheet that I prepared as a draft which we discussed at our meeting in September." If your Lordship recalls, that is the term sheet for the Cape Verde repayment that I will turn to in a minute. He says this below that, though: "With regard to the sale to Prime the sellers were Simon Elten and Andy together with Mark Ingham and Tom McCarthy. London Group LLP was appointed agent to receive monies due to Simon Elten and Andy. There is not much to come to Simon Elten and Andy from the basic consideration but there is an additional 5 per cent due to them on the sales of any of the lodges et cetera at Waterside."

For completeness, if we can turn to <D2D10-00057282>, your Lordship will see the attachment to which reference was made there with the heads of terms by which Mr Hume-Kendall was seeking to agree a repayment plan for the repayment of the Cape Verde Resorts Limited -- the indebtedness of CV Resorts Limited and LPE Support Limited, formerly Atlantic Petroleum, which I took the court to yesterday. Returning to Mr Hume-Kendall's recollections on this, as to Prime, his understanding was that they were mostly interested in developing the Dominican Republic assets but were also content to take on Lakeview as well, for a potential onward sale.

As to the hive-off of the CV Resorts piece, as it were, my Lord, he says at paragraph 103 -- so if we have that up, that's at <C2/2>, page 30 -- sorry, it starts the page before, 29. He explains here that -- some reticence, really. He had known that this was -- it had been known that this was a somewhat speculative investment, and -- overleaf, again -- he had no interest in managing it but felt compelled to take it back to ensure that the remainder of the transaction proceeded and that, in his recollection, at least, it was conditional that, "If we didn't take CV Resorts back, the deal with Prime might fail".

Your Lordship has seen, I think now twice, the ways in which, that having happened, Mr Hume-Kendall sought to repay the indebtedness by agreeing a repayment plan, and so on, and the draft

heads of terms. His recollection is that that process was, and it seems right, in time interrupted by the FCA's intervention. My Lord, your Lordship will recall the second stage of Prime involved the sale of LUKI and IRML -- which was the company that was nee LCCL, it was originally Lakeview Country Club Limited -- into Prime, dated 11 April 2018. A copy of that is at <MDR00216566>. The essence of this, of course, was for that acquisition to take place so that the full picture with respect to Lakeview, both its indebtedness -- the indebted entity and also -- that's Lakeview Country Club Limited, with respect to the LUKI bonds, and also the sliver of land, the development land, that was retained from the original Lakeview transaction all came into the ownership of Prime.

My Lord, you can see the rationale of this in contemporary correspondence where that's been discussed. If we can turn, please, to <MDR00141582>.

THE CLERK OF COURT: Apologies, we have somehow gotten disconnected. I will reconnect once again. (Pause).

MR WARWICK: My Lord, if I may, to the observers via videolink, we paused proceedings to bring you back online again.

Resuming, my Lord.

The contemporary rationale for this transaction can be seen from the email thread that appears at <MDR00141582>. This is a chain of emails spanning the period 11 April 2018, around the time, of course, of the second consolidated Prime SPA. It runs to several pages. But if we can go to page 3, where the substance of it starts, for context, my Lord, the person named as Vanessa in Mr Sedgwick's email seen on that page of 4 April 2018 at 10.45 is an employee of Hypa Management. Hypa Management were the agents who oversaw the marketing of the LUKI bond. Mr Sedgwick writes to her: "Dear Vanessa.

"Can you please let me have the current value of the outstanding bonds issued by LUKI (excluding any interest)."

To which she replies a little later on the same day: "Hi Robert.

"The outstanding capital amount is £5,067,700. "Also, please could you arrange for payment of the Lakeview interest for March -- total amount £50,448.33 (detail attached)."

If one goes to the second page, one sees the comment above that:

"This is the amount owing on the LUKI bonds." It is not immediately clear where that fits in this thread and I'm afraid I can't shed any light on that. But what you can see above that is a message from Mr Mitchell to IS@prime, which is Mr Sands. Cc David Massey, sent on Wednesday, 11 April 2018 at 11.12, subject "LUKI loans":

"Hi gents.

"It is all agreed more or less as we discussed last time.

"Our purchase price is reduced by £5m and we take over the responsibility of the bond (£5,067,700 outstanding).

"The pocket of land is then available for LC&F as comfort in our headroom until all sites are revalued. "They confirmed that the relationship with the bondholders is and has been good apart from possibly one month when the coupon payment was a few days late." There is reference to an attachment, and so on, and stock transfer forms.

Above that, David Massey replies on 11 April: "Dear All.

"This all looks okay to me.

"One issue I did raise with Terry is: (i) is there a security trustee for the LUKI bonds and if so (ii) does it have to approve the guarantee substitution?" A perfectly sensible question to ask. Then, if we go over to the first page, that's resolved by the bottom message from Mr Mitchell:

"Sorry David.

"I did raise the question and no they only receive the interest and distribute to the bondholders." Then above that, on 11 April, one can see emails about the signature of the SPA. On 11 April 2018, 15:55, Ian Sands emails:

"Hi chaps.

"Terry David and I are okay with this.

"Paul isn't responding.

"I am signing now and will scan and send it to Robert shortly unless there are any objections." To which Mr Mitchell replies:

"Yes good to go please Ian.

"Many thanks.

"T."

What one can take from this exchange was the rationale was to acquire the companies to which I referred earlier and it's effectively, as Mr Mitchell calls it, taking responsibility for the bonds, liabilities of just over £5 million. But of course, correspondingly, the purchase price was to be reduced by £5 million.

My Lord, that adjustment is found in the second consolidated Prime SPA, which is at <MDR00216566>. That, my Lord, is the share purchase agreement, to which your Lordship was taken by my learned friend, of 11 April 2018. Your Lordship has seen this, but the price adjustment is found on pages 6 to 7 of the PDF under the heading "Post completion matters". There is an indemnity given there at 5.2, but at 5.3 it says this:

"The parties agree that the terms of the SPA ..." That is, my Lord, a reference to the combined SPA of 27 November 2017 -- for your Lordship's note, that's a defined term of the SPA, which appears on page 4 as such. But remaining here at page 6 for a moment, it says -- there is an adjustment at (a) and then at (b) it makes clear:

"The amount due to LG LLP in respect of the purchase of the preference shares shall be reduced by £5 million."

My Lord, again, the claimants make much of documentary infirmities, and I can't contradict some of the points that are taken on this, but, again -- and, indeed, the problem of it seeming, post completion, the preference share issue not being addressed. But, of course, again, Mr Hume-Kendall was entitled to rely on his lawyers and on Mr Sedgwick in order to document this deal, as were the other parties entitled to rely on their lawyers, which apparently also had some involvement with Buss Murton. Whether that works chronologically isn't immediately clear from the email I took your Lordship to, but nonetheless Mr Lee was aware of it. It may well be that Mr Sedgwick has to answer

questions about the documentary infirmities there are with this transaction, as there are with some of the others likewise.

By way of a summary, my Lord, the position is as set out in the diagram to which I took your Lordship yesterday on page 5, so that's found at <A3/20>, page 5. We have set out here in diagrammatic form, using references mostly to the neutral statement of facts, but not entirely, showing where the corporate information for -- the company information for these entities is found, and what happened. That's the first combined SPA. Overleaf on page 6, your Lordship will see the second element, the purchase of LUKI Holdings, and so on, to which I have just referred.

MR JUSTICE MILES: Going back to the first element, the first page, I'm just trying to remind myself, so there are two lots of sellers?

MR WARWICK: Yes.

MR JUSTICE MILES: And LG LLP is one of the sellers, and it gets a total consideration of 20 million. Is that the 20 --

MR WARWICK: Yes, it is, it is 10.3 million of loan notes and supposed to have been 9.4 million of preference shares.

MR JUSTICE MILES: It's transferring to Prime, what, the shares in the Support companies?

MR WARWICK: Well, it transferred to Elysian the shares in the Support companies. I recall your Lordship asking a question of my learned friend about this.

MR JUSTICE MILES: I'm still trying to understand it.

MR WARWICK: Yes. It's not that easy to understand, and I'm sure there are lawyers in the room who would not have documented this deal in the way it was documented, but there is an SPA dated 6 December 2017 by which Elysian bought the Support company shares from LG LLP for £1 per company, and I think my learned friend took you to that. It is at <D2D10-00040082>. Could we turn over -- I don't have a hard copy so I might be navigating this a little on the screen. Over again, please. You will see, my Lord, the parties are LG LLP and Elysian, and there is a fair amount of recital, but it explains at A [page 3]:

"As part of an intragroup reorganisation of the group owned by the Buyer ..."

Elysian is defined as the buyer:

"... the buyer intends to purchase from the seller all the shares in each of Waterside Support Limited (the Waterside Target), Costa Support Limited ... and Colina Support Limited (the Colina Target, and together with the Waterside Target and the Costa Target, the Targets). The Targets are currently wholly-owned subsidiaries of the seller. The seller is not part of the buyer's group but, following the sale of the Targets to the buyer and the completion of the reorganisation, the seller may consider a proposal to purchase certain other Elysian-owned subsidiaries ..."

I'm not sure that bears on it very much. But, in operative respects, this agreement proceeds as follows -- if we turn over one page, please, and again, please. Clause 2 [page 5] deals with the sale and purchase of the shares in those companies and clause 3 deals with the purchase price, which is £1 each.

MR JUSTICE MILES: Going back to your diagram ...

MR WARWICK: Yes, my Lord, that's <A3/20>, page 5.

MR JUSTICE MILES: So, it is selling those Support companies, effectively, as part of the transaction?

MR WARWICK: That's right, my Lord, yes.

MR JUSTICE MILES: But by that stage, is this right, the ones in the bottom box in the middle are -- what are they, subsidiaries --

MR WARWICK: They are all subsidiaries of --

MR JUSTICE MILES: -- of Costa Support?

MR WARWICK: Of Elysian. They all come to be owned by Elysian. Both the asset holding companies and the Support companies come into Elysian and Elysian was sold in Prime transaction to Prime RDL.

MR JUSTICE MILES: Some things are coming, as it were, from the -- on this diagram, from the Ingham/McCarthy side?

MR WARWICK: Yes, that's right, because Ingham and McCarthy sold Elysian to Prime as a seller in the combined SPA and by doing so -- GRP, in fact, dropped out of the picture because, in the reorganisation preceding the transaction, the subsidiaries shown on the bottom left-hand side, other than CV Resorts, came into the ownership of Elysian directly. That was -- shares in that company were transferred under the combined SPA to Prime, and Elysian also acquired, under the SPA I have just shown your Lordship, the three Support companies shown in pale blue for £1 each, so that they all come together as subsidiaries of Elysian RGL in the ownership of Prime.

My Lord, I do have references to Companies House documents --

MR JUSTICE MILES: Is there anywhere in the papers a simple explanation, narrative explanation, of these transactions?

MR WARWICK: Yes. This is explained in --

MR JUSTICE MILES: This is exactly the sort of thing that the parties should have been able to agree, and what I was hoping for, in the uncontested statement of facts.

MR WARWICK: That's right, my Lord. I think perhaps, if there hasn't been agreement, it is because, of course, many of the arguments that are put forward about this transaction as indicia of the wide and dishonest case advanced by the claimants are embedded in the ways in which this is done. But I don't understand what's shown on the screen at the moment to be controversial.

MR JUSTICE MILES: I don't find it particularly -- I mean, it is helpful, so far as it goes, but I don't find it that helpful, because of the number of steps that have been taken, to try to remind myself, as it were, what was owning what at the various times.

I mean, where in this diagram are the underlying assets held, as it were? What do any of these companies actually own?

MR WARWICK: Waterside Villages Plc, as you can see on the left-hand side, is holding the Lakeview resort, and Costa Property Holdings Limited is the holding co of Tenedora, the Dominican entity that owns --

MR JUSTICE MILES: Right, but that seems to come in twice because --

MR WARWICK: Ah, well, this might be a matter of presentation. So, the left-hand side is the position pre transaction, and, in effect, the middle is the position post transaction.

MR JUSTICE MILES: Who is, as it were, providing those companies to Prime? Because I'm looking at the money agreements, in part, and I'm trying to understand why LG LLP is getting the lion's share of the consideration at this stage?

MR WARWICK: Well, the reason, my Lord, is because the Elysian transaction was -- as to payments, as to deferred consideration, incomplete. It was a matter of months later Mr McCarthy and Mr Ingham sell Elysian to Prime. So Prime steps into their shoes as the company who owns the shares in Elysian and Elysian owns all the property-owning companies, so ultimately Lakeview and the other assets. But also LG transfers into Elysian's ownership the indebted Support companies -- obviously not CV and LPE --

MR JUSTICE MILES: Why would that be worth anything if they were just indebted companies?

MR WARWICK: Well, the worth, my Lord, is that the consideration that had been £82 million under the Elysian transaction becomes 20 million, as shown on the top right-hand side. So, instead of receiving all the remaining monies to which they were entitled under the Elysian SPA, LG receives the monies under the Prime SPA reduced, but it divests itself of the Waterside, Colina and Costa Support companies which are indebted. The net result is that Prime ends up owning everything apart from CV Support and LPE Support, having paid 20 million for it.

My Lord, I wonder if I might move to the LPE transaction. Now, the issues arising with respect to this transaction, by which interests in various technology companies, in the nature of early-stage tech startups, essentially, were purchased by -- or brought within the ownership, ultimately, as intended, of the LPC and LOG Group -- I think I can save some time by not going into too much detail on the structure of ownership of ITI and LAI, which my learned friend outlined to you, but, essentially, if we go on two pages within the document that is open on the screen at the moment, please [<A3/20>], you will see here the position prior to the LPE SPA. As I understand it, there isn't much between the parties on this, in that, essentially, ITI was owned -- its legal ownership was split 10 shares and 90 between, respectively, Mr Ingham, on the one hand, and Mr Hume-Kendall and Mr Barker on the other hand, and that ITI was a Holdco essentially. Green shows beneficial ownership of Mr Ingham, Mr Hume-Kendall, Mr Barker and Mr Golding, and it owned 100 per cent of Asset Mapping and 9,620 shares in Reserec -- I will explain that in a moment. 80,000 shares in Reserec were owned by Dr Jagadeesh Gorla. The reason for the unusual number of shares in Reserec was the investment agreement to which my learned friend took your Lordship whereby ITI came to acquire Reserec in a staged way, by making certain payments of consideration, which would have amounted up to a total of 20 per cent of the company, but, as at the date of the LPE SPA, was only 9,620 shares out of the total. The deal required that the company issue those shares, so that's why it is an irregular number, but, essentially, just over 11 per cent of the ownership of Reserec was in ITI's hands as at the date of the LPE SPA.

With respect to LAI, I think there was, at a time, a difference between the parties over how precisely it was owned, but I think that's clear now and reflected in the neutral statement of uncontroversial facts, schedule 1, that, essentially, LAI was owned by Henry Hume-Kendall, who is Mr Hume-Kendall's son, 36 per cent, that's 360 shares; a company known as Ashdown Acquisitions, which was essentially Mr Barker's company beneficially, 440 shares; and Global Realisations Limited, 200 shares. So it was in that split.

An overview, slightly disparaging, if I may say so, was given of the businesses in which Asset Mapping, Reserec and LAI were involved. But, in essence, Asset Mapping was invested in a cloud-based software -- rather, was operating a cloud-based software platform for monitoring smart buildings and Reserec used or was developing artificial intelligence for use in advertising and marketing, essentially an algorithm that matched investors to businesses that required investment.

I think Dr Gorla's credentials and a summary of the position to do with his company Reserec is described by Mr Hume-Kendall in his witness statement, if we could go to that, please, at <C2/2>, pages 36 to 37, at paragraph 129. Mr Hume-Kendall, who will give evidence and quite probably will be the only witness to have met Dr Gorla, says this of him. He founded Reserec, a company which used AI in the advertising and marketing industry, he had expensive expertise in this area: "He had been carrying out research into natural language processing since 2005, held a PhD in search relevance and machine learning (having been a Microsoft Research Cambridge scholar at University College London), and was the recipient of a Dorothy Hodgkin Postgraduate Award from the UK Government. He had also shown that he could use his technical expertise to develop successful commercial products: among other things, he had developed an algorithm for Match Capital to match businesses with potential investors, and had built and deployed recommendation models for Channel 4. All in all, I was extremely impressed with his credentials, and was confident that Dr Gorla was someone with whom the London Group could develop a fruitful relationship. I raised the idea of us beginning our experience and expertise to develop an algorithm to predict commodity prices, and he was enthusiastic about this. We kept in touch ...", and so on. Of Dr Gorla and his background summarised there, the claimants say this. They describe him as Jaggu, a computer programmer from the State of Telangana in India, who seems to have settled in the UK after some initial visa difficulties. That's found in the claimants' skeleton at H83, and, for fairly obvious reasons, my Lord, I invite you to disregard that summary of Dr Gorla.

Dr Gorla entered into, as your Lordship has seen, a consultancy agreement, and, in a sense, part of the value in being involved with his company was being involved with him. For your Lordship's note, the consultancy agreement is found at <EB0061444>. That is really for your Lordship's note. The operative parts of that agreement the court has already been taken to. I wonder if we could return, please, to the organogram I showed the court earlier, <A3/20> on page 8. My apologies, this looks unduly cluttered, but what we have done here is put together the status quo ante on the left-hand side with the deal afterwards. Obviously, all that's on the left is what was on the slide before, so it shows the ownership of ITI, legal and beneficial, in the way shown, and of LAI, legal and beneficial, in the way shown, and the essence of the transaction was that the interests in ITI as Holdco of Asset Mapping and Reserec and of LAI in its own right, such as they were before, were transferred to LPE Enterprises Limited, a company that was formed for the purposes of the purchase, and the purchase was for £20 million.

Now, the difficulty to which the claimants point is that, as at the time of the transaction, at least, and when it was formed, LPE Enterprises was owned by a company known as TW Private -- sorry, an LLP, TW Private, formerly known as London Private Equity LLP, of which Mr Hume-Kendall was one of the members. But, of course, there was an additional element to this transaction, and that is the intention of the board and part of the plan by which the circle was to be squared by effectively bringing in the LPE entity within the LPC and LOG group and use of a share option agreement, a £1 share option agreement, to achieve that. That is the element identified by a dotted red line on the right-hand side of this chart.

An explanation is provided again by Mr Sedgwick about why he documented it in this way and what the rationale was for doing this.

If we can go, please, to <C2/5>, page 19, at paragraph 66 onwards here, he explains, and it's relevant to note, my Lord, a matter we will come to in greater detail in a moment, but at the time the LPC Group was, and its shareholders and shareholders in LOG in particular were, contemplating a reorganisation for reasons that I will come to which was advised by Mazars, or the process was advised as to by Mazars, by which some shareholders could sell their shares and others may remain, and, indeed, an employee share scheme be set up. This was relevant context for the following reasons. As Mr Sedgwick explains, Mazars had not specifically advised on the acquisition of the technology assets: "I wanted to deal with the acquisition in a manner which was consistent with the treatment of the preference shares and which would be neutral in value terms for those shareholders who wanted to exit from their investment in LPC."

Pausing there for a moment, my Lord, the preference shares is a reference to LG LLP's preference shares in LOG, which were part of the -- LPC, I beg your pardon, which was part of the difficulty to do with the way in which --

MR JUSTICE MILES: Sorry, say that all again because it was a bit muddled.

MR WARWICK: It is a bit muddled.

MR JUSTICE MILES: It is only your sentence is a bit muddled because you changed it halfway through, so just what the preference shares are.

MR WARWICK: The easiest way to explain this -- perhaps I can take this, since it is relevant context to both this and the LPT transaction, I wonder if I can go to this now. But Mazars devised a plan which would rationalise some difficulties that there were with the ways in which shares of the LOG and LPC Group were owned at the time and which were regarded as impediments effectively to people, shareholders, selling their shares and so on.

The Mazars plan is found at <MDR00219494>. As your Lordship will see from this plan, going overleaf by a page, please -- actually, if I may, I wonder if I could revert to a different version of it instead because it is the version, in fact, seen by the board, and that way I can pick up a question later of what the board was authorising be done, which is relevant to the LPT transaction, and that might be more time efficient. If we can go, please, to <D2D10-00046566>. To the first page, please. I would ask your Lordship just to note for now the date, 11 June 2018, which is shortly before a board meeting that will become relevant in a moment.

Overleaf, please, two pages to page 3, there is an executive summary, and it explains:

"This executive summary should be read in conjunction with the rest of our report", and so on: "We have identified the areas of taxation from the proposed restructure of the London Power Corporation Plc group which would be relevant to London Group LLP and LPC Plc for discussion in the board meeting on 14 June 2018."

Then what follows, my Lord, is a series of steps --

MR JUSTICE MILES: What's the corporate structure at this stage, before all this happens?

MR WARWICK: The corporate structure is found, my Lord, overleaf -- sorry, I'm going to jump between two documents. Can we go back to the summary, the organogram, please, but have the mind that I want to come back to this Mazars plan, please. It is <A3/20>, page 9.

So, the corporate structure, if you look on the left-hand side, was this, that there were various ordinary shareholders in LPC but LG LLP, whose members included Mr Hume-Kendall and Mr Barker, owned 25 million preference shares -- that is the preference shares to which Mr Sedgwick was referring a moment ago in the part of his evidence I took your Lordship to a moment ago, and also 50,000 ordinary shares. I think it is uncontroversial to say that the 50,000 ordinary shares were the only voting shares and, of course, there existed a large number of preference shares. What Mazars were doing for the board of LPC were devising a plan by which a new Topco could sit above LPC in which the various shareholders would have a holding allowing some of them to sell their shares and others to perhaps acquire more, if necessary, or retain their interests, and an employee share scheme to allow for that to happen. One could well see how LG LLP owning the preference shares and the only voting shares was an impediment to doing that.

Jumping back, please, to <D2D10-000465 ... yes, that's right, thank you [<D2D10-00046566>]. If one goes over to page 3 of it, you will see that they were devising a step plan. Essentially, this was a plan for what was going to happen. It was a plan that was ultimately cut short by the FCA's intervention, and it is the relevant context in which not only the LPE but also the LPT transactions are to be understood. Clearly, this is tax advisors telling the board how to go about it in a way that generates as few a number of tax events as possible, relevant tax events, and you can see that this is what the plan was. The first step would be for LG LLP to make a distribution of the shares it owned in LPC to its members.

Step two would involve the Newco, to which I referred a moment ago, that was LPT, my Lord, being formed by those members of London Group LLP who wished to retain their interest in LPC.

And step three would involve the members who formed the Newco, obviously the ones who wanted to retain an interest, transferring their shares in LPC to Newco in exchange for new ordinary shares in Newco, so switch. Overleaf, please, on page 4 of the PDF. Step four would involve the receipt of debt finance by Newco from institutional lenders.

And step five would involve Newco acquiring the remaining shares in LPC by either purchasing them for cash or exchanging them for shares in Newco. The result is, of course, that way it's reorganised so that the shareholders in the group are just the shareholders in Newco. You can see how this is rationalising the position if carried through to its end. And step six involved Newco offering shares to select individuals, some of whom would be employees or officers. So that's the employee share scheme. Then overleaf, on page 5, step seven would involve shareholders realising their investments in LPC by either disposing of the shares in Newco to a third party or Newco disposing of its shares in the group to a third party, followed by the formal liquidation of Newco with the proceeds distributed.

There is a little more detail on that document that I could come to in a moment, but the point here, my Lord, is that Mr Sedgwick, in devising the shape and documentation to be used for the LPE transaction had this in mind, and his evidence, if we could return to it -- I'm mindful, my Lord, that you wish to rise in five minutes, and it will only occupy that time. If we go back to Mr Sedgwick's evidence, which is found at <C2/5>, page 19, you will see, picking up where we were, it says this:

"As for the acquisition of the technology assets, Mazars had not specifically advised on their acquisition. I wanted to deal with the acquisition in a manner which was consistent with the treatment of the preference shares ..."

That is the LG LLP preference shares:

"... and which would be neutral in value terms for those shareholders who wanted to exit from their investment in LPC. In other words, my view was that the shareholders who were selling their LPC shares would not want the value of those shares to be affected (one way or the other) by the value of the technology assets, and so a value for shares in LPC should be agreed without taking the technology assets into account." If we go on, please, you will see:

"This informed the decision to fund the acquisition through a loan from LOG to LPE with a call option in favour of LOG granted by the 100 per cent owner of LPE, TW Private LLP. As a result, there would be a credit in respect of the loan from LOG to LPE and a debit for the loan received by LOG from London Capital & Finance. The result would be neutral from the perspective of outgoing shareholdings of LPC, LOG's 100 per cent shareholder. "Accordingly, the transaction structure that I suggested was as follows ...

"A. A resolution of the members of LG LLP to distribute the preference shares in LPC to the members, the 2nd and 3rd defendants."

Your Lordship will see that's step 1 of Mazars: "B. A share purchase agreement (SPA) for the sale of the preference shares in LPC by the 2nd and 3rd defendants to a company which was to be incorporated (London Power & Technology (2018) Limited, renamed as London Power & Technology Limited (LPT) -- see further below);

"C. An SPA for the sale of LAI ITI to LPE Enterprises Limited (previously ..."

That's -- it gives its previous name which I don't think is relevant here:

"D. Loans between, on the one hand, LOG and LPE and, on the other hand, LOG and LPT to fund the above acquisitions."

Then he explains the accounting practice within the group and he explains that he didn't, as a result, produce facility agreements for the LOG/LPE and LOG/LPT loans. That's his evidence. It has, in fact, been the subject of some satellite proceedings to these: "The basic terms of these loans were that the money lent was repayable within three years of the last drawdown and subject to reimbursement to LCF of the cost of its borrowing and interest of 1.75 per cent above the interest paid to the ultimate lender."

And then of course E:

"A call option agreement between TW Private LLP (the sole shareholder of LPE) and LOG to enable LOG to acquire all the shares in LPE for a nominal £1." That was the design, my Lord. If that is a convenient moment.

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

(12.50 pm)

(The short adjournment)

(2.00 pm)

MR JUSTICE MILES: Just a moment, I seem to have been logged out.

MR WARWICK: The pause might be welcome. I understand from my colleagues on the Bar that there was a holdup at the door following lunch today for a security reason, which means that quite a few people have only just entered the room.

In the meantime, could we have <MDR00214273>, please. The call option agreement to which I referred before the short adjournment is now on screen, dated 21 June 2018 in pen, but it is common ground this was generated in early 2019. On page 3 of the document -- you were taken to this document by my learned friend in opening, but to refresh my Lord's memory, it was as between LOG Limited and TW Private, which is the Topco that was the sole owner of LPT.

The point is that this document was the mechanism by which London Oil & Gas, who were to borrow money to fund the acquisition of the tech group, would come to acquire it.

Your Lordship will see, at 1.1, the company to which this document relates is LPE Enterprises Limited, which was the holding co to whom shares in ITI and LAI were sold under the LPE SPA and, your Lordship will see consideration is defined as £1, which is the purchase price of the option shares. Of course that's not the complete picture since London Oil & Gas would be the funder of the acquisition of the tech companies as they were purchased by LPE. The facility agreement, at the bottom of that page, is defined as shown: "... between the buyer and the company on or about the date hereof whereby the buyer granted a finance facility (facility) to the company."

Then overleaf, on page 4, my Lord, you will see the definition of option shares:

"All the shares and other securities of any kind or description in the capital of the company [LPE] legally and beneficially owned by the seller ..." And the option is granted on page 5 of the document. At 2.1:

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

The option period is given below. As your Lordship will see, essentially, it can only be exercised after the date. Obviously, that gives rise to a problem, since this was executed in early 2019. But also whilst the loan or loans made under this facility agreement remain outstanding.

My Lord, there are obvious problems with this being "papered" in the way it was, to use the colloquial expression or given legal expression -- give an expression in legal terms by the documentation produced by Mr Sedgwick. I have taken your Lordship to Mr Sedgwick's witness statement, where he explains the reasoning for documenting this transaction in a way that would cause the ownership of LPE only to be brought into the group of companies with LPT at the top of it after the Mazars restructuring -- after that restructuring, because it wished to create a -- not create an artificial or an unwanted situation to do with the assets of that group.

This seems to be the contemporary rationale as well. If we can turn, please, to the document at -- the exchange of emails, rather, at <D2D10-00046940> -- my apologies, it is a single email, not an exchange of emails. It is an email from Robert Sedgwick to Mr Hume-Kendall, on 20 June 2018, describing the shape the transaction was going to have in Mr Sedgwick's mind. It says this:

"Here is the draft share sale agreement for the sale of your shares in ITI and LAI to London Power & Technology Limited.

"This provides:

"1. The initial purchase price is £20M of which £12.9M has already been paid.

"2. The balance shall be paid by 31 December 2018. "3. The IPR [intellectual property rights] shall be agreed or valued as at 31 December 2018 and 2019 and averaged. If the average value of the IPR is

greater than £20M that additional sum shall be paid to the sellers within 6 months of determination." Then he says this:

"A number of issues arise ..."

And item 1 deals with the holdings that there were in London AI and that, of course, aligns with the diagram that I showed to your Lordship a moment ago. "For Henry" is a reference to Mr Henry Hume-Kendall. It explains below:

"These are all held in trust so we need to get Ashdown and Henry to transfer their shares to each of you. We need to consider do you want to leave Jaggu [that's a reference to Dr Gorla] with shares in London AI or buy him out or give him shares in LPT in exchange."

It explains the ways in which the shares in ITI were held at 3 and 4. Then, at 5, it says this: "David [that's a reference to David Elliott, the CFO of LPC, an accountant] has said that in accordance with the Mazars plan the transfer of assets to LPT should not happen until LPT has acquired the share in LPC." Of course, that's a contemporary communication between Mr Hume-Kendall and Mr Sedgwick in which Mr Sedgwick is explaining the rationale, which is of a piece, essentially, at least, with the overview given by Mr Sedgwick in his evidence to which I took your Lordship earlier, the idea of not -- the acquisition not, in fact, occurring until after the Mazars plan was put into effect by LPT acquiring LPC, so as not to disrupt the reorganisation outlined in the Mazars plan.

Can I take your Lordship, then, to the board minutes approving this transaction, the first of which is <MDR00157040>. This is a minute of the meeting of the board of directors of London Power Corporation on 14 June 2018. As your Lordship will recall, the draft Mazars plan, to which I took the court earlier, dated 11 June, was prepared to be seen by the board members at this meeting. It lists there the attendees and it is worth remarking straight away that Mr Hume-Kendall, Mr Barker, Mr Hendry and Mr Starkie were also directors of London Oil & Gas, as was Mr Robin Hudson, who was in attendance.

Your Lordship will also see that Mr Thomson, as director of London Capital & Finance, was also present. It explains there that Mr Ruscoe couldn't attend and that Mr Hume-Kendall was authorised to speak on his behalf on certain issues, and that David Elliott and Mr Hume-Kendall would review key points of the meeting with him at a later date, on 20 June, and confirm his agreement with all the board-approved matters. If we turn over to page 3 of the minute, please, PDF page 3, that is a section dealing with group restructuring and financing. For reasons of time efficiency, although this relates to the LPT transaction, I may address that while we are here, my Lord. It explains here that LPC has completed the process by that time of moving from a Plc to a Limited company and, as foreshadowed earlier, my Lord, it explains that the London Group LPC is looking to consolidate into one Topco:

"This will allow some shareholders to sell over a period of time.

"This will allow for the consolidation of share classes.

"Simplify the process to sell when the time is suitable."

Mr Hume-Kendall noted:

"There has been interest from potential buyers as well as parties whom wish to buy in."

He remarked he felt, "LPC has a promising future and that it has not maximised its potential". The intention was expressed at that time for Mr Hume-Kendall and Mr Barker to look to sell 50 per cent

of the LG LLP, not personal shares, in due course. So some form of sale at least was envisaged or foreshadowed by Mr Hume-Kendall's remarks. At item 3, it says:

"As some directors are looking to sell their shares, LPC's leadership is looking to develop a system to buy shares from these parties.

"(a) LCAF has agreed to review and consider the purchase of seller's interests. This will be secured on the assets of the company currently valued at over £100M per Mazars paper."

I think I have to concede Mazars paper doesn't specifically put a value of that kind on it. It might have been a mistake. I can't gainsay that, I'm afraid, my Lord. Below that, it says:

"Action: the proposed indicative buyout structure was approved. The final structure will also need to be approved by the board.

"David has been speaking with Mazars to develop a restructuring and share consolidation strategy. "(a) see attached Mazars 'Step plan for proposed group restructure of London Power Corporation Plc'." That's the document to which I took the court before the short adjournment:

"(b) DE is satisfied with the draft and does not expect it to change in the final structure. "Action: the board has approved DE/SHK to continue forward on the restructuring process. Once the final process is determined an EGM will be arranged and the board will vote to approve the final structure." Overleaf, the next page, please, 4:

"Action: the board approves ..."

MR JUSTICE MILES: Where are you looking?

MR WARWICK: At the top of page 4, please. I beg your pardon. It is suggested to me, and it might be right, for some reason, my print-out is slightly different in alignment meaning the words "Action" appear at the top of the page I'm looking at at the moment, but I don't think it matters:

"Action: the board approves for LPC to form the required new shell companies and for preference shares to begin to be transferred as the first step in the restructure."

Below that, it says:

"Security and loan repayment.

"(a) at this time there is not a set repayment plan in place to repay off the lenders. The loans are rolling and have no set repayment date but the major concern is the IOG SNS financing structure ..." It goes on to describe some security arrangements. As concerns LPE, my Lord, this board minute proceeds as follows. At the bottom of the page -- it might be some way into the page on the version on the screen -- it says this:

"Update on new investment opportunities: "1. Technology (a) London Artificial Intelligence and (b) Asset Mapping.

"(a) London Artificial Intelligence.

(i) LAI is an investor into Reserec and in partnership on our ongoing commodity project. "(ii) presentation from Dr Jagadeesh Gorla (see attached presentation)."

I will come to that in a moment, my Lord: "(iii) LAI is looking for new opportunities to apply AI to the energy sector.

"Action: the board approved to bring technology into the core activities of the new Topco at fair valuation estimated currently @ £20M.

"Action: the board approved Robin Hudson to consult with LAI regarding the technical aspects of trading." There is more below. I think this is laid out, perhaps, not as best as it might be, but under the words "Action" that relates to something else, I think, it says this:

"Asset Mapping.

"The company is now making profits.

"See supplementary document.

"London Power & Technology.

"1. SHK/Elten proposed that both LAI and Asset Mapping be brought formally into the LPC Group; this was noted to be the original intention for both assets. The present estimated value is £20M but will be professionally valued as they develop." Those words are important, my Lord:

"SHK advised a new subsidiary have been formed and to act as a subsidiary of Topco for LAI, Asset Mapping and Future Energy Projects."

That's a reference, albeit not in name, to LPE: "Action: the board approves the formation of a new technology company and to bring LAI 20 per cent of Reserec and 50 per cent of Asset Mapping into the LPC Group."

Then below that:

"SHK/Andy [being a reference to Mr Thomson]: LPC has agreed in principle to a facility with LCAF to acquire and develop the technology side of Topco. Security for such a facility will be decided on in due course." My Lord, that constitutes approval to the deal and approval to it at a value of £20 million plus an overview of what it was that they were getting into in terms of what the companies were and also, at a minimum, acknowledgement of agreement in principle to the existence of a facility with LCAF to acquire and develop the technology side of Topco, noting, of course, that, while this is not headed a board minute of London Oil & Gas, the directors of London Oil & Gas were also present at this meeting, my Lord.

The point is taken about the interests that Mr Hume-Kendall and Mr Barker had. I wonder if we can go to the next board minute of London Power Corporation Limited, which is found at <D2D10-00061008>. My Lord, you will see it is a minute of the meeting taking place on 7 August 2018 at 2.15 pm. Those present are identified and those in attendance. A quorum was declared. Below that, under "Chairman" it says: "In David Peattie's absence it was agreed that SHK chair the meeting.

"SHK explained that the meeting would discuss and consider each agenda item and then the meeting would adjourn until 9 August ..."

Two days further forward:

"... when it would reconvene with SHK and DP present and DE in attendance. DP would assume the role of chairman once the meeting reconvenes and resolutions relating to the agenda items would be considered and, if appropriate, passed."

Turning over the page, please, the purpose of the meeting was identified. Your Lordship will note at 4.1(a) the first item was:

"Approve the minutes of the board meeting held on 14 June 2018 (the minutes)."

Also to discuss the reorganisation, to discuss and approve the company's financing investment strategy including -- particularly in relation to existing and future borrowings from LC&F, executive share scheme and also receive an update to discuss and approve the proposal for the company to invest in the artificial intelligence industry by acquiring interests in LAI and Asset Mapping Limited, AML, and other items. At 6, below that, at the bottom of the page, draft minutes were produced and it was noted that the directors had been given an opportunity to review the draft minutes and provide the company secretary with any amendments thereto.

While we are on that, my Lord, if we can jump forward to page 7 of this document, it is also minuted under 17 that the meeting reconvened on 9 August at 5.30 pm, as foreshadowed on the 7:

"It was noted that SHK and DP were present and that DE was in attendance. It was agreed that DP assume the role of chairman of the meeting from SHK. "It was noted that SHK summarised the discussions on each of the agenda items had by the meeting prior to its adjournment and explained that each had been considered by the meeting then convened and that, in respect of the various proposals for each agenda item, each director then present was minded to vote in favour." Then you will see a table containing the resolutions approved, and the first one is approval of the board minutes on 14 June. That matters, of course, my Lord, because a point is taken about the content of those minutes.

MR JUSTICE MILES: I thought you said there was a point about the interests --

MR WARWICK: Indeed, returning to that now, my Lord, if I may.

MR JUSTICE MILES: I thought that's what you were going to, yes.

MR WARWICK: For efficiency of time, my Lord, I'm mopping up any other points that arise in documents I'm going through. If we go back to page 4, please, there is a section there dealing with the investments. They are described -- I think this is where some of the difficulties arise here -- as potential investments, but your Lordship has already seen that the board has already approved the investments. But at the bottom, it makes, a 177 declaration -- is made in the box at 12.7. EB declares his interest as beneficial owner of ITI and AML under a trust arrangement for 10 per cent of the shares in ITI. ITI is the target and EB is, therefore, one of its sellers. ITI is the seller of AML, one of the targets of the proposed transaction. He gives details of his interest in LAI. Then Mr Hume-Kendall gave details of his interest in ITI and AML -- that's Asset Mapping -- under a trust arrangement. Under LAI, the minute records him saying he is a director of LAI.

But, of course, the board knew very well and, as is permissible under section 177(6)(b), there need not be a formal declaration of this kind given where, and to the extent that, directors are already aware of the interest. And beyond any shadow of a doubt, the directors were fully aware of Mr Hume-Kendall's interest.

The only evidence from other directors before the court is that they were aware, and so that your Lordship has it, I wonder if we could briefly go to a witness statement produced by Mr Ruscoe in proceedings --

MR JUSTICE MILES: Is that admissible evidence? I don't know. I thought there was a rule which said -- is it in these proceedings, or ... I thought there was a rule that unless a witness statement has been deployed, it's not to be used?

MR WARWICK: The undertaking against collateral use and the position as set out in 32.22, I think, against collateral use, yes, it's been disclosed in these proceedings, of course.

Might I just take instructions? The control imposed by the Civil Procedure Rules is control upon documents being used collaterally that were disclosed in proceedings. Of course, if they are disclosed in these proceedings --

MR JUSTICE MILES: Was it made in these proceedings?

MR WARWICK: Not made in these proceedings, no. Pausing there --

MR JUSTICE MILES: Go to it, in any case. I will look at it de bene esse.

MR WARWICK: I'm grateful. My Lord, there may be a simpler and neater way of doing this because the interest is made plain in the report of Mazars seen at the 14 June meeting anyway. I wonder if we could turn that up. It is at <D2D10-00046566>. You will recall, my Lord, we went through the steps set out in the summary at the beginning, but the background facts section is also informative. It starts at page 8 of this PDF. It is first worthy of note in what some people called the chapeau, the top part of the paragraph that then follows into different subparagraphs: "For the avoidance of doubt, the advice in this document is based upon information and explanations provided to us by the chief financial officer of LPC." Mr Elliott is, in fact, the source of the information. You will see the fourth bullet down explains quite clearly that the LLP, which is LG LLP, has two members in a legal capacity in equal proportions: Elten Barker and Simon Patrick Hume-Kendall. It follows that the ownership of that company was fully known.

I'm afraid the position to do with the tech companies, I would rely on the witness statements, because that's not found here as well.

MR JUSTICE MILES: Why don't you --

MR WARWICK: If a point is taken on it --

MR JUSTICE MILES: -- show me and then --

MR WARWICK: Yes, I'm grateful, my Lord. Mr Ruscoe's witness statement is found at <D2D10-00066443>. Details of the proceedings in which this was given which relate to a novation of a borrowing agreement between LG LLP and London Oil & Gas. At page 2, he gives his background, and then, on page 4, he sets out the position. Page 16 details the proposed reorganisation/restructuring of LPC and, again, he also explains to the court in those proceedings: "These discussions arose out of the desire of some shareholders of LPC to exist and receive some return on their investment but also to deal with the structural issues as a result of all the voting rights being held with London Group LLP together with redeemable preference shares ...", and so on:

"Also, the members of London Group LLP, SHK and Elten Barker, wanted to introduce into the LPC/LOG group their investments in certain technology [asset] companies including London Artificial Intelligence Limited, Asset Mapping Limited and a small share in Reserec Limited ..."

He goes on, at paragraph 20, to explain more of the background. He is talking in paragraph 20 about the board meeting of 14 June, referred to in the previous paragraph and the Mazars report, and it says this: "At that same meeting the board approved the principle of bringing the technology assets into the core activities of the new Topco at a fair value estimated at £20 million. It also approved the formation of a new technology company to hold these assets. These decisions are referred to in the minutes referred to above. Valuation of early stage companies is notoriously difficult and these

companies were no different. As far as LAI Limited is concerned its situation has a number of positives in that further investment to start trading is relatively low with small staff numbers and apart from computers, internet links and office space working capital is required with potentially immediate positive cash flow." He details trials that have been undertaken and below that:

"... an AI based software programme for trading in commodities which in June 2018 had resulted in very positive results in the gas market which I could see had considerable potential for other commodities. We as a board were also happy with the values placed on the preference shares by BDO [I will come to that in a while] which is discussed in detail in the witness statement of SHK."

So, my Lord, also the witness statement in the same proceedings of Mr Hendry and Mr Starkie also explain, using the same words, bringing their interest in those technology companies into the group. The same point. So it appeared in their evidence as well. I can give the references for the transcript to that. Mr Hendry is <D2D10-00066444>. It is in paragraph 12. Mr Starkie is at <D2D10-00066445>, and it is dealt with in paragraphs 17 and 18 of the witness statement.

Mr Hume-Kendall's case is, of course, at the board meeting on 14 June 2018 with Mr Hudson in attendance, all LOG board members were present, and, as the minute records, there was an in-principle agreement to a facility with LCAF to acquire and develop the technology side of Topco, but there can be no doubt that the members of the board knew exactly what was envisaged with this borrowing and what it was to be spent on and on that I would take the court to the exchange of emails found at <MDR00134611>. My Lord, this is the exchange of emails taking place between the members of the board, or at least a subset of them, several of them, across the period 2 to 3 October 2018. At this time, I think it is uncontroversial to say Mr Elliott was undertaking a process of reviewing the finances of LPC and its borrowing from LC&F as foreshadowed in the board minute to which I took your Lordship earlier. What he does, on 2 October 2018, by his email of 18:07, he says: "Dear members of the board.

"We have received the final draft of the LCAF facility agreement and subject to small further suggested immaterial amendments to be made by us, this is now attached for your review and comment." He was clearly in the process of negotiating it: "I apologise that this is being sent late in the day but it has only been received this afternoon." He sets out some comments on it. The first bullet point is important. It says this:

"The commitment is being set at £150m against current lending of circa £105m. Please note that in clause 17 there is an LTV threshold set at 75 per cent and at current lending levels this equates to an asset value of circa £140m. We will need to keep this under regular review. I would advise that BDO have indicated they expect a further risk discount (they applied one last year and are seeking to apply at a reduced level this year) to the NPV as part of the valuation calculation."

My Lord, his summary makes absolutely clear that additional borrowing in very large, significant sums was being envisaged by the commitment level that this new facility agreement was going to have and the reaction of the members of the board is telling. If you look above that, on 3 October 2018 at 9.51, Mr Mike Starkie, a board member of both LCF and LOG, replied: "I think you've all done a great job. This is the most protection we could hope for while still letting LCAF meet regulatory and audit requirements. And nothing to prevent us investigating alternative facilities in the interim.

"Best.

"Mike."

Mr Peattie replied:

"Thanks all, this looks good to me. Well done for achieving such a good way forward.

"Best wishes.

"David."

Above that, from Mr Martin Ruscoe, who is a member of the LOG board:

"David.

"Well done to the team this certainly significantly improves our position and I am happy to approve. "Kind regards.

"Martin."

For completeness, I wonder if we can go to <MDR00134613>. You will see this is a further email, this time from Mr Robin Hudson, a member of the boards of LCF and LOG, sent on the same day. Obviously the chain of emails is split in some way, but he says this: "I am happy with the agreement subject to clarification ..."

And he identifies a particular term, 19.3.2, where there is some numerical or textual difference. Quite clearly, he had reviewed this in some detail and was happy with it.

My Lord, it is Mr Hume-Kendall's case that it is quite clear that the members of the board of LPC, and indeed the members of the board of LOG, were quite content with the lending arrangements and gave their consent to it and, when shown what it meant on paper, the numbers involved, were of one voice in expressing their approval for it.

My learned junior is quite right to, for completeness, have me point out, please, if we could return to <MDR00134611>, the chain of emails to which I referred the court a moment ago -- sorry, not this one, the earlier one, <MDR00134611>, so the document just before this one that we looked at. Back to the first bullet point again, it actually goes on, picking up where I left off:

"This will have the effect of reducing our carrying value of IOG, compared to the recent shareholder valuations which did not include such a discount." That's referring to the BDO risk discount that was anticipated:

"Calculation of the LTV in the facility agreement does not specify that the audited valuation is to be used and so gives scope to argue a separate valuation method with LCAF. It should also be noted that it is intended that the facility will be split between LOG, LPT (new Holdco) and the tech businesses shortly which will further assist the LTV calculation." Quite clearly, the split of that debt finance was articulated clearly to the board and going to be embodied in this facility agreement, or at least the facility agreement was going to be -- the monies to be borrowed under the facility agreement were going to be split in the ways shown and, again, the board members approved, having reviewed it, apparently, in detail. There is a point, my Lord, taken about the valuation at £20 million. Again, and with the same caveat about the reference to this witness statement, I wonder if I could take your Lordship briefly to Mr Starkie's evidence. I mentioned it previously. It is at <D2D10-00066445>. Again, produced in the proceedings shown by the cause title there.

MR JUSTICE MILES: Can I ask a question: was he a defendant of these proceedings?

MR WARWICK: He was.

MR JUSTICE MILES: At the time he made this statement?

MR WARWICK: At the time --

MR ROBINS: Not at the time he made the statement. These proceedings commenced in August 2020. So this is a statement of his from previous proceedings relating to the novations.

MR JUSTICE MILES: Had there been letters before claim or anything like that? Was there any intimation of claims against the directors at that stage?

MR ROBINS: I would need to check. I think he'd been interviewed.

MR WARWICK: So, on page 5 of that document at paragraph 23, please, Mr Starkie's evidence, as you will see, my Lord, was, again, to the same effect, about bringing the activities of the group into the new Topco. He says: "... at fair valuation estimated by Robin Hudson, a non-executive member of the LOG board, at £20 million."

It goes on to point out that the board approved formation of a new technology company to hold the assets:

"In the event, an existing company, LPE Enterprises Limited, was used for this purpose."

Again, these decisions are referred to in the minutes referred to above:

"It was proposed and approved that London Artificial Intelligence Limited (LAI) and Asset Mapping be brought into the group and that it had been agreed in principle that LCF would fund their acquisition." That was his understanding. So, the board were relying, then, on a non-executive member's experience in order to -- and opinion of value. He's not a qualified valuer, but Mr Hume-Kendall outlines his credentials and the reasons why it was felt he was in a position to put a value on those assets in his witness statement at paragraph 145. In summary, my Lord, he had been the head of commodities trading at Macquarie Bank in London. His early career focused on developing computer-assisted trading models. He had a great deal of experience developing technologies to assist with that, and so he was felt well placed to take a view on its worth. My Lord, great emphasis was placed on a valuation, or appraisal, rather, produced by a firm known as Kilby Fox, trying to put a number to the value to Asset Mapping and producing some rather alarmingly high figures for its valuation. But the thing to say about that is that the board didn't rely on Kilby Fox's valuation. There is no suggestion in the minutes and no suggestion in this evidence, or indeed the evidence of Mr Hume-Kendall, that that was the source of the £20 million figure. So I'm afraid that is a straw man point.

There were diverse further points taken about the values of the technology companies. If there is a common theme to all of them, it's that what's been done here by the claimants is pointing to later valuations prepared for the purposes of liquidation or the sale of the assets that formed part of the balance sheets of these companies in distressed circumstances of their administration at a later date somehow informs the value that the board put on it -- to it in the summer of 2018 when looking at their future prospects and the synergistic value there might be to their group to do with commodities trading.

The valuations that your Lordship was shown were as follows -- briefly, only, I think -- two valuations produced in 2019, one by Mazars. As to this, it ought to be said this was produced several months after the LPE SPA. It was produced on -- I beg your pardon, I did have a date for that. Perhaps we turn it up. It is <MDR00213396>. It is 28 February 2019.

Then over on to page 2, you can see on the first of the two columns of text that this has been produced as a valuation for tax purposes in relation to the proposed transfer of shares between shareholders and employees of the company. Not the same exercise as valuing it prospectively as to its prospects for the purposes of an acquisition.

On page 14, please, you can see from the third bullet point that what he was doing was looking -- what the valuer was doing was looking at Capital IQ as a comparator for the purposes of -- sorry, Capital IQ database is a source of information for comparables, rather than Capital IQ itself as a database and not a comparator, but it makes clear in that bullet point that Capital IQ doesn't present forward multiples on industry level. So, therefore, it was inherently retrospective, looking at the last 12-month multiples. The second valuation that your Lordship was shown was produced by Lambert Smith Hampton at <MDR00005799>. There are some rather obvious problems with relying on this as a data point for assessing the value given to this wider group of companies in the LPE SPA. First of all, this was performed on 17 April 2019. It is understood that Lambert Smith Hampton are surveyors and consultants and their expertise is not -- not necessarily to be found in valuing early-stage technology businesses. Consistent with that, if we turn to page 4 of the valuation report, so called, you will see, at paragraph 2.5, that the valuation was prepared in accordance with RICS, as a RICS Global Standards valuation. Well, the assets of the company were not land or development land. It was a technology start-up.

MR JUSTICE MILES: Is it referring to two things there? Is the International --

MR WARWICK: Valuation Standards --

MR JUSTICE MILES: Is that part of RICS or separate?

MR WARWICK: The IVS are appended to the RICS.

MR JUSTICE MILES: So when it's "Global Standards 2017 and the International Valuation Standards", they are both RICS?

MR WARWICK: IVS are not, strictly speaking, RICS, they are international valuation standards which are appended to the RICS Red Book, and they are used as a sort of international -- to compare to how valuation is undertaken internationally. The RICS rules, for the most part, tend to align with them closely.

MR JUSTICE MILES: Are they concerned with property or with other assets?

MR WARWICK: Well, it's possible, of course, for a valuer to adopt a definition from them such as "market value" so as to model the effect of a hypothetical transaction, and so on. But, quite clearly, what's going on here is that Lambert Smith Hampton are -- think they're producing a RICS valuation.

Thirdly, the claimants also referred to the sale of the company in administration for an upfront price of £150,000, but of course -- and an earn-out of, I think, from recollection, £4 million. That was mentioned on Day 8 in my learned friend's oral opening, page 88, line 3 and onwards. But of course that was a sale by administrators and the priorities of administrators are very obviously different, as embodied in the schedule to the Insolvency Act, from those of a board who want to acquire a company for its prospective value to them. Again, the Kilby Fox valuation was relied upon, and I believe it was said on Day 8, at page 95, that Kilby Fox valuation was the valuation upon which Mr Hume-Kendall relies. Well, my Lord, the basis for that statement is unclear because the Kilby Fox valuation is not mentioned in Mr Hume-Kendall's amended defence, or indeed in his witness statement, but it is mentioned in his written submissions as something that was discussed and part

of the materials provided to the board. But I don't think there can be any question that anyone took the value from it and applied it in circumstances where the figure was £20 million for all of the companies on an opinion expressed by a member of their board with commercial experience in the area in which the companies were operating.

My Lord, as to LAI and Reserec, a point was taken about live testing of the commodity trading software, and so on. A document was produced to the board entitled "Update on London Artificial Intelligence". It is at <EB0092190>. Could we have that, please? You will see that's a document headed "London Artificial Intelligence", and it contains a summary of its activities and the stage of its development that it had reached. If we turn to page 5 of that document, please, your Lordship will see reference to –

EPE OPERATOR: Sorry, my system has just crashed.

MR WARWICK: Would you like a moment?

EPE OPERATOR: Yes, please.

MR WARWICK: You will see that on page 5 there is a heading "What are our immediate next steps?". Perhaps we can go to the page below. It contains all sorts of -- the page before this, please. You will see it contains all sorts of graphics and data visualisations of how it works. I believe the one at the top is described -- it shows the accuracy of the algorithm predicting price within 50 basis points and it traces actual against prediction. I suppose there's not much to be gained by a visual comparison by lay people like us, but essentially one can see that it is operating.

Then, overleaf, on page 5, you will see under (b) "Live testing", it explains:

"The next major project milestone is to bring the system to a stage where it will be able to trade on live markets, as opposed to back testing."

Your Lordship will note that that document was produced to the board. So the board was fully aware of the developmental position that the company and its technology was in as at the moment it approved its purchase alongside other companies for the total £20 million sum.

Lastly, my Lord, as to Reserec, a further document produced by Hilco was put before your Lordship -- sorry, as to LAI, a further document was put before your Lordship, which is not relevant in the context of the LPE SPA because it was a valuation produced by Hilco for the purposes of liquidation value in a forced sale. For your Lordship's note, that's at <MDR_POST_00000378> Lastly -- as I understand it, this is common ground, because this is a point I think taken by my learned friend in opening, that it was a valuation produced for its liquidation. So that's what its purpose was. For Reserec, I think the point taken was that the acquisition of just over 10 per cent of the company as at that time couldn't justify payments of £20 million, but, of course, the payment of £20 million was a global price to be paid for the LPE SPA and the acquisition of all of the technology assets, and not simply Reserec. But the point remains that the value in Reserec, of course, also derives from the consultancy with Dr Gorla, whose credentials I have already mentioned to the court by reference to Mr Hume-Kendall's witness statement. I wonder if I could correct myself to one limited extent, please, my Lord? I think I said earlier that Mr Hume-Kendall's witness statement doesn't mention the Kilby Fox valuation. I'm wrong. It does mention it. It is at <C2/2>, page 41, at paragraph 146. But the point he's making there is that he was comfortable with Mr Hudson's valuation, or, rather, Mr Hudson's £20 million figure that he gave to the board. My Lord, lastly, the LPT transaction. My Lord, mercifully, I have covered quite a few of the documents which I need to take your Lordship to on that deal. As your Lordship has seen, the background to that was the Mazars plan, a step plan to achieve,

as tax-neutral as possible, a reorganisation addressing the problem of LG LLP's ownership of a large number of preference shares in LPC and also all of its ordinaries, 50,000 ordinary shares, and therefore all of the voting rights in the company, with a broader plan to allow some shareholders to exit by selling their shares and others to remain and the setting-up of an employee share scheme.

Your Lordship has also seen from the evidence given in other, albeit related, proceedings other members of the board explaining their understanding of the background of why that was being done and also that purpose recorded in the board minute of 14 June 2018. Mr Sedgwick again explains what in fact was done. If we can call up his witness statement, please, at paragraphs 64 to 68 at <C2/5>, page 19. At paragraph 64 he explains:

"I was asked by the second defendant shortly after the board meeting of LPC on 14 June 2018 to prepare documentation to give effect to the above reorganisation in light of the Mazars report and our previous discussions."

I think there is no doubt, my Lord, that what those involved with this were trying to do was give effect to the Mazars plan so far as possible and, as for the transactions and the documents, these were -- the way in which this was documented and legal effect was given to this were essentially his idea. If you look at paragraph 68, my Lord:

"Accordingly, the transaction structure that I suggested was as follows ..."

I have taken your Lordship to how that was put in place already. It is, of course, not disputed by the claimants that LG LLP and, ultimately, therefore, Mr Hume-Kendall and Mr Barker did own the preference shares, and of course they were, therefore, at all times, entitled to redeem them, and there is evidence as well that it was the intention of those involved or the understanding that they would ultimately be redeemed. Mr Starkie deals with that in the witness statement to which I took your Lordship a moment ago. Again, it's at <D2D10-00066445>. If we go to his paragraph 19, which is on page 4 of the document, he makes clear: "... by the end of 2017 it was my understanding that the directors, in principle, agreed that during 2018 we would reorganise LPC to achieve the following: "(a) enable some shareholders to exit from their investment in LPC.

"(b) redeem the redeemable preference shares in LPC ..."

And then the other steps:

"Make all shares voting shares.

"Introduce into the group the technology assets." He goes on to explain how the directors instructed Mazars to advise on the reorganisation and ensure it was done in the correct and tax-efficient manner. I have taken your Lordship to the board authority given for this restructuring. There is one further board minute to take the court to. It is at <D2D10-00044518>. This is a document dated 11 April 2018. It is a minute of a meeting of the board of directors of London Power Corporation taking place on that date. The attendees are shown.

If we go over to page 4, you will see that, even before the authority was given in June 2018, the board were content with this arrangement and set in motion a process for it to be looked into, advised upon and taken forward. You will see it says this under "Group restructuring and financing":

"1. The London Group/LPC is looking to consolidating into one Topco.

"(a) some shareholders would like to sell. "(b) the shares structure should be reorganised as there are currently 5 classes of shares ..." Pausing there, I think that's inaccurate to the extent there were, in fact, four classes of share, I think:

"... (aim to convert all to ordinary shares). "(c) any shares sold would be monetised over the next 18 months, tracking the IOG share price. "2. David has been speaking with Mazars to develop a restructuring strategy."

Below that:

"Action: board approves the restructuring of the company. SHK, JM and DE will continue to explore this process."

If your Lordship would forgive a brief pause, I want to make sure that, in having done this facing documents rather than my notes, I don't skip a point inadvertently.

So that I'm sure that I have mopped this up, if we could go back to the board minute of 7 August 2018, at -- or, rather, go to the board minutes of LOG as well as LPC, of the meetings of that board that took place on the same date, that's found at <D2D10-00051099>. My Lord, you will see this is a minute of a meeting of the board of directors of the company, which is London Oil & Gas Limited, on 7 August at 11 am. Who is present is stated there and in attendance. It makes clear at 6, on page 2, in terms your Lordship will recognise, because, of course, the LPC board had also met: "The chairman reported that the purpose of the meeting ..."

And that included discussing and approving, as indicative proposal to restructure the company's group, the reorganisation. That is described more fulsomely on page 3 and onwards, my Lord, at item 8 in the minutes: "SHK and DE reminded the meeting that the company's ultimate parent, LPC, was proposing the reorganisation, which would involve the consolidation of the company and LPC into a new Topco structure."

I wonder whether, perhaps to spare my voice and also for time-efficiency reasons, your Lordship would prefer simply to read items 8.2 to 8.11, than for those to be read into the record. They are in similar terms to the points discussed in the LPC meeting.

Your Lordship will see they also include authorising the company's external counsel, Lewis Silkin, to manage the legal aspects of the reorganisation, approval of the reorganisation at 8.9, a resolution, at 8.10, from Mr Hume-Kendall and others and Lewis Silkin to continue to progress the reorganisation, and at 8.11, approval of the formation of the Topco, it says here, "is hereby ratified and approved".

For your Lordship's note, on the final page there is a corporate benefit statement at 13.1.

Likewise, so the picture is complete, my Lord, on the question of the objective being for the redemption shares to be so redeemed, I wonder if I may return briefly to Mr Sedgwick's witness statement in one place, that's at <C2/5>, page 15. It is paragraph 50(c), under the heading "Overview", which is under the bolder heading "Reorganising the asset holding structure of the group and the Mazars report", he says:

"In early January 2018, I was told by the 2nd defendant that he and the 3rd defendant as members of LG LLP had been discussing with the other directors of LPC and LOG a possible reorganisation of the asset holding structure of the group to provide, inter alia, for the following objectives ..."

And your Lordship will note objective (c) in the list.

My Lord, to complete the documentary picture, two further documents, briefly. <D2D10-00047734>. We will see the involvement of Lewis Silkin. Can we go on a page, please. You will see the gentleman Mr Joe Lythgoe is, in fact, a trainee solicitor but it is quite obvious from who is copied into this he is under the supervision of Mr Graham Reid, a partner of the firm. You will see, on 10 July at 9.46, he sent a draft incorporation information checklist for the Newco, contains placeholders. He discusses the Mazars stepped plan, and so on.

Then, on 19 July at 14:56, he emailed Mr Hume-Kendall, copied to Mr Graham Reid: "Hi Simon.

"Thanks for your time just now."

They have obviously spoken, perhaps, or met: "In addition to the confirmation as to who the initial subscriber shareholders shall be. We also need the following information (which was left as placeholders in the attached incorporation checklist) ..."

And then he identifies, at item 1:

"The proposed share capital -- I assume this will be one ordinary share of £1 (to be held by you, assuming that Mazars are happy with you being the sole shareholder)."

What is important, my Lord, is the red word "confirmed" was included there by Mr Sedgwick, because, if we look above to the top email in the chain, it is an email from Mr Sedgwick back to Joe Lythgoe, copied to Mr Graham Reid, on 19 April 2018 at 16:44. He says this:

"Dear Joe.

"Further to our recent telephone conversation please proceed to incorporate the Newco. I have answered your questions below. Simon is going to be away next week and has asked that I be copied into all emails so that I can reply on his behalf.

"Please liaise with me to change the name of the company in due course."

He gives Simon's full name and address and nationality and occupation, but he also adds in the red text. So you can see it is Mr Sedgwick, in his legal work in handling the structuring of this transaction, who confirms to Lewis Silkin that it would be Mr Hume-Kendall who would be the ordinary shareholder of one ordinary share of £1 in the proposed Newco. Then, also, at <D8-0039113>, we see the matter gets picked up again a little later in the summer. This is a thread of emails on 15 August 2018. At the bottom, Mr Elliott, the CFO, asks Graham Reid of Lewis Silkin: "Dear Graham.

"I am aware that the restructuring process is under way using the Mazars step plan. When you have a chance, I should be grateful if you could let me know what stage we are at currently?"

Mr Reid replies:

"We haven't taken any specific steps as we were awaiting confirmation that we needed to action ... formed the Newco ready to acquire. We have drafted many of the documents but we are awaiting confirmation of price of the shares and share/cash agreements but have not taken any other steps. We are aware from Simon HK that steps to deal with the LLP assets may have been taken which I believe we may have been sent some papers to review (Gavin will have these)."

Then, above that, Mr Reid emails Mr Hume-Kendall: "Simon.

"We've got the papers that Robert gave us on Friday concerning the LLP to check -- not sure what David knows and obviously I didn't want to be too specific about Robert's involvement (with Jo cc'd).

Unless you say otherwise we were waiting for the information as per below and were going to check the documents Robert gave us."

Quite clearly, the documents for the deal appear to have been provided to Lewis Silkin as well, and anything untoward happening is happening absolutely under the nose of a City law firm. That is a matter that's material to inherent probability or otherwise. My Lord, finally on LPT, there is a question taken about valuation. Permission has been given by your Lordship to rely on expert evidence for both the Hume-Kendalls and the claimants on the value of LOG's investment in IOG. I propose to leave this matter largely for that stage of the trial.

But what's quite clear is that the contemporary understanding seems to have been what was reflected in the work of Mr Elliott and Mr Starkie, carried out in the summer of that year. A balance sheet of LOG was shown to the court. That's at <D2D10-00047741>. I think much was made of the fact that the experts have valued that asset on the basis of Black-Scholes and not by reference to the assets, balance sheet assets, of the company invested in. But, of course, I must point out that it appears that both experts acknowledge that a long-term investor, such as, of course, I say in parentheses, LOG was, could use net asset value as a basis of valuation.

I wonder if we could go to <D2/2>, page 11. Obviously Mr Wright is yet to give evidence, but this is part of the report of Mr Wright, and he explains that point at 23 to 24. He says at 23:

"... the most appropriate method for valuing LOG's equity and equity-related interests in IOG is for these to be based upon the share price of IOG at the appropriate time. I hold this opinion notwithstanding that IOG is a small-cap company with limited share trading liquidity."

He says below:

"Another permissible approach, particularly in the period prior to the administration of LOG when it was a long-term investor with no immediate obligation to monetise its interests, would be to value IOG based on its NAV."

My Lord, that is apparently what Mr Starkie and Mr Elliott did and that is the basis of the valuation figure given, because, of course, it fed into the formula that your Lordship was shown in the addendum to the articles of association of that company for valuing the redeemable preference shares.

Your Lordship may also recall having seen the LPT SPA. I am turning now to <MDR00163962>. My Lord, I'm mindful slightly of the time, but I have compressed my documentary review this side of the transcriber's break -- perhaps I should mop up final points after it.

MR JUSTICE MILES: Yes, I think we will take a break now for five minutes.

Mr Ledgister, [Redacted by mouseinthecourt] I'm not sure that it will, in fact, be possible to go on with your submissions this afternoon. Is that going to cause a problem, if you have a clean start in the morning?

MR LEDGISTER: Not at all. More time to work on it.

MR JUSTICE MILES: I know that's always welcome for counsel. I don't think it should cause a problem with the timetable, [Redacted by mouseinthecourt] … I think it would probably be preferable to do that, if that is all right with you.

MR LEDGISTER: Certainly, my Lord. I will still be, I would say, about two hours, maximum. So we will finish well before lunch tomorrow.

MR JUSTICE MILES: Then the position as regards the first defendant seems to be somewhat up in the air, from what I have seen. Is there any update in relation to that?

MR PEASE: My Lord, no update as from our side.

MR JUSTICE MILES: What's the proposal in relation to that? Obviously, we can't just leave it drifting.

MR PEASE: I gather that Mr Slade will be in court tomorrow, so it might be better to interrogate him on the subject --

MR JUSTICE MILES: I won't interrogate him, but I might ask him.

MR PEASE: Talk to him about the subject. Given possible changed circumstances at the end of today, there may be developments in respect of that in the Crown Court. I'm not apprised of anything.

MR JUSTICE MILES: Okay. We will take the five-minute break now and then you can, as you say, mop up. (3.20 pm)

(A short break)

(3.26 pm)

MR WARWICK: My Lord, finally, then, I had called up a copy of the SPA itself, dated 27 July 2018. This is a document that the court has been taken to already but the purchase price term is worth dwelling upon on this question of the valuation and that appears on page 4 of the document, please, PDF, clause 3 of it. Your Lordship will see and recognise the figure of £32,225,096. The purchase price payable is set out below:

"The purchase price is based on the draft balance sheet for the company [as we have just seen] as at 31 May 2018 and is subject to variation in the event that there is any change in the audited accounts for the company when they are produced to the intent that the purchase price shall be the sum which is 30 per cent of the net asset value of the company as at 31 May 2018." That 30 per cent number deriving from the formula used to calculate the consideration to be paid for redeeming the shares:

"In respect of each payment pursuant to clause 3.2, the parties will consider if there has been any change in the net asset value of the company and if there has the amount payable in respect of that instalment shall be adjusted accordingly."

So price adjustment up or down, my Lord, by reference to any change in the NAV:

"In the event of any dispute as to the amount of any instalment the dispute shall be referred to the auditors of the company who shall determine the same as experts and whose determination shall be final." My Lord, again, here are the parties agreeing to refer the purchase price for the acquisition of the value of the preference shares by reference to the auditors of the company in the event of any dispute about it and adjust it either upwards or downwards to ensure that an accurate figure, as at 31 May 2018, was achieved.

My Lord, this transaction was entered into with authority. It was valued by a formula that aligns with the formula for calculating the value of the preference shares. It was determined by persons other than Mr Hume-Kendall on the board and a price revision mechanism ensured that it would align

exactly with the sum to which LG LLP would be entitled upon redemption of the redeemable preference shares with a provision for adjustment and a dispute to be resolved by the auditors in that event.

My Lord, whatever is said again about the unusual state of some of the documents used to put this transaction into effect, it is clear this is what the board intended and authorised and was what was given effect to, and that amounts to an honest explanation for what the claimants contend is dishonest. My Lord, that completes my review of five quite large transactions, corporate transactions, some of them leveraged buyouts. Again, I can't hope to have answered every smaller point that may have been taken along the way in the very long review that my learned friend for the claimants gave of these transactions in opening, but, of course, Mr Hume-Kendall has the opportunity both to give evidence on this himself and also to respond further in closing at the end of this trial, and I consider it is probably best left there to do with Mr and Mrs Hume-Kendall's case.

Could I just deal very briefly, lastly, with the shape of this trial for your Lordship's case management of this trial.

My Lord, you will recall in an earlier judgment that you gave when an application was made to vary the terms of proprietary injunction orders relating to Mr and Mrs Hume-Kendall's assets that of course it was acknowledged by you, rightly, at that time, that of course the number authorised would not necessarily allow for the full level of service which might ordinarily be expected and that I think -- I hate to quote your words, my Lord, but the lawyers and Mr and Mrs Hume-Kendall were to cut their suit effectively to match the cloth available, and this, my Lord, having given thought to it, is how it looks.

I have had a note, so the position is clear, prepared, and I think that's been produced electronically. If it hasn't made it across and up, might I rely on a hard copy of it? It is only two and a half or three pages long.

The note also effectively served as a covering note for the table of unpleaded points that I have already taken your Lordship to, but the relevant bit is representation at trial. I can say without waiver of privilege I was first instructed on 10 January. That was the date on which the written opening was filed, and it is for that reason that it is signed by Mr and Mrs Hume-Kendall's solicitors and not by me, and for no other reason at all, though I have to say, for completeness, I did ask for the section on pleading and proving fraud to be included within it. Essentially, Crowell & Moring can remain on the record and there is sufficient resources for that to happen and anticipates being able to do that. The Hume-Kendalls are being represented by me and my learned friend Mr Russell, who is employed by Crowell & Moring, for as much of the trial as we feel the resources could allow and might assist both the court and also the Hume-Kendalls, obviously. As that breaks down at the moment -- again, I must stress it is subject to resources and the rate of burn of those -- we have already attended the claimants' opening submissions, and we have attended our own opening submissions, of course. We might not attend all aspects of other defendants' opening submissions if we feel that work is better done on cross-examination preparations.

In line with the indications given by your Lordship in that judgment of January of last year, some emphasis will be put towards handling the cross-examination of witnesses, since that's a matter that self-represented parties can't be expected to do skilfully or as well as might be hoped. It is hoped that there will be attendance for Mr Hume-Kendall's oral evidence and also for the questioning of expert witnesses and then also closing submissions, but I think we will have to leave open the form in which those might appear. It may be preferable to put in writing the best points rather than handle

oral and written closing submissions. My Lord, I'm sorry that that falls short of full representation, which your Lordship would ordinarily expect, but your Lordship can probably well see why resources don't allow for such full representation. Finally, if I may, and with apologies to Mr Ledgister, I was going to mention, to do with the evidence relied upon, there is one point arising. Essentially, the Hume-Kendalls' case is embodied in evidential terms in the witness evidence of Mr Hume-Kendall. It has long been understood by both parties that Mrs Hume-Kendall was not going to give evidence. She is not accused of any wrongdoing and the question is really whether she can prove her case of being a bona fide purchaser without notice. For that reason, she relies -- for that she relies on Mr Hume-Kendall's evidence.

Then, also, any closing will set out documents referred to. But the question arises, my Lord, about witness handling to do with contemporaneous documents. Very obviously, the claimants' fact witnesses are all the office holders or people engaged by the office holders who had, on the face of their evidence, apparently no prior involvement in the matter before the FCA raid or their various appointments. In fact, Mr O'Connell says as much in his witness statement. The joint administrators' statement of proposals given shortly after their appointment in the administration of LC&F gives the usual statement that one sees of no prior involvement, and so on, and, for that reason, I won't be putting to those witnesses the sort of longer list of contemporaneous documents because their observations would only be ex post facto, subject, of course, to your Lordship agreeing that that's an acceptable approach. I doubt that they could say very much about them, even if they were asked, but, for good order, I will check that they have no contemporaneous recollection that predates their appointments. I think that is all from me, my Lord, unless I can assist your Lordship further.

MR JUSTICE MILES: No, thank you very much. That's very helpful. We will rise now and resume at 10.30 am tomorrow.

(3.37 pm)

(The hearing was adjourned to Wednesday, 13 May 2024 at 10.30 am)

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