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 15 - Wednesday, 13 March 2024

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

Michael Andrew Thompson (D1) appears in person

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

Elten Barker (D3) settled and is not appearing

Spencer Golding (D4) is debarred from defending the claim

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

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

Robert Sedgwick (D8) appears in person

Housekeeping

MR WARWICK: My Lord, before Mr Ledgister starts, a very brief matter arising from yesterday. Your Lordship asked me about the status of the witness statements of the former directors -- the witness statements that were referred to.

MR JUSTICE MILES: Oh, yes.

MR WARWICK: I think, on the hoof, I addressed the question of their disclosure, but I didn't, as I perhaps should have done, turn to the rule in 32.19. There is a simple answer, my Lord, which is, having conferred with those acting for the claimants, who were more closely involved in the novation proceedings, each of those witness statements was put in evidence in a public hearing as part of that, and, as a result, the restriction on their use doesn't apply because of the exception in 32.12(c). Hopefully, my Lord, that deals with the question.

MR JUSTICE MILES: Thank you.

MR SLADE: My Lord, very briefly, before Mr Ledgister, I have come to court today to say we expect to have Mr Thomson's counsel back in court from Monday. It appears that the Crown Court order is being made this morning, and that will expedite things. If the court would permit, it would suit us very well to make Mr Thomson's oral opening starting on Monday morning.

MR JUSTICE MILES: Mr Robins?

MR ROBINS: My Lord, it seems to us there's actually four matters to address insofar as Mr Thomson's representation is concerned.

The first involves the orders that your Lordship has made already. Of course, your Lordship varied the proprietary injunction against Mr Thomson for the specific and limited purpose of securing legal representation for him to the end of the trial, and your Lordship did that on very particular terms. If we could look at <F3/7>, page 1, please, we will see the order that your Lordship made on 13 October, and at page 3 of this document, in paragraph 3, my Lord will see the very particular reference in lines 3 and 4 of paragraph 3 and elsewhere to "Richard Slade and Company". On the next page [page 4], in paragraph 4(a): "Payments shall be made [into the specific client account of Richard Slade and Company]." In paragraph 8, there is a charge that's permitted to be granted in favour of Richard Slade and Company.

My Lord knows that this order was varied by an order by the Court of Appeal -- <F3/8>, page 1. The variation we can see on the next page [page 2] doesn't affect in any way the references to Richard Slade and Company. The position is the same in respect of the order in agreed terms which was send to your Lordship's clerk by Mr Slade on 4 March. That refers throughout to "Richard Slade and Company". We are now told, of course, that Richard Slade and Company has gone into administration. Mr Slade has said its business and assets were transferred to AH Christie Legal LLP, which now represents Mr Thomson, and we have received a notice of change.

But, obviously, that can't affect the mortgage in favour of Richard Slade and Company. If we go back to <F3/7>, page 4, please, your Lordship's order provides, in line 4:

"Richard Slade and Company shall not assign its rights under any such mortgage or exercise any of its rights as mortgagee under any such mortgage without the prior agreement of the claimants or the prior permission of the court. Any application for such permission shall be made on 3 days' notice to

the claimants." So, obviously, as I say, although we are told there's been this transfer of business and assets to AH Christie Legal LLP, that can't affect the mortgage because neither the consent of the claimants nor the permission of the court has been sought or granted. That seems to mean that, as matters stand, if and when the house is sold, which we are told is imminent, the proceeds of sale will be payable to the administrator of Richard Slade and Company to the extent that any sums that remain owing to Richard Slade and Company cannot be paid to any other person. Now, of course, it may be that Richard Slade is going to seek a variation of the existing orders. If that is right, then obviously he will need to provide us with a draft variation order and he will need to provide us with at least some evidence in support. A key point we will want to understand is whether the sums that have been released from the proprietary injunction are still going to be used for the specific and limited purpose of securing representation for Mr Thomson to the end of the trial.

If, on the contrary, it is said that no variation is required, we are obviously going to need to understand the position in that regard as well. That's the first point, my Lord.

The second point relates to Mr Thomson's living expenses. On Sunday, the 10th, Sunday just gone, Mr Slade emailed your Lordship's clerk to say: "As previously mentioned, there will be a need to adjust Mr Thomson's living allowance under each of the relevant freezing/restraining regimes. "Mr and Mrs Thomson have found a property that is suitable and I have paid out a holding deposit on their behalf. The rental is £32,600 per annum, which breaks down to £2,717 per calendar month. Mr Thomson would need to pay the first 12 months' money upfront and a deposit of £2,884. His removal expenses would not exceed £15,000."

Mr Slade went on:

"I have written to Mr Crome asking for his consent on the part of the SFO and will drop a line to Mishcon de Reya as a courtesy, even though they are copied on this email, and ask for their consent. In any event, I hope that this, too, can be dealt with quickly."

Your Lordship won't have seen my instructing solicitor's response, if I could just pass that up. (Handed).

My instructing solicitor made the point, towards the end of the first paragraph, that he hadn't yet been able to take formal instructions but would imagine that the claimants would have no objection to an adjustment for the rental payment, nor reasonable removal costs: "However, the adjustment cannot, it seems, stop there. You know that your client has the benefit of orders permitting him to utilise the frozen funds with regard to his reasonable living expenses. I attach his witness statement dated 13 May 2021, together with the exhibit. I refer you to pages 120 to 122, which is a schedule that sets out your client's updated living expenses ... You can see from that schedule that there are a number of items of expense that are no longer the obligation of your client and must be deducted. Furthermore, there are a number of questions that require urgent answers from your client, which will inform the court whether those items are still the obligation of your client and in what amount. Of course, dependent on the size and location of the rental property, some of those items will have reduced." The items which appear to be no longer Mr Thomson's obligation are set out. Obviously, those are items of expenditure which pertain to owning an 8,000-square-foot country house. My Lord may recall the rather generous allowances for swimming pool maintenance, et cetera, and the gardening. The items which require information include the address of the rental property, et cetera, and that's set out.

Then my instructing solicitors say, over the page: "Clearly, there are significant sums which Mr Thomson will no longer have to pay ...", and we look forward to hearing from Mr Slade.

We haven't heard anything. That's obviously something that's going to need to be addressed if, as we are told, Mr Thomson is moving out imminently and requires an urgent adjustment to his living expenses. It's really not something that Mr Slade can raise and then ignore.

The third point relates to the timing of Mr Thomson's oral opening submissions. We saw Mr Slade's email to your Lordship's clerk asking your Lordship to schedule Mr Thomson's counsel's opening speech for Monday. It doesn't seem to us to be very satisfactory. The defendants' opening submissions are meant to conclude this week.

We anticipate that your Lordship may wish to ensure that Mr Thomson is provided with the fullest opportunity to benefit from legal representation. But some sort of longstop date is going to have to be put on this to ensure that the trial is not disrupted. The fourth and final point, my Lord, relates to the cross-examination of our witnesses. We were asked by the solicitors for the second and tenth defendants to identify the order in which we intended to call our witnesses of fact. We have responded and, in our response, we asked the defendants to state whether they intended to cross-examine our witnesses of fact and, if so, how long they anticipated requiring, so that we could provide an updated timetable.

We have had responses from a number of defendants. First, on behalf of the second and tenth defendants, Crowell & Moring have said that their counsel, Mr Warwick, does intend to cross-examine the claimants' witnesses of fact and anticipates that he will require nine and a half hours in total. We have been told by Kingsley Napley, on behalf of the fifth and sixth defendants, that their counsel team do not intend to cross-examine our witnesses of fact. Similarly, Mr Sedgwick has said he does not intend to cross-examine our witnesses of fact.

We have had no response yet from Mr Slade and, again, that's not very satisfactory. We need to know the position, as we are calling these witnesses next week.

MR SLADE: My Lord, I don't know how useful you found any of that. I only came to court this morning to update the court in relation to Mr Thomson's representation. But I suppose that, since Mr Robins has raised these four points, I ought just to quickly respond to them, though, as I say, I don't know how useful your Lordship will find any of this.

The first point, in relation to the mortgage, we can read, just as well as Mr Robins can read, and your Lordship will be unsurprised to hear that the mortgage is completely unaffected by the transaction we have in mind. There may need to be an adjustment simply to the client account which is paid for purposes of convenience, but I won't know the answer to that until this afternoon. When I do, I will be in touch --

MR JUSTICE MILES: How does that work as a matter of legal analysis? Because the mortgage, as I recall -- well, as I was just told, is in favour of Richard Slade -- is it called Richard Slade and Company?

MR SLADE: Richard Slade and Company Limited is the firm which is in administration as from yesterday. As a matter of legal analysis, it is totally straightforward. In the agreement that was entered into with the administrators, the new firm, the successor practice, was appointed as agent to receive monies under the mortgage. The mortgage stays where it is. By agreement with the administrators, the money probably will come into the new firm's client account as that will probably be more convenient. We won't know, as I say, until this afternoon. It is simply a matter of banking.

MR JUSTICE MILES: I'm sorry, I'm a little bit behind. Is the sale taking place under the mortgage as mortgagee?

MR SLADE: No. The sale is a sale by Mr and Mrs Thomson.

MR JUSTICE MILES: I see. But it is obviously subject to the mortgage?

MR SLADE: Correct. Yes, my Lord.

MR JUSTICE MILES: You say that, effectively, the benefit of the mortgage has been transferred to the new firm's --

MR SLADE: In fact, it hasn't. I have simply been appointed as a collection agent.

MR JUSTICE MILES: Whose property, then, is the money --

MR SLADE: The money will be dealt with in accordance with a sale and purchase agreement between the two entities.

MR JUSTICE MILES: It may just be that you better provide some information to the claimants' solicitors about that.

MR SLADE: Yes, my Lord, of course. That would happen in the normal way, at the appropriate time.

MR JUSTICE MILES: I'm not going to say anything more about that.

MR SLADE: There is really no need for the court to be concerned with any of this, my Lord.

In relation to Mr Thomson's living expenses, again, it is the same point: there has been correspondence between solicitors. I have been rather busy over the last two days so I haven't yet responded to Mishcon de Reya but take it from me I will. I have my client's full instructions in the form of a spreadsheet which they will be receiving shortly. I don't think I need to say anything more about that. Mr Robins' third point related to the timing of my client's opening submissions. I'm afraid to say, in practical terms, Monday is the best I can do. I have moved heaven and earth to ensure --

MR JUSTICE MILES: I think his real point, when it came down to it, was there needs to be a longstop date by which -- it seems to me, if I was to say it is Monday and no later, then I'd be prepared to agree to that.

MR SLADE: I'm grateful.

MR JUSTICE MILES: I'm not prepared for it to go on a rolling basis.

MR SLADE: No, of course. I completely understand.

MR JUSTICE MILES: I am, of course, very concerned to ensure that all defendants are able to be properly represented to the extent possible, but, on the other hand, if it gets to the point where it is rolling along, then it may just be that the trial will have to proceed without an opening submission from Mr Thomson.

MR SLADE: Of course, my Lord. We completely understand.

MR JUSTICE MILES: If I was to say Monday and no later -- will it be less than a day?

MR SLADE: I don't know. I have been, I hope, considerate of counsel's time. I haven't been able to arrange with Mr Thomson to pay them, and so taking up huge amounts of their time at this stage wouldn't be appropriate.

MR JUSTICE MILES: No, but I would like to know how long they are going to be. Perhaps you could find out?

MR SLADE: I will make enquiries, my Lord.

MR JUSTICE MILES: At the moment, I will say provisionally, and perhaps you could just talk to them, I would be prepared to allow them until Monday, but that's on the basis that I'm assuming they will be no more than a day.

MR SLADE: I think that's a fair assumption, my Lord. Finally, in relation to cross-examination of the claimants' witnesses, the same point arises. I haven't had an opportunity to discuss this with counsel. I would have thought the best thing would be for them to be in touch with Mr Robins directly when they have an answer to his question.

MR JUSTICE MILES: Right. But, again, I think it is important, because there is a knock-on effect on next week if you have Monday for your openings. I think it would be helpful for the claimants to know that as soon as possible. It may be that your counsel also would like to liaise with Mr Warwick because the question of what is going to be covered in cross-examination may be relevant: but, again, I would like an answer to that as soon as possible. So, again, I don't want it just drifting off and then coming along on Monday and saying, "Well, we still haven't quite decided". I would like to know today how long they would expect to be.

MR SLADE: My Lord, I will make the appropriate enquiries and inform everybody. I'm very grateful. With the court's indulgence, I will now leave and get on with a few other things. Thank you, my Lord.

Opening submissions by **MR LEDGISTER**

MR LEDGISTER: My Lord, as said by Mr Warwick, in response to the claimants' written opening submissions of 300 pages and some 5,300 documents, insofar as we have been able to review those, and their three weeks of oral opening, it is now a speaking part. So, my Lord, taking the case for D5 and D6, the claimants have, over the past few weeks, relied on a variety of documents in support of their case which the court has been directed to.

For a fair amount of that time, in fact, when we were going over the issue with regards to the SPAs, nothing was mentioned about Paul Careless or indeed Surge.

But of the material that the claimants rely on as part of their case against Paul Careless and Surge, we, in support of our defence, rely on the same material, the same emails, text messages, WhatsApp messages, telephone conversations. Because, taken at face value, they're not evidence of fraud at all, we will say, though the claimants interpret them as such. They are, however, a running commentary, and, as a commentary, they tell us what was happening and what was unfolding over the period of time from 2015, late 2015 to 2018. And from it we can glean what the defendants were thinking at the time; understand what their intentions were.

Whilst I don't propose to rehearse in any great detail the content of many of the documents that my Lord has already been taken to -- it certainly wouldn't improve the best use court's of time -- where necessary, we will revisit certain documents and draw the court's attention to certain aspects which may have been glossed over or not even looked at all. We say that these messages and emails, and so on, are perhaps the best evidence available. They are not contrived, and it gives us an ability to zone in at any particular time to see, as I say, what the intentions of Paul Careless and the Surge team were.

Although we pray in aid much of the material that the claimants have relied on in support of our own case, we say what the claimants have done, however, is what is described by Mr Justice Mann in the Mortgage Agency Services and Prince Harry's case -- it is completely unrelated in terms of facts, my Lord -- but what Justice Mann said in that situation, in that case, was that the claimants had donned their fraud-detection goggles, turned the sensitivity up too high and attributed a dishonest motive to every interesting feature in the landscape.

My Lord will recall towards -- I think it was the end of last week, we were reminded of a WhatsApp communication between Kerry Venn and John Russell-Murphy where it was discussed, I think, the possibility of Surge being acquired by Spencer Golding in the sum of £30 million or £50 million. That was being discussed. And Ms Venn queried whether Spencer Golding can raise that amount of cash and Mr Russell-Murphy says he thinks so, as it's two months' worth of LCF money. If I can maybe take my Lord to that document, it is to be found at <D7D9-0007347>. My Lord, this is the document that my Lord was taken to last week, and just about halfway down the page, Kerry Venn -- it begins with the line: "The suggestion to sell to a Spencer-related company ..."

This is, by the way, 7 June 2018, at 3 o'clock in the afternoon:

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

She then goes on to say:

"Therefore the problem is, can Spencer raise that cash?

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

John Russell-Murphy responds:

"I would have thought so 2-months worth of LCF money!"

Kerry Venn then replies:

"LCF can't use investor money like that (Andy does follow the sentiment of the IM I believe)." So here we have that dialogue taking place, and we would respectfully submit that the claimants have donned their fraud-detection goggles, and just to use this particular example, they have donned their fraud-detection goggles and offered my Lord two possibilities -- only two possibilities -- as to why she might have said that.

The first one that the claimants say is that, well, John Russell-Murphy's assumption about Ms Venn's knowledge was wrong, in that she didn't know Spencer Golding had free and ready access to bondholder money. That's option one. Or, option two, she was concerned that he, John Russell-Murphy, having now made a comment like that, wanted to, and I take Mr Robins' exact words, correct the record, correct the record, by contradicting what he said.

The claimants actually invite my Lord to adopt option two, to follow option two, because they say that Ms Venn was, of course, aware, they say, of the 1 per cent of new bondholder monies going to Mr Golding.

So here we have two options given to my Lord, even though it is written clearly in black and white what she said. We say what was actually written is what was simply meant. She was saying that bondholder cannot be used in this way, and the point to note here, my Lord, is not just that she was saying that, it's when she's saying it. This is June 2018, months before the knock on the door by the FCA, and she is still maintaining that bondholder money cannot be used in this way. But, of course, with fraud-detection goggles on, it is a completely different interpretation. This is why we say, looking at this case, and certainly insofar as Surge and Paul Careless is concerned, the record is the very same record that we rely on in support of our case because it is written clearly in black and white. Given that there is no specific factual evidence on any part of the claim around the alleged dishonesty of Paul Careless and Surge, we say, the claimants have to take such an approach. And even following our disclosure there were no additional pleadings set out in their further particulars in respect of Paul Careless and Surge.

So, the best they can point to are four years' worth of communications. Bear in mind, it is continuous dialogue and communications between LCF and Surge. Four years. That's the best they can point to. They can't point to a particular piece of evidence that says, "Hear you are. Gotcha". Nothing.

We don't propose to respond point by point to the claimants' submissions on knowledge. My Lord will hear from Mr Careless and Ms Kerry Venn in due course and my Lord will make his own assessment of them as they're examined and, of course, will be tested on their evidence. But what is clear, however, is that Paul Careless disagrees with the characterisation of his conduct given in the claimants' opening. He and Surge at all times, we will say, acted in good faith in providing services to LCF which they considered to be a bona fide, legitimate business. They had no knowledge, be it actual or on a blind-eye basis, that LCF's business involved unlawfulness or impropriety. My Lord will hear that Paul Careless is an entrepreneur, formerly a soldier, a police officer, somebody who has built many businesses, a marketeer who turned Money Expert, as its chief marketing officer, as he was, into a hugely and successful, profitable company that employed many people. By marrying technology and marketing over the years, he has gone on to create other businesses -- some have done well, others not so. My Lord, he is what some might call an archetypal entrepreneur: ever-enthusiastic and motivated. He is not the calm, measured, relaxed, overly-cautious professional, like a lawyer or an accountant. Eternally optimistic and a driven entrepreneur, some might say with the energy of a Christmas tree, and full of excitement. We have seen snippets of that in the messages, my Lord. We have been taken to some of his emails and WhatsApp messages that the claimants have drawn my Lord's attention to. He is proud of his entrepreneurial achievements, building businesses from nothing and creating something of value. He incubated and nurtured his business, including Surge, which was a marketing company. He owned this along with Kerry Venn, though they had very distinct roles. My Lord will hear he was the visionary, the bigger-picture individual, and she was the detailed person overseeing the minutiae on the operational side of things, and they prided themselves, really, on professionalism and wanted Surge to be the best it could be.

We will say that Paul Careless directed the business to ensure that it went over and above, insofar as professionalism is concerned, compared to others who were operating in the same space, because he felt that they operated to a lesser standard. So Surge, in this relationship with LCF, my Lord, we will say, went over and above of what was required of them both in law and practice in the service that they provided to LCF. They undertook, for example, regular monitoring and training for account managers. My Lord will hear about that. There were penalties for non-compliance by any of those individuals who were liaising with investors. They engaged the services of Thistle -- my Lord has heard a little bit about those. Those are the compliance specialists. No need for them to do any of this. This is what they did off their own bat. They had their own solicitors, Macfarlanes, prepare a

service contract. Finally, they implemented call recording. This was totally voluntary on their part. No requirement for it at all. It was their decision to record all calls and, incidentally, after the LCF raid, they offered up all of those calls to the authorities, nothing being held back. "There you are, have a listen to them".

The recording remains in operation throughout the entirety of the LCF relationship. It is not like halfway through they stopped recording, which could be interpreted as, well, maybe they have realised that something goes wrong, "Let's stop the recording". It carries on right the way to the very end. You will hear that they penalised employees for non-compliance and also an interesting point of note, my Lord, is they paid their staff well. So it wasn't a case of, convert leads at any cost, where employees are having to convert leads just to survive. They developed a software platform whereby they could attract investor leads who were looking to invest in financial products, and they would then sell those leads on to IFAs. They formed a relationship with Blackmore -- my Lord has heard little about Blackmore -- and they provided to Blackmore, interestingly, a very similar service to what they did to LCF. It was a very similar product, albeit it was a property bond. A similar fee structure, albeit they charged 20 per cent. And they successfully raised around £45 million for Blackmore, though no fraud was inferred in regards to that operation.

When interviewed by the liquidator and the SFO, nobody was interested in Blackmore at all. Now, unfortunately, Blackmore collapsed in due course and was subject to rigorous review by the authorities and, after the review, it was concluded that that was not a fraud. But Blackmore being their first major client, they had honed and refined their systems and were about to -- or, rather, were ready to roll that service out to other prospects. This is when John Russell-Murphy, around about this time, was introduced to them. I think we have heard a little bit about that as well.

Now, he was already selling a bond for SAFE. SAFE was, on the face of it -- had good security and very good promoters in the form of Simon Hume-Kendall and Spencer Golding. The opportunity was exactly what Mr Careless and Surge were looking for at the time. My Lord will hear that he was very impressed by the sponsors. Mr Hume-Kendall was considered of high pedigree, vice chairman of Crystal Palace Football Club. Some might say that's not that high pedigree. Chairman of Clydesdale Bank. Andy Thomson, a relationship banker at RBS and John Russell-Murphy, an experienced financial advisor from St James's Place.

Having presented as highly successful people, some of them displayed the trappings of success. But, most importantly, they had security. And Surge knew, from experience with Blackmore, that, whilst investors were interested in coupons and other such matters with regards to bonds, what typically piqued their interest was the security available and LCF had it -- well, SAFE had it at time and LCF would also have that. It presented as a strong business case because they were going to lend to SMEs, which seemed a great idea at the time, and it was a perfect opportunity for, as I say, Surge to get involved with a strong company. They didn't just take any company that came through the door that wanted them to raise for. We have heard about the discussions that -- I think it was mainly Kerry Venn had with Simon Hume-Kendall with regards to another potential bond offering in the oil business. That they had considered wasn't significantly securitised, and they didn't see that as an attractive bond proposition. But they knew that, with good security available, it made their job so much easier in attracting and converting leads.

They, at the time, had high regard for John Russell-Murphy. As I said, he had come from St James's Place. He was already selling this product on behalf of SAFE. But notwithstanding that, they felt that they could do a better job than he would as an independent, considering that they had the systems in place, they had an infrastructure, they knew what they were doing, and experience had taught

them that IFAs weren't particularly good at converting leads. They were somewhat haphazard in getting back and following up on leads, or, if they did, it wouldn't be done in a manner or a professional manner or fashion. They were of the view that, with their infrastructure wrapped around John Russell-Murphy, they would be able to raise significant funds, and that proved to be right. We have seen the bar chart that my Lord was taken to. Before Surge were involved, it wasn't doing -- well, it was doing okay, but after they got involved, it really does move on at a particular pace.

Now, having won -- or, rather, in trying to attract the business, in trying to win LCF's business, it wasn't a shoo-in. They had to fight for it. They had to fight for this business. They provided their terms of engagement. Andy Thomson didn't immediately jump at the opportunity and it seems he was shopping around for alternative service providers. My Lord has seen, I think from correspondence, there was an email from Simon Hume-Kendall when he doesn't seem too impressed by the marketing of Surge to LCF, doesn't seem too impressed about the way that they're going about trying to secure the LCF business. But what's quite clear and plain, we would respectfully submit, is that, at this point, it's certainly not Surge in bed with Mr Hume-Kendall and Andy Thomson. They are completely separate. Surge tried to fight for the business as a third party service provider.

When the business was finally won, there was much excitement around it, and it was celebrated. There was excitement as to how it would change the course of their business. There was excitement as to how it could change lives.

We have seen -- we were directed to -- I think it was a text message of Paul Careless referencing the car he would buy as money landed. There was a lot of excitement at the time. Maybe he would be more guarded, had he known that his celebratory messages would one day be scrutinised. But he didn't know the world would be watching.

On that point, my Lord, of believing that what he had written would remain private, we will say this is important in the context that there is no evidence of clear knowledge of fraud in any message, text, call or email. No fabrication of documents, no falsifying of signatures, in over four years, from a man and a company who didn't know the world would be watching. And neither did Kerry Venn in June 2018, when she expressed her view about Andy following the sentiment of the -- sorry, when she expressed her view about Spencer Golding with regards to using bondholder money for his own purposes to acquire Surge. She didn't know the world would be watching.

Now, having won the business, Paul Careless was keen to protect it. Keen to protect it. Like in any client/supplier relationship, one will be keen to preserve it, and although at times there will be difficult discussions and questions have to be asked of your client, an element of sensitivity is required. During the infancy of the Surge/LCF relationship, my Lord has seen much of the correspondence between those acting on behalf of Surge -- Kerry Venn, Jo Baldock, and of course Mark Partridge, who asked many questions in trying to understand exactly what the security position was, and of course there was discussion about wanting to get hold of some case studies.

The claimants say that, as the defendants didn't get the answers, this, of itself, suggests they must have known that LCF's operation was a fraud. No credit whatsoever seems to be given to the efforts that they made continually pressing for information. We will say that, if there were dishonest intentions, Paul Careless and the Surge team could have stopped asking questions over the period, but they didn't. They continued to bang their drum, seeking clarity where there is inconsistencies, and, further, we say that any dissatisfaction with Andy Thomson's transparency or lack of consistency

in providing information is not evidence of wrongdoing. What more should they have asked, we will say, given what they knew at the time, to conclude that LCF was a fraud? They asked everything that they could have done. We also invite the court to bear in mind we say that this is over a long period of time, and, over that period of time, it wasn't simply a case that the relationship with Andy Thomson was, they had a particular view about him. It is a relationship that ebbs and flows over time.

It wasn't all the time that he gave no information. But, of course, the claimants will zone in on incidents such as that to make their case.

Now, notwithstanding the early days of the relationship Surge pressed for information, and this wasn't because they distrusted Andy Thomson or believed they were being exposed to fraud. The reason they asked questions is because they needed the answers to do their job. The job of presenting information about the impressive sponsors of LCF and a job about presenting the fabulous security that they understood existed. They wanted to put forward LCF in its best possible light because, in doing so, of course, they helped themselves. Despite their efforts trying to ascertain the information on past borrowers and case studies to help them, they got little. When pressed to get the information on security, the position wasn't entirely clear, and of course you have heard that they employed the services of Mark Partridge to do the digging, their accountant. A man that Paul Careless wanted and retained as an advisor. He is the complete opposite to Paul Careless: pessimistic, dour, seemed to have a problem for every solution. Perhaps the ying to Mr Careless' yang.

But, my Lord, what was quite clear was Paul Careless wanted somebody like that, the pessimist, the sceptic, to review the material. This is why he retained him. Someone who could ask all the difficult questions without Surge appearing to be the difficult ones asking the questions of the client.

This is exactly what they needed in order for the company to evolve, in order for the proposition to be made clear. They needed someone to ask the questions. But we know that Mark Partridge wasn't the type of man who minced his words. He didn't hesitate to make his feelings known. "Spencer is Madoff", comments such as that. The claimants refer to this as knowledge of a specific fact. We will say, what were the defendants, Surge and Paul Careless, supposed to do with that information that they didn't do? They continued to press for information on the business of LCF. Something else that Mark Partridge will say, or said: "You can't believe a word that Andy Thomson and JRM say". Again, this is not knowledge of a specific fact. It was simply that Mark Partridge had a different view on something. My Lord, this is why the audits were so important in this case, because it wasn't a case of Surge taking the view that it's just Mark being Mark again; it could be independently tested and verified by a third party, independent auditor.

Then, finally, my Lord, with regards to Mark Partridge and how blunt he could be, remember his reference about Andy Thomson: "He just talks out of his arse", he said. This was the Mark Partridge that Paul Careless had now at the forefront asking the DD questions, and, knowing him as he did, when he instructed him to take a light touch, that has to be considered. It's light touch in the context of talking to Mark Partridge, the man who freely mentioned that someone was talking out of their arse. This is the client-facing representative that they had at the time. What we don't see in any dialogue between Paul Careless and Mark Partridge, or my Lord will not see, is Paul Careless calling him off, saying, "Don't ask this. Don't do that". In fact, every bit of information received from LCF, from Andy Thomson or whoever, negative or otherwise, that comes through the hands of Paul Careless, Kerry Venn or any other officer, is passed on to Mark Partridge with regards to security. The

negative and the positive. Nothing is withheld from him. Because it is more important to get the answers, as opposed to effectively turn a blind eye and brush it under the carpet.

Now, the claimants make much of Mark Partridge's scepticism, and it is a place where, again, we rely on the very same material in our defence, and, despite the back and forth of communication between Surge, Partridge and Andy Thomson over the period of time with regards to security, the claimants don't seem so keen to rely on him -- this is Mark Partridge -- when what he has to say doesn't suit them.

Now, notwithstanding his scepticism, you will hear that Surge took great comfort from a number of factors, including the calibre of legal and accounting professional advisors who were involved with the LCF bonds, and this was right from the outset. One, the information memorandum prepared by Lewis Silkin. Two, Buss Murton being retained as solicitors to the company. Three, the involvement of Sentient and, subsequently, Kobus Huisamen, who my Lord has heard of. They took comfort from the fact that all communications, all their comms, were challenged and then signed off by Sentient and Kobus Huisamen. Four, Oliver Clive & Co as the accountants, and of course, subsequently, the audits of 50 per cent of the Big 4 auditors -- EY and PwC.

My Lord, interestingly, GST were also involved, Global Security Trustees Limited, and the claimants rely on their lack of independence as one of the factors which give rise to blind-eye fraud.

My Lord will hear, even though Paul Careless hadn't appreciated the proximity of relationship of Robert Sedgwick and the other defendants, in as early as May 2016, Surge had expressed their views of wanting better advisors involved, and their view, certainly Paul Careless's view, of GST was, he was letting LCF down.

If I could take my Lord to an email, please, to be found at <SUR00019510-0001>, if we can just -- it is an email chain. If we can go to the bottom of the page, please, this is an email from Jo Baldock to Andy Thomson. It is directly in relation to GST. 6 May 2016. What she says is:

"Hi Andy.

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

"Please can you call him ...

"Please let me know once you have spoken with him and how you got on and what you said. As I said the other day it's embarrassing and unprofessional on our part when we don't have enough information." Now, he replies later on, on the same day -- well, in the night. At 10.26 that night, he replies this: "Hi Jo.

"Thanks for your email.

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

He continues:

"This is really simple stuff, is easily answerable (all of the answers to how and why the security trustee is involved is contained in the IM, do you not require all staff who engage with investors to first read the relevant literature?) and shouldn't require a 'senior person' to return the call of 'Danny'. Given the simple nature of the answer I won't be calling Danny as to have the CEO call to answer a simple question just wouldn't be right, unless that is if the investor was investing a significant sum, say £1 million. The better solution would be to take the information above, read the relevant background info re the role of the trustee and have the person who spoke with Danny call him back. "I appreciate that we have discussed the positioning and presence of GST when an investor looks into the company and I am addressing this, you did not highlight a lack of basic knowledge on the subject." And it continues, my Lord. I could read the rest, but it is not really that necessary.

What's important, however, what's important, however, is that Kerry Graham picks up on this and, on 7 May 2016, she's writing to Paul Careless. So Kerry Graham of Surge is writing to Paul Careless about GST and this is what she says:

"GST need a proper online presence. They play an important role yet ..."

MR JUSTICE MILES: I think this is from Mr Careless, this email.

MR LEDGISTER: I'm looking at a slightly different link. I don't know how that's happened.

MR JUSTICE MILES: The one on the screen is from Mr Careless.

MR LEDGISTER: So this is Paul Careless to Andy Thomson. There is actually another email Kerry Graham is writing to Paul Careless but this one does the job just as well. What Paul Careless is saying to Andy Thomson is: "Off record here, Andy but I need to say this. "GST need a proper online presence. They play an important role yet anyone doing DD won't find much about them and they are not FCA regulated.

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

"Jo is totally justified in asking for help until the online provenance exists and is sufficient. Which I am happy to set up gratis so the issue disappears." So, here we have Paul Careless, far from happy to have GST involved, positively saying he doesn't want them, or he'd rather they weren't there. He would rather a better-calibre company involved. So, my Lord, we would respectfully submit that this is not blind eye. He is pushing for an FCA-regulated entity, a more recognised professional, not blind-eye, and, in any event, this is not a fact as of itself, bearing in mind what the claimants say, that would make Surge believe that this was a fraud. But, GST aside, we will say that Surge were entitled to be comforted by the involvement of all of these professionals, and surely they couldn't have all got it wrong, they couldn't have all missed that LCF was a fraud. Of all the allegations levelled at Surge and what they were supposed to have known as elements of fraud, these must have been picked up by the professionals. The connected party lending, the 25 per cent extraordinary commissions, which I will come to in due course, the independence of GST, the LCF business model.

It is inconceivable, they would have thought, that Ernst & Young & PwC will have failed to pick up on these issues, and we will see later on that they very much had these elements in mind, as one might expect, when conducting their audit.

My Lord, just very briefly, perhaps, before the short break, Surge respected and understood that there were a number of professionals involved, and, as I said, they took great comfort from their

involvement in the LCF bond, and, despite the professional sanctions in certain matters, there were still times when Surge would police themselves.

If my Lord remembers the reference to the non-transferable ISA, here Surge were being told by LCF and their advisors that it was okay to promote the non-transferable ISA as such and they pushed back time and time again, they checked with their own lawyers, they checked with their accountants and pretty much went around the houses on this. So they didn't just accept the word of the advisors in situations like that. So notwithstanding being told by the professional advisors, they were still challenging and asking questions when they felt it right to do so. This, my Lord, we will say is inconsistent with being party to a fraud, or turning a bind eye to one, and not consistent with the actions of fraudsters.

My Lord, would now be a convenient moment to break?

MR JUSTICE MILES: It is rather early to break, I think, isn't it? I don't know how -- because we normally break at about quarter to, so why don't you carry on?

MR LEDGISTER: I'm more than happy to carry on. The greatest comfort of all came from the endorsement of Ernst & Young and PricewaterhouseCoopers, having performed full audits. Additionally, the endorsement made Surge's job much easier to convert leads. They realised that investors would take comfort from knowing that respected advisors were scrutinising and auditing the operations of LCF.

My Lord has heard much about the attempts to get to the bottom of the security numbers which tended to move quite a bit. Surge finding it difficult to pin LCF down exactly as to the level of security available. Other than being told in the early days that there was sufficient security, this wasn't independently substantiated to any material degree until the accounts of PwC were produced in late 2016.

Now, Surge -- they placed great reliance on these because it was independent verification, we say, of the level of security which existed at the time. My Lord, can we bring up the accounts, please, to be found at <L1/7>. These are the PricewaterhouseCoopers accounts for the year ending April 2016. Page 7 of the report. It is not necessary to go to it, but this was the report of the senior auditor, Jessica Miller. The senior auditor --

MR JUSTICE MILES: Sorry, this is the director's report?

MR LEDGISTER: Sorry, it is page 7. We see at the bottom there it is Jessica Miller, senior statutory auditor for and on behalf of PricewaterhouseCoopers, dated 10 October 2016. Not just any auditor, we say, the senior statutory auditor of PwC, one of the most renowned accountancy practices in the world. A great degree of comfort was had from this.

My Lord, if we go, please, to page 4, going backwards slightly, and the next page, and the next page -- I'll find it on my own. It is page 1 of the report, but it is page 4 in real time, if you like. So if we go to page 1, at the top of this page, this is the strategic report, and I should make that very clear, and it is a report which says:

"The directors present the strategic report and financial statements for the year ended 30 April 2016.
"...

"The company's principal activities during the period continue to be raising funding through the issuance of private bonds and then lending the proceeds of the bonds to medium-sized businesses

on a fully secured basis. During the year there were bond additions of £9,269,143 and bond redemptions of £664,463."

It goes on:

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

"Value of secured assets ..."

Here it is, my Lord:

"£60,752,482."

Now, Paul Careless and Surge are criticised for taking comfort as this detail was contained in the strategic report -- I think that's the claimants' case -- and outside the scope of the audit. But we will say they were entitled to take comfort from this audit because, notwithstanding the claimants' observations, this is a number contained in the audit, and to any layperson -- Surge, Paul Careless -- the fact that it was contained in the PwC unqualified audit report of Jessica Miller meant to them that it must have been subject to scrutiny and review. They wouldn't have known any better. They are not financial professionals. My Lord, if we can please --

MR JUSTICE MILES: Can I just ask a question about that? The point is made that the strategic report is not strictly part of what's audited. Can I just check something. Give me a moment.

MR LEDGISTER: I will be taking my Lord to the part where it's clearly been considered.

MR JUSTICE MILES: Why don't you do that rather than me asking about it.

MR LEDGISTER: If my Lord turns to -- I'm just trying to make sure I'm getting the pages right because my pages are somewhat out of sync. In the section that is "What we have audited", which is on [internal] page 6, [<L1/7>, page 9], please. If my Lord can take it from "What we have audited" and it says "The financial statements" and it gives a number of documents. At the bottom, also audited are the notes to the financial statements which include a summary of significant accounting policies and other explanatory information. If we go down a little bit further to "Opinion on other matter prescribed by the Companies Act 2006", it says this:

"In our opinion, the information given in the strategic report and the directors' report for the financial year for which the financial statements are prepared is consistent with the financial statements." So, we say that PwC have clearly considered the strategic report where it's states the £60,752,000 figure, and the report in the auditor Jessica Miller's view is that it's consistent with the financial statements. Does that answer my Lord's question?

MR JUSTICE MILES: Partly. The other question I had was whether the amount of the security was referred to in the notes.

MR LEDGISTER: Page 21, note 10, I'm told. The paragraph beginning "Credit risk":

"The company's credit risk is primarily attributable to its receivables. The amounts presented in the statement of financial position are net of allowances for doubtful receivables. The credit risk on liquid funds is limited because security is held over and above the value of the loans and extensive credit checks and due diligence are performed on new and existing customers."

It carries on:

"The carrying value of the loans outstanding as at year end is ..."

My Lord sees the number:

"... the notional value of the loans outstanding as at year end is £9,396,814 and the fair value of the assets against which these loans are secured is ..." That number again:

"... £60,752,482. The carrying value of the loans is the value of the loans outstanding as at the year end net of deferred revenue. The notional value is simply the value of the loans outstanding as at the year end." My Lord, if we can just go back again -- I just want to make sure I'm going to the right spot -- what's also of note from this report is the other matters on which the auditor is required to report by exception, and that's to be found back on [internal] page 6 [<L1/7>, page 9]. Towards the bottom of the page, "Other matters on which we are required to report by exception". My Lord will no doubt know and what my Lord will see is the senior auditor is required under the Companies Act to report on the adequacy of accounting records and information received by exception. My Lord will see that it says here:

"Under the Companies Act 2006 we are required to report to you if, in our opinion:

"We have not received all the information and explanations we require for the audit; or "Account adequate accounting records have not been kept, or returns adequate for our audit have not been received from branches not visited by us; or "The financial statements are not in agreement with the accounting records and returns.

"We have no exceptions to report arising from this responsibility."

In other words, they have received all the information they wanted, and explanations; the accounting records, as far as they're concerned, are in order; and the financial statements are in agreement with the accounting records and returns. We will say that Surge and Paul Careless rightly took comfort from this and were entitled to do so. There would have been no need for them to suspect that anything had been withheld from the auditor. The senior auditor, Jessica Miller, had everything she wanted and needed to conduct her audit. It is inconceivable that anyone would have been able to pull the wool over the eyes of the auditor, who can make any request they want. She's asked everything, she's got everything she wanted, and there it is. The claimants say, "No, no, no, you can't look at that, you can't take any comfort from that".

My Lord, if there was anybody who wasn't going to be impressed by the audit, well, we know who that would be: Mark Partridge. He wouldn't have hesitated to make his views known in his direct and unequivocal style. If anyone was going to bring Surge back down to earth with an almighty crash following that audit, it would have been him. But he doesn't. And the reason he doesn't is because he, too, is satisfied with the number as presented and in subsequent communication he refers to this figure.

My Lord, can we please have a look at the document <MDR00073897>. This is a document some months afterwards, in February 2017, the accounts having been signed off in October 2016. My Lord, the point of this -- I won't read the whole letter out, my Lord sees it. He is making direct reference in the third paragraph:

"As at 30 April 2016, the last audited accounts stated that LCF held a lien on assets valued circa £60m. That gives implied security for up to £45m worth of bonds."

What he was doing here was writing to Andy Thomson accepting that £60 million figure as a matter of fact and querying a couple of matters arising. Now, interestingly, my Lord, is that

Mark Partridge -- if we can zoom out on this letter, please, not only is Mark Partridge an accountant, but, if we look at the top left, his firm are also registered auditors. They're registered auditors. So, from auditor to auditor, here he is, reading the accounts, having read the accounts, accepted the accounts, and, as an auditor himself, the person who is advising the Surge team, advising Paul Careless, he accepts the audited figure of £60 million. Mark Partridge FCA, chartered accountant.

So, at the end of 2016, this is what we know: notwithstanding the layer of advisors, Buss Murton, Lewis Silkin, Sentient, Kobus Huisamen, Oliver Clive & Co, Mark Partridge and now PricewaterhouseCoopers, it's said that Surge and Paul Careless were supposed to know better, and all of these professionals, with all their indemnity insurances, Surge and Paul Careless should take no comfort from the auditor and the auditor's report -- the senior auditor, I must correct myself, at PricewaterhouseCoopers.

MR JUSTICE MILES: I don't think it probably means the senior auditor within PwC.

MR LEDGISTER: I'm not saying the most senior person --

MR JUSTICE MILES: I think it means her role is –

MR LEDGISTER: Is the senior statutory auditor for the purposes of this report. I'm certainly not suggesting she's the most senior person there.

MR JUSTICE MILES: Well, I don't know, but that seems a stretch.

MR LEDGISTER: Absolutely, my Lord. Following the audit, my Lord, there is independent evidence now -- there is independent evidence as to the level of security being held, and bearing in mind that Andy Thomson had been throwing out numbers to Surge over the months prior, here it was, now in black and white, that Mark Partridge was actually just being sceptical Mark again and Andy Thomson was probably right. Based on the audited accounts, there was now £60 million worth of security. Where all along he'd been saying there was security, it's now been verified by an independent third party auditor.

And the advisors continued to do their work throughout 2017, when there is another audit, Ernst & Young. My Lord, it is the same point to be made. I will just bring the accounts up. To be found at <L1/8>. This time prepared by Mr Neil Parker. My Lord, if we can just go to [internal] page 1 [<L1/8>, page 4] of the accounts, please. My Lord, can I take this in short order: value of the security, 284,725,329: "The company holds fixed and floating charges over the assets of its customers to secure the loans. At the year end, the loan to collateral value was 21 per cent ... as below ..."

The scope of the audit is set out on [internal] page 5 [<L1/8>, page 8]. I don't propose to take my Lord to it. The strategic report is considered. It also says, if we just turn very briefly to [internal] page 5, right at the bottom of the page: "The strategic report and the directors' report have been prepared in accordance with applicable legal requirements."

Of course, it's the strategic report that has the figure of 284 million. The matters that ought to be reported by way of exception, which is to be found at [internal] page 6 [<L1/8>, page 9]. Nothing to report. In other words, everything in order, everything received, all explanations that had been required had been given. Financial statements are in agreement with the accounting records and returns.

In the notes, [internal] page 20 [<L1/8>, page 23], top of the page, "Fair value of financial liabilities", the second paragraph, there is a reference to the £284 million figure. This time, it's Ernst & Young, and the accounts were signed off on 14 February 2018. My Lord, may I just turn very quickly, in connection with these accounts, to a document <SUR00144686-0001>, because Surge were impressed, but not only were they impressed, again, it's Mark Partridge, who, this time, when he receives the accounts at 8.33 in the morning -- the time will become significant in a moment, my Lord -- from Kerry Graham, she says:

"Hi Mark.

"The LCF accounts are attached.

"Let me know what you think."

Some time later, Mark Partridge replies: "Well good news."

For Mark Partridge, that's probably quite excited for him to say that:

"Well good news."

It's very clear here that he thinks that that 284 million figure is good. He says:

"EY have assessed their security at £284m which gives them 5x cover on loan book at 30/4/17. What bonds in £m have been issued since then?"

He's replying to Kerry Graham. He seems somewhat perplexed. He carries on:

"I can't quite reconcile their costs to commissions that Surge should have been paid on new bonds (at least £13m on £53m increase in bonds o/s) their cost including interest paid is only £6.6m. Not really our issue though the main thing is the bond cover looks more than adequate."

So, here you have Mark Partridge effectively saying, he can't quite reconcile the numbers here, "But it's not really our issue". This is a comment that, when Paul Careless takes a similar view, "Well, we have done what we can, not really our issue", is said to be blind-eye. Mark Partridge does exactly the same thing here and that's not jumped on: not really our issue, we have got the accounting records, it says what it says. Now, my Lord, when the claimants took my Lord to this email, I think it was last week, what they said was, the reason why Mark Partridge had responded "Well good news", it may have been, I think it was said, that he only had a short time to consider the accounts by then. Well, having received the email at 8.33 in the morning, he had an hour and 43 minutes to review it before he said "good news", ample time for a man who is a director of a company that audits themselves, the accountant, pessimistic sceptic, who has lived with LCF for a period of time by then, he had ample time. But, of course, the best the claimants can say with regards to that, my Lord, is going to be, "Well, he didn't have enough time to review it". He had enough time and he reviewed it and the figure was £284 million and that's a figure that Surge and Paul Careless took comfort from. My Lord, I hope I'm not premature this time in suggesting that this may be a convenient moment for a break.

MR JUSTICE MILES: Yes.

MR LEDGISTER: I'm grateful.

MR JUSTICE MILES: Five minutes.

(11.48 am)

(A short break)

(11.55 am)

MR LEDGISTER: From very early on in the relationship with LCF, and John Russell-Murphy in particular, we were very much aware that he was being paid 20 per cent for introductions made to SAFE. My Lord will hear this in due course. My Lord will hear we were also aware that he set up a deal for 25 per cent commissions between himself and SAFE, and that was in return for doing far less work than Surge were offering as a service. We don't propose to take my Lord to a document unless my Lord wishes me to do so, but, by explanatory background information, 25 per cent was a figure that we will say was canvassed and agreed between John Russell-Murphy and SAFE. It will come out in due course. I think my Lord may have seen documentation already.

But my Lord will hear from Paul Careless and Kerry Venn on the issue of the 25 per cent fee, and, in particular, the rate of 25 per cent was in the range of going rates for that type of service being offered. My Lord will hear evidence on this.

Now, the fee itself wasn't something that Surge was scared to reveal to other third parties or make subject to scrutiny. In fact, we would respectfully submit, and will be saying, it was common knowledge amongst the advisors and service providers to LCF. There was no secret about it.

Kobus Huisamen. He was aware of it. In the draft Surge/LCF agreement sent by Andy Thomson to Kobus Huisamen on 3 June 2016 -- it is an unsigned document, but it is in there. My Lord, I'm going to give you the reference but I won't necessarily take my Lord to the document unless you wish me to do so. The reference is <MDR00043104> for the document, and the email sending it is <MDR00043105>: so, we say that Kobus Huisamen was clearly aware of it because it's in the draft agreement.

It's been suggested, I think quite wrongly, by the claimants that the auditors were not aware of the fee, and that simply isn't right. I will take my Lord to a document. <MDR00060881>.

My Lord will recall the discussion about the forged signature of an agreement between Surge and LCF. That came about because the auditor had required the agreement -- they wanted to see sight of the agreement, and Andy Thomson, sending this email, finally got back to the office and has scanned in the agreement below. So he sends the agreement somewhat -- well, it is not the agreement that Surge were happy to put their signature to. But in that agreement that's sent by Andy Thomson, the 25 per cent figure is in there as well. And that was what went to PricewaterhouseCoopers. 7 October 2016. So they also are aware of the 25 per cent fee. And it goes on.

Ernst & Young, likewise, they were sent the agreement on 13 November 2017. Reference <MDR00111096>. And the email that it was attached to is <MDR00111099>. I think I may have it the wrong way around -- the email was the first reference, the attachment was the second reference. So EY are aware of it.

Also, my Lord, we know that EY have definitely considered it because, in a pre-audit meeting which took place on 8 November, it was considered. Can my Lord please turn to document <MDR00226609>.

This is the TP minutes. It is a pre-audit meeting. In person is Neil Parker. He is the, dare I say it, senior auditor, my Lord, for PwC -- for EY, who carried --

MR JUSTICE MILES: He is called the same thing.

MR LEDGISTER: Called the same thing. Who carried out the audit for EY. Nadir Hussain, Krishna Patel, all part of the audit team, and Tina Robertson from their tax team. My Lord, this document is the minutes of the meeting, and it tells us quite a lot, really, because, if we look at the "Understanding the business" section, and I don't propose to take my Lord through it, but here is a clear explanation where they see how the business model works. Financing is provided against secured assets with an LTV of 31 per cent. The company charges a premium of 1.5 per cent and arrangement fees of 2 per cent.

Now "Understanding the business", because, clearly, EY are looking at it, they didn't think the model was indicative of fraud.

If my Lord just goes down to just before the indentation, "Major expenses":

"Major expenses are interest incurred in relation to bonds and the following costs/charges as paid to following service providers:

"Surge: External service provider that performs marketing on behalf of LCF and carry out initial bonds application preparation. Surge receives 25 per cent of gross amounts on bonds as accepted by LCF." Not only do they know about it, they talked about it.

At the bottom of the page, my Lord, here we have EY very much with their focus on fraud:

"... discussed the three aspects of the fraud triangle ..."

My Lord can see that. Over the page, I think it is the second line -- forgive me. On the first page, the second line:

"[Neil Parker] reinforced to the team the important of being professionally sceptical at all times." Which you probably expect from an auditor. But he invited them to be sceptical at all times for fraud when carrying out this audit. They then go on and look at the bottom of the second page the inherent risks. At the middle of ... over the next page, my Lord, in the middle of that page [page 3], the "Incorrect calculation of bond arrangement fees payable to service providers". Here, again, we have consideration of the fee: "As discussed above, the service providers of the company in relation to generation of bonds are Surge, LCM and GCEN.

"These fees are calculated as a fixed percentage of the value of the loan (25.5 per cent in aggregate) and are capitalised against the loan value before being amortised over the life of the loan.

"Whilst this represents a significant cost to the company that could have a material impact if miscalculated, we noted that the fee calculation process was relatively noncomplex and that the number of bonds issued during the year was relatively low. As a result, we considered the likelihood of misstatement to be lower.

"Further, we noted that whilst the amortisation calculation adds some complexity to the expense recognition process, it is a largely mechanical calculation to spread the costs evenly over the life of the bond and that, once set up, this process had a lower likelihood of resulting in error.

"The team discussed our proposed audit approach to the calculation of these fees and agreed that the procedures as listed in the APT were appropriately designed."

My Lord, I think if we go over the page, they consider the going concern status. Forgive me, my Lord, I will find the reference to that.

Yes, my Lord, on page -- it is the last page: that's not the last page. If you keep going down, there's more. That's what was confusing me. The last page [page 6], "Going concern" on the right-hand side. In particular, my Lord, can I take my Lord to the second bullet point:

"[Neil Parker] pointed out that due to loans and bonds maturity not matching with each other, eg bonds maturity being two years and loans maturity being three years, the company might be paying off liabilities through issuance of new bonds. The same risk applies in case company is servicing its markup obligations through new bonds and not recovering markup from borrowers." So, here, they're considering the going concern status, querying whether or not new bonds are being issued and might be being used to pay off liabilities. So we say it's a full and thorough audit by EY, as one might expect, where they are considering not only the 25 per cent fee, how it affects the going concern status, the issue of fraud, and they sign it all off, clean bill of health, unqualified reports that the claimants say Paul Careless and Surge can take zero comfort from.

MR JUSTICE MILES: On the previous page [page 5], this bit about "Related Parties".

MR LEDGISTER: That was another consideration of theirs. My Lord, the issue of related parties is also covered, I think, in the notes on the actual audited accounts as well.

My Lord, we say that there are a number of entities aware of the 25 per cent fee, it was certainly no secret. In addition to EY, PwC, Kobus, Oliver Clive, the original accountants, were also aware. My Lord, I don't have that Bates reference to hand, but I will certainly provide it to the court. Correction, I do have the Bates reference, it is <MDR00095171>. Buss Murton were also aware, as they were sent a copy of the Surge/LCF agreement by Andy Thomson on 3 October 2016. That's to be found at <MDR00060232>. Macfarlanes, they, too, were also aware, and they had drafted amendments to the agreement proposed by Andy Thomson, which Surge wouldn't sign. This was very clear on the 25 per cent Surge fee, and that can be found at <MDR00092336>. And also, Lewis Silkin were also involved in preparing the IMs, who were aware of the 25 per cent fee. They had the Surge agreements in various drafts, my Lord. 3 July 2016, <MDR00092489>. Another reference, <MDR00092572>. And <MDR00092573>, which has the attachments, and the fee can be found on page 17 of the services agreement.

During the discussions, at no point did Lewis Silkin or Macfarlanes suggest that the fee was obviously uncommercial, as the claimants say.

Now, my Lord, it is our case that the 25 per cent fee was acceptable and reasonable, a reasonable rate for the services that they provided, and this seems to be borne out by third parties. If we can please turn to <SUR00147598-0001>, at the bottom of the page, please, this is an email from Alex Paschalis, who is from Thistle Initiatives. If we just have a quick look at the other page, please. They consider themselves the compliance specialists. Now, this is an email thread between Alex Paschalis and Kerry Venn on 18 June 2018. What it says here -- I will read it:

"Hi Kerry.

"I've got a UK prospect who are currently having their loan note (quite similar to minibonds) structured with UK lawyers.

"It'll be a 5 per cent coupon for 3 years. They're looking to raise £25mn.

"They're allocating 25 per cent of the raise to marketing."

25 per cent of the raise to marketing:

"They state a law firm has done DD on their offering. I haven't seen any of it.

"Their business is UK property; they buy sites for groups of houses in the UK and loan the developer the funds, et cetera.

"They're looking for a marketing company for their section 21 loan note. Are you interested for me to introduce you to them over an email?

"I don't know them beyond the information above. The intro would simply be friendly and I'd step out immediately."

So Alex from Thistle, the compliance specialists, is effectively brokering a deal and inviting Surge to represent the client for a 25 per cent fee, which is the amount they have allocated for their marketing. They obviously didn't see that was a problem, 25 per cent. But Kerry Graham, as she was then, replies: "Hi Alex.

"Thank you for thinking of us for this! I am thrilled that you would put us forward for the opportunity.

"On this one, however, I will not be able to assist because we are loyal to Blackmore, we wouldn't represent another property company. We would only be enhancing their competition."

He replies:

"Hi Kerry.

"That makes total sense. I'll keep you in mind going forward!"

So it is not a case of Kerry just jumping on the opportunity to make even more company. Here she is being loyal, doing what we say Surge did, acting properly and professionally and rejecting the opportunity to make more money, because it would be a conflict of interests.

My Lord, the claimants say that Paul Careless and Surge knew that the 25 per cent fee was obviously extravagant, disproportionate, uneconomic and/or uncommercial and/or that no legitimate and honest money lender would have been willing or able to pay such a fee. Well, that wasn't a point that struck the two firms of lawyers, the two sets of world-renowned accountants and the compliance specialists, Thistle, who were seeking to broker a deal on the very same basis. My Lord, moving on, there's been talk about raising heads above parapets. We say that scrutiny isn't something that Surge were frightened of. My Lord was taken to references where Paul Careless makes reference to raising their head above the parapet, which of course, when viewed with fraud-detection goggles, looks questionable. My Lord, he will be asked many questions about it, I'm sure, in cross-examination. What we do know is, when looking at the independent contemporaneous evidence, one can test how concerned Surge really were about raising their head above the parapet or how concerned they really were about scrutiny of their operations.

Back to, if I can call it such, the forged signature Surge/LCF agreement, as my Lord will recall, you were taken to a WhatsApp communication between Andy Thomson and Kerry Venn where Kerry Venn was not quite playing ball in signing the agreement to appease the auditors. I will take my Lord to that document. It seems to be the one reference that I didn't write.

Just by way of background, the auditors were pressing to get hold of the Surge/LCF agreement. Andy Thomson was putting pressure on Kerry Venn to sign an agreement. My Lord will recall that she didn't want to sign it because she wanted it checked by the lawyers, and so on. The reference is

<D7D9-6795> [as spoken] -- my Lord, we may have to provide the reference later. My learned junior is still looking for it. The WhatsApp communication from Andy Thomson to Kerry Venn goes something like this, where he's saying to her, "Look, can you please sign the agreement? If you don't sign it", and he says this, "The auditors will take a closer look". I don't know if my Lord can recall that. When we find the reference, I will take my Lord to the document.

So, we will say he's effectively trying to put pressure on Kerry Venn to sign the agreement, and because, until that point, she's not playing ball, he then says in the WhatsApp, "If you don't sign it, the auditor PwC is going to take a closer look". Now, we will say that this is interesting because it gives real insight to the mind-set of the Surge actors and their thinking and beliefs, because, notwithstanding Kerry receiving this message, what she doesn't do is immediately return the signed document; what she doesn't do is, we don't see any evidence of her sending a message to Paul Careless saying, "We need to sign this, let's get it signed". She does communicate with Paul Careless, effectively complaining about the pressure that she has, being placed on her by Andy Thomson. There is dialogue. And she is effectively saying, "We need to do this properly". That was the explanation she gave to Andy Thomson, "I'm not going to be rushed into signing this agreement. We need to do it properly".

Instead, what she does, rather than send him the signed agreement by return, she digs her heels in, sends it to her lawyers to get proper advice on getting the agreement done properly. There's no reference over the following days by her even mentioning the fact that the auditors are going to take a closer look, to Paul Careless or anybody else. Doesn't even mention it. Completely irrelevant. No consequence whatsoever. As far as Surge are concerned, they can look all they want. So much so for the threat. It is not until some seven months later -- seven months later -- does Kerry Venn say, "Here we are, now the document is ready. Now the document is ready. They are going to take a closer look. Let them look. Let them look". Seven months later she sends the document.

So, so much for Surge being panicked about close scrutiny.

My Lord will know that the Serious Fraud Office had investigated Surge, Paul Careless, and discontinued proceedings against him. My Lord will hear that. My Lord will hear that Kerry Venn remains a witness in support of the SFO.

My Lord, we will respectfully submit that, if one were to look at the information available in this instance, in this case, it doesn't point towards fraud, it doesn't point towards wrongdoing on the part of Surge and Paul Careless. They did everything they could. They asked all the questions they could., they employed the services of sceptical Mark Partridge, they told everyone about their 25 per cent fee, they received the audit from EY, from PwC, both give it a clean bill of health. EY and PwC having seen the 25 per cent fee. They didn't jump through hoops to make sure nobody took a closer look. They stood their ground and took their time. They didn't know the world was watching. And yet, still, the claimants can't point to any piece of evidence that is categoric about dishonesty on their part in terms of them knowing about the fraud or turning a blind eye to fraud. They did the opposite. They asked all the questions they could time and time again. Even when they were told it's fine to proceed, for example, with the non-transferable ISA, they still questioned and challenge and queried it. My Lord will hear all the evidence. I don't propose to say much more. Paul Careless will give evidence, he will be tested. Kerry Venn will give evidence as the person in charge of operations and she will be tested. My Lord, just turning to the matters of pleading, if I can, please, like Mr Warwick did yesterday, there are matters which we say have not been properly pleaded that the claimant now relies on. In particular, my Lord, the allegation that Paul Careless knew that LCF was making payments to Spencer Golding. That's not pleaded. The allegation that concerns were raised on the

MSE forum -- that's to be found at M1.8 of the claimants' written opening. The allegation that D5 and D6, Paul Careless and Surge, had knowledge of the fraud because of Mrs Venn's concerns over Surge becoming LCF's appointed representative. That's not pleaded. That can be found at M20 of the claimants' written opening. There is no pleaded allegation that D5, D6 or Mrs Venn knew that the ISA bonds were not eligible for tax-free status and that claims being made by LCF were untrue. That's to be mound at M21.

The allegations regarding involvement with LCF 2, as defined in the written submissions, to be found at the claimants' written opening at M22 and M28, are not pleaded. The proposed Isle of Wight deal is not pleaded, to be found at the claimants' at M30. And also the allegation that Mr Careless knew that LCF was making payments to Mr Golding, that's not pleaded, and that point can be developed in due course if my Lord needs me to, but there are a host of points that have not been pleaded that the claimants rely on and we would respectfully submit that -- my Lord, of course, will rule on this. Clearly, there are issues that go to credit and they were discussed yesterday. We adopt Mr Warwick's submission insofar as how my Lord should treat the unpleaded points.

MR JUSTICE MILES: Sorry, did you say the allegation that LCF was making payments --

MR LEDGISTER: Directly to Spencer Golding.

MR JUSTICE MILES: One of the questions that arises in relation to a number of the points about the pleadings is that -- where there's sometimes a difficult line to be drawn, is that there may be some evidence in relation to certain events which is not -- where those events are not specifically pleaded but they evidence the state of mind of the actors in the case.

MR LEDGISTER: My Lord, yes.

MR JUSTICE MILES: So, for example, on your list, the allegations concerning the LCF 2 matter. Now, obviously, I'm not reaching any view on that at the moment, but, just by way of example, the claimants rely on certain aspects of those discussions to say, "Well, that shows that the various defendants understood that to be similar to LCF 1, and what's said in those communications therefore throws light on what they understood about LCF 1".

MR LEDGISTER: My Lord, yes.

MR JUSTICE MILES: It is not a separate case which is being brought in relation to LCF 2 in the sense that anyone is relying on it as part of the case, but that it is evidence of what people understood about LCF 1 –

MR LEDGISTER: My Lord, yes.

MR JUSTICE MILES: -- and that may be an example of where it's -- it's not like a case where someone is alleging an entirely separate case in deceit or a separate conspiracy, or whatever. It's, as I understand it, relied on as evidence of the parties' understandings about LCF 1, ie, LCF.

Now, generally, the court is able to listen to evidence about the state of mind of parties which is relevant to the allegations which are made. It may be that, in relation to a number of these points, it is a question of seeing how the evidence comes out. It may be that there is a sort of line to be drawn where, if it is being relied upon to evidence what people understood at an earlier stage, then that's one thing. If it is being relied upon or the cross-examination appears to be directed to, as it were, setting up a new case, then obviously that wouldn't be acceptable. Obviously I haven't heard from

the claimants yet, but these are quite difficult lines to draw, and it can be difficult to do so in advance of knowing what the cross-examination is going to be.

MR LEDGISTER: Indeed, my Lord. I think, as far as, for example, LCF 2 being looked at as -- in the context of important explanatory background information, I think that there could be no quarrel from this side of the Bar, if the claimants were to take that view. I think it is where the claimants seek to rely on it as direct evidence, somehow, of it being knowledge of a fraud in the wider LCF picture is where we will take issue. But my Lord is quite right, and, as the case develops, we will hear clearly what's being asked and we can take it from there.

MR JUSTICE MILES: Well, I have got to hear from the claimants about all of these pleading points, but it is an observation that I make at this stage that it is not always easy to draw a hard and fast line between what are allegations, as it were, of particulars of fraud and knowledge, and what counts as evidence in the case supporting those particulars. It is often a very difficult line to draw, particularly in large cases. That may go to the question of the extent to which it is really feasible to make rulings in advance, as it were, about the scope of the evidence which is sought to be adduced through cross-examination.

MR LEDGISTER: Understood, my Lord.

MR JUSTICE MILES: Anyway. There it is.

MR LEDGISTER: My Lord, unless I can assist you any further.

MR JUSTICE MILES: No, that's very helpful. Thank you very much for your submissions.

So, I gather -- Mr Sedgwick has been observing the proceedings. I gather -- is it possible to allow Mr Sedgwick -- is he able to speak so that we can hear him?

At any rate, I gather, from indications that were helpfully given to me by Mr Warwick yesterday, that Mr Sedgwick doesn't, in fact, wish to make opening submissions, and so I am going to operate on that basis. There has been no contact, as I understand it, from the seventh and ninth defendants to suggest that they wish to do so. Is that right? No-one has heard --

MR ROBINS: My Lord, we haven't heard anything.

MR JUSTICE MILES: So, I think what we will do now, then, is adjourn until Monday. It seems to me, Mr Robins, it is more sensible for you to respond on what I call the pleading points once all of the defendants have had their say, rather than doing it piecemeal. Does that seem sensible?

MR ROBINS: My Lord, yes. I think, if Mr Thomson had made clear that he wasn't taking any pleading points, we might be in a different position, but he's made clear in his opening submissions that there are some he would like to take.

MR JUSTICE MILES: I think it best to hear from you after all of the defendants have opened. It is an unfortunate situation that some delay is required, but it seems to me that, in order to ensure that the defendants have a proper opportunity to make their submissions at this stage in the trial, a short adjournment of that kind is required. So that's what I shall do.

On the question of your application for disclosure, are the parties happy for me to deal with that now on the papers, or does anyone wish to make any further submissions in relation to that?

MR WARWICK: No further submissions, my Lord, no. On the papers will be fine, so far as we are concerned.

MR LEDGISTER: No, thank you, my Lord.

MR JUSTICE MILES: I will consider that on the papers.

MR ROBINS: I'm grateful.

MR JUSTICE MILES: We will resume, then, on –

MR LEDGISTER: Before my Lord rises, I have that reference.

MR JUSTICE MILES: Let's put it in the transcript.

MR LEDGISTER: The reference for the WhatsApp conversation between Kerry Venn and Andy Thomson is to be found at <D7D9-0006795>.

MR JUSTICE MILES: Do you want me to look at that now?

MR LEDGISTER: I don't ask my Lord to look at it now.

MR JUSTICE MILES: It is in the transcript. We will resume on Monday, thank you.

(12.37 pm)

(The hearing was adjourned to Monday, 18 March 2024 at 10.30 am)

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