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 19 - Monday, 25 March 2024

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

Michael Andrew Thompson (D1) is represented by Miss Anumrita Dwarka-Gungabissoon

Simon Hume-Kendall (D2) & Helen Hume-Kendall (D10) settled and are no longer appearing

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

Monday, 25 March 2024 (10.30 am)

MR JUSTICE MILES: Yes. I am wondering whether, Mr Ledgister, you come first on this.

MR LEDGISTER: My Lord, yes.

Reply submissions by **MR LEDGISTER**

MR LEDGISTER: My Lord, I can take the points very quickly, I hope. I have seen that my Lord has very much got the points in mind. We have made our submissions initially and Mr Robins has responded to them.

First of all, my Lord, I think it is a simple point insofar as we say, with regards to the Isle of Wight and Spencer Golding issues, if the claimant seeks to rely on those matters as evidence of fraud in any way, they should make amendments and plead.

MR JUSTICE MILES: That's the payments to Mr Golding.

MR LEDGISTER: Indeed, my Lord. From LCF. Again, I say my Lord very much has that in mind and we need not say more about that.

Insofar as the handling of various facts, the claimants are entitled, of course, to use and deploy them in a number of ways, be it to rebut, be it on the basis of attacking the credibility of the defendant and Mrs Venn, there is nothing stopping them doing that, we could have no quarrel. And also, of course, if it forms important explanatory background information, of course they are entitled to rely on it.

What they can't do, we say, however, is to plead it as evidence of knowledge of fraud, unless it has been properly pleaded.

The rules and the law is very clear on this. In particular on fraud. And there must be specificity. Certainly where an inference is to be invited from certain primary facts.

With regards to Mrs Venn's concerns, my Lord, we would say that if the claimant wished to rely on those again as forming a positive case against the defendants, be it actual or constructive insofar as knowledge is concerned, it must be pleaded. They simply can't rely on the denial of the defendants to certain points that have already been pleaded and seek to introduce those primary facts through the back door, upon which they ask the court to infer knowledge. That can't be done. With regards to LCF 2, they are entitled to rely on that if it goes to state of mind and, again, for any other purposes, but, again, if it is for the purposes of relying as primary facts upon which knowledge can be inferred, we say it must be properly pleaded. My Lord, I don't propose to rehearse what I have said already but, given my Lord's observations, what we say is that we will wait to see what the claimants have to say in any reamended particulars, we will consider them at that point, I am not saying we are going to roll over on them, but we will certainly consider them. Of course, we will say they should have made them by now if they were going to make any reamendments, but that is an argument to be had at a later point. We will wait to see what they say and we'll take it from there. Broadly, those are our submissions in response to what Mr Robins had to say last week, Thursday. Of course, I can assist my Lord and go further, if needs be.

MR JUSTICE MILES: Yes. Can I take it a little bit further? I understand your points about the first couple of examples, but taking it -- some of the points which are made are actually quite discrete bits of evidence. So say -- I am now paraphrasing, but suppose that there is a message where Mrs Venn says, "We don't trust this company".

MR LEDGISTER: Yes.

MR JUSTICE MILES: Now, as you say, that is something that can be explored, you accept that, with the witnesses. It might go to the question of whether what the witness has said in the witness statement is to be accepted, whether actually what is said in the defence is to be accepted. How does that tie in to the -- sorry, I will put it another way. Is that then something -- supposing that the court concluded that, indeed, your clients did not trust this company, and that is obviously a big assumption because you would argue that that document has to be seen in context and so on. But just assume that against yourself for a minute. Is that something that the claimants would be able to rely upon? They have pleaded that Surge made various enquiries of LCF which were never satisfactorily answered, are they able to rely on that fact, if it is established, that Surge did not trust LCF under that particular?

MR LEDGISTER: My Lord, we would say that, using this particular message as an example, that is actual evidence which -- there is nothing stopping the claimants from pleading that. We say it should be properly pleaded because it is a material piece of information upon which they will be relying on to suggest that there is clear distrust, if I can put it that way, and, flowing from that, knowledge of fraud. We say that should be properly pleaded, if, indeed, that is the case.

Of course, they could use it in cross-examination, they can use it in rebuttal, but if they are using this as a pillar of their case, their positive case against the defendants, we would respectfully submit that that ought to be pleaded and their pleadings should be amended to reflect that they are reliant on that particular statement or that particular message, that particular belief held by Ms Venn, as a pillar of their case against the defendants.

MR JUSTICE MILES: I mean, generally speaking, pleadings are required to set out the case obviously so that the defendant, the other party, can understand it, but they are not generally required to plead every item of evidence that is relied upon. There is a distinction between the pleading of the allegation sufficiently clearly and the particular bits of evidence which are relied upon.

Supposing that they had said in terms, as part of their case, that Surge did not trust LCF, they had said that in terms, could it then be said that the particular example that they are relying on is just a piece of evidence going to that allegation?

MR LEDGISTER: Absolutely, my Lord. I think we would have to concede that. I think, if that broad point had been pleaded, that would certainly envelop Ms Venn and her message. But we say it is a fundamental pillar which goes to knowledge, we would say. And, in that case, it should be pleaded.

If the claimants had done as my Lord has suggested, effectively, that Surge didn't trust LCF, of course it would be covered. And I don't think we could have any problem on that point.

MR JUSTICE MILES: Yes.

(Pause).

Just give me a moment.

(Pause).

Is there a hard copy of the pleadings available?

MR ROBINS: We can make it available.

MR JUSTICE MILES: Could we just get up the particulars of claim. It would be helpful if I could have that, please.

(Pause).

MR ROBINS: Page 48, my Lord. Oh no, it won't -- I am in the wrong document. It is going to be <B1/2>, page 48.

MR JUSTICE MILES: Sorry, okay, let's have a look. (Pause).

Right, can we go over the page, please. Yes, and then over the page.

(Pause).

Yes.

(Pause).

Right, okay. Yes.

MR LEDGISTER: So, my Lord, you know, nowhere does it say that Surge didn't trust and, therefore, that is something from which the court can infer. And that is the reason why I make the point.

Of course, again, if the particulars are amended, we will have to see what they say and take it from there.

MR JUSTICE MILES: Right.

MR LEDGISTER: I am grateful.

MR JUSTICE MILES: Thank you very much. Yes.

Reply submissions by **MS DWARKA**

MS DWARKA: My Lord, my submissions will be very short. I know that Mr Robins was not sure if we were adopting the submissions of Mr Warwick on the effect of rule 32.19 or on everything else. We are obviously only adopting the submissions made relevant to rule 32.19. We cannot adopt anything else.

On that, our view is this: the obligation on them is to make sure, or make it clear to the other parties, that they are questioning the authenticity of the documents in question. Under the rules, it does not really matter how they make it clear, so long as they do. Mr Robins made the point that the rules did not apply to documents the claimants produced themselves. But only to documents produced by other parties. But that is not quite right. If they receive a document from another party and they question its authenticity, they have to give notice under the rule. If they produce the documents themselves, then they have to produce a description of it in their list of documents, and that description would have to make it clear that they regard it as not being authentic.

The intention, obviously, is to avoid the situation which has occurred here, where the parties come to trial and a point relating to authenticity has not been flagged up in advance.

I listened to Mr Robins very carefully on Thursday afternoon and I have to say that, by the end of it, I was not quite sure whether he was saying they have complied or not. If they have complied, then that is the end of it. If not, then they need to make a proper application with supporting evidence and we reserve our position until they do.

Mr Robins was speculating about what application they could make. That is a matter for them, but, if it helps, we believe that they would have to make an application to withdraw the admission and also an application for relief from sanctions. The admission is the admission, the sanction is the rule which prevents them from raising it now. So they would need both.

Those are my submissions on that point.

MR JUSTICE MILES: So you say, on the last point, that he has to make a formal application, do you?

MS DWARKA: Yes. In respect of -- within the application, an application to withdraw and an application for relief.

MR JUSTICE MILES: Well, can you make a submission as to why it would require relief from sanctions? Because the argument on the other side was that it would simply require a withdrawal of the admission, not relief from sanctions, because the rule doesn't have a sanction in it.

MS DWARKA: Well, our view is that it is late for them to raise the point now and they haven't made it clear before. Because the rule requires them to make it clear and that point is we are taking.

MR JUSTICE MILES: But that would be -- the lateness would presumably be something that would go into the discretionary exercise of the court in deciding whether to allow them to withdraw from the admission. So I can see that lateness or lack of promptness or however you put it is relevant to the exercise of discretion, but it doesn't follow from that that they require relief from sanctions.

I'm just looking at the rule. It doesn't have a sanction attached to it, it simply says that, unless a notice is served within the necessary timeframe, a party is deemed to admit the authenticity of the document. So, in other words, it tells you what the consequence of the lack of a notice is.

MS DWARKA: We could see that, my Lord, but as we were also not very sure whether they had to make both, our view is they should make both to be able to cover all bases, just in case.

MR JUSTICE MILES: Right. Do you submit that you are not in a position to make submissions about that application? It was made informally, as I understood it, by Mr Robins as his fourth submission. Do you say that you are unable to deal with that?

MS DWARKA: Unless I see what the application says, yes, we reserve our position, my Lord, on that point.

MR JUSTICE MILES: Well, he said that the application was to withdraw the admission. I mean, that part of it isn't very complicated. Is that not something you can deal with now as a matter of submission?

MS DWARKA: My Lord, that is all we wanted to say in respect of that. That is just the reply.

MR JUSTICE MILES: Do you want to -- for example, one of the factors that would have to be taken into account is the potential prejudice to the parties of either allowing the admission to be withdrawn or not allowing it to be withdrawn. Do you wish to say anything about that? The question is, what prejudice would be suffered by your client if the admission was now withdrawn?

MS DWARKA: The prejudice is this. I think, until very recently, it wasn't very clear that they were disputing the authenticity of the July 2015 SPA. That is a new information which came about by them doing so. So, had they wanted to do that, that should have been made clear in one way or another. So to do so now is just late and it will prejudice my client.

MR JUSTICE MILES: How will it prejudice your client, other than being late?

MS DWARKA: Well, he hasn't really prepared himself to deal with anything. He is ready to deal with the case that has been pleaded, in the way that the claimants had pleaded it so far. And that wasn't made clear, that the July 2015 document was being questioned as being authentic and made at the time.

MR JUSTICE MILES: Well, he pleaded those documents, so that was before disclosure had taken place, at quite an early stage in the case. He has pleaded them and, therefore, said that they are real and he has said in his witness evidence that they are real. Now, obviously, it is always prejudicial to a party if the other side -- in one sense, if the other side withdraws an admission, because they then are confronted with a point that was otherwise common ground. So, in one sense, the withdrawal of an admission is always prejudicial because it means that that point is now in issue where it wasn't before. But what I think is meant by "prejudicial" in this context is, if, in some way, the process has been unfair to the party -- so, for example, that there is evidence that they would have wished to adduce, like expert evidence or something of that kind, which they are not in a position to adduce.

In other words, that there has been something in the process which means that it is now unfair to withdraw the admission. It is something along those lines. It is prejudicial in that sense.

Now, what would be prejudicial in that sense about allowing the admission to be withdrawn?

MS DWARKA: Well, until now, my Lord, we were working on the basis that the July 2015 was not being questioned, so there is no disclosure made in respect of that point by our client to show that that was prepared in 2015 rather than what the claimant is saying. So it is prejudicial to our client.

MR JUSTICE MILES: Is it your position that there would be further disclosure about that question?

MS DWARKA: There may be, my Lord, I just don't know, because that was not considered at the time. Now, we weren't instructed at the time and Mr Thomson had been representing himself for quite a while, until the firm was instructed. So I am not able to confirm right now what the position is, but we would say that there will be some prejudice and unfairness towards the first defendant if the admission is allowed to be withdrawn.

I don't intend to say any more than that, my Lord, but that I think that is where we are on it.

MR JUSTICE MILES: Well, are you able to -- you may not wish to, but I will give you the opportunity to explain that a bit more fully to me. How do you say that there is the prospect of further disclosure about these documents which has not been given?

MS DWARKA: There shouldn't be, my Lord, because disclosure requires all relevant documents to be disclosed, whatever the position. So there shouldn't be. But I won't be able to confirm to you now that there isn't anything that could have been provided as a way of an explanation had that point been made very clear in one way or another by the claimant at some point in the past.

MR JUSTICE MILES: Well, are you able to tell me whether any enquiries have taken place in relation to this since the point was raised by the claimants?

MS DWARKA: I am not able to confirm that. I don't have instructions. I wouldn't know.

Can I take one minute just to find out? (Pause).

MR ROBINS: My Lord, while that is happening, may I just remind your Lordship that Mr Thomson's knowledge of the MoU and SPA, purportedly dated 15 July 2015, was part of disclosure issue 81.

MS DWARKA: In response to that, my Lord, we would say that wasn't very clear. Although it was in the list, it should have been made in a clearer way that that is being taken as an issue. But those are my submissions, my Lord, in respect of that.

(Pause).

MR JUSTICE MILES: I mean, this isn't a particularly -- I have to say -- helpful approach. The point was raised last week. We heard this being dealt with on Thursday. The claimants raised this point about the authenticity of these documents in their oral opening some little time ago now. You have had since Thursday last week to take instructions on this point and it was clear, from what Mr Robins said, that one of the questions that would arise was the question of prejudice. He went through that.

Now, you have just said to me, in a very generalised way, it may have made a difference to disclosure, but you haven't been able to give any detailed explanation of that. These points that arise in the course of a trial need to be dealt with quickly because we are about to get on to the evidence.

I will just go on to hear from Mr Robins a moment. Mr Robins, the point which is made is that a proper application is required for this purpose and you haven't made such an application and that they say it should be made on evidence. What do you say about that?

Submissions by **MR ROBINS**

MR ROBINS: Well, your Lordship can hear the application informally and, ultimately, it is a matter of applying the various factors in CPR 14.5. There is no further evidence in the strict sense relevant to the exercise of the multifactorial assessment that the court has to perform. All the relevant materials are in the trial bundle and I took my Lord to the materials that we rely on in my submissions last Thursday afternoon. The only potential prejudice which has been identified is the suggestion that there might conceivably be further disclosure. It is very difficult to see how that could possibly be the case, given that disclosure issue 81 encompassed Mr Thomson's knowledge of the MoU and the SP**A.**

We got these documents from his disclosure, from the disclosure of the other parties. We only got them because the disclosure issue was included and the parties specifically turned their mind to identifying and disclosing documents pertaining to the genesis of these two agreements. So it seems to be pure speculation, without any proper basis in the facts, to suggest that there could conceivably be some further documents out there.

The only reason there could be further documents out there is if the parties hadn't properly performed their disclosure obligations, but I don't think that is being suggested.

MR JUSTICE MILES: Does issue 81 -- is it 81?

MR ROBINS: Yes.

MR JUSTICE MILES: Does that cover both those agreements?

MR ROBINS: Yes.

(Pause).

MR JUSTICE MILES: Right. Thank you.

Ms Dwarka, I am inclined to say that the application can be made informally because it is the kind of application that just has to be dealt with in the course of a trial like this. I am going to give you a

short opportunity to take instructions to see whether there is anything more you can say about the question of disclosure, bearing in mind that disclosure issue 81 encompassed Mr Thomson's knowledge of the MoU and SPA purportedly dated July 2015 and how it is that you say that there could be further disclosure given which might throw light on the date of these documents which hasn't already been given.

I am keen to obviously deal with this before the start of the evidence because it is going, no doubt, to be one of the matters which will be explored in the course of the evidence.

How long do you need to take instructions on this particular point?

MS DWARKA: Maybe 15 minutes, my Lord?

MR JUSTICE MILES: I am going to be generous and give you half an hour because I want to be able to deal with these questions.

MS DWARKA: Thank you, my Lord.

MR JUSTICE MILES: We will come back at 11.30 am. (11.01 am)

(A short break)

(11.30 am)

MR JUSTICE MILES: Yes.

MS DWARKA: My Lord, I have some instructions on the point. The team did seek further instructions following the point being made last Thursday and I don't believe that there would be any further documents per se, but the point is more -- it is not a matter of disclosure not having been made, because the issues would have covered everything that should have been found in terms of disclosure, it is more a matter of pleadings. It was just not made clear in the pleadings that the authenticity was taken as a point.

At various points within the pleading, the words "purported date" or "backdating" have been mentioned, but we say there is a difference between questioning the authenticity of a validity a document or backdating. Those are my instructions, my Lord.

MR JUSTICE MILES: Okay. Thank you.

Right. I don't think, Mr Robins, there is anything more you need to say on that.

MR ROBINS: Not unless your Lordship has any questions.

Ruling

MR JUSTICE MILES: I have to rule on two matters. First, some points about the scope of the pleadings and, secondly, a point about the authenticity of certain documents.

The first point concerns the case against the Surge defendants, that is to say the fifth and sixth defendants. They submit that there are various parts of the opening submissions of the claimants which are not covered by the pleaded allegations. These are identified in paragraph 13 of the Surge defendants' opening written submissions.

The Surge defendants submit that it is a requirement of the rules of pleading that any matter from which an inference of knowledge is to be drawn must be specifically pleaded.

The first matter to which objection is taken is an allegation that the Surge defendants knew that LCF was making payments to the fourth defendant. In relation to this allegation, counsel for the claimants points out that, in paragraph 42(5)(iv) of the re-reamended particulars of claim, which I will call "the particulars", it is alleged that it is to be inferred that the Surge defendants knew that other people involved in the business were involved in the misappropriation of bondholder monies.

That plea starts with the words "In the premises". The premises are, in essence, to do with the 25 per cent commission payable to Surge, the allegation that that was something that no honest lender would do, and the allegation that Surge knew that the 25 per cent commission was not disclosed to investors. There is no real dispute that the Surge defendants knew of the connection of the fourth defendant to LCF. In paragraph 42(10) there is an allegation about online comments and about the absence of any evidence that LCF lent monies to SMEs and that it could be regarded as a sham.

Paragraph 43 contains an allegation of blind-eye knowledge. It is alleged that the Surge defendants deliberately refrained from making enquiries because they suspected fraud.

In the defence, the Surge defendants plead that they were not aware of any payments by LCF to other individuals or companies as alleged in the particulars of claim. That is to say, they say that they did not know of the payments. That plea is made in paragraphs 5(9)(b)(ii) and paragraph 12(5).

There is also a general plea in paragraph 5(9) that Surge honestly believed that they were providing services to a respectable company operating a bona fide lawful and legitimate business. This is also a theme of the witness statements where the point is made by both Mr Careless and Ms Venn.

The list of issues for trial includes, at issue 122, the knowledge of the Surge defendants of the payment of monies by Surge to Mr Golding. I note that that issue does not refer to payments by LCF itself to Mr Golding. The Surge defendants accept that it may be open to the claimants to cross-examine the Surge defendants about these matters, either as part of the general background or in rebuttal of their defence, or possibly as going to questions of credibility. However, they contend that, insofar as the claimants wish to rely on Surge's knowledge of payments to Mr Golding and to make a positive case in that regard, it should be pleaded.

I have concluded that this is a matter that should be pleaded if the claimants wish to rely upon it as part of their positive case on which to infer knowledge of fraudulent trading. It seems to me that it has not been sufficiently pleaded so far, albeit it is a point which is very close to the pleaded case. It also seems to me that the general positive case advanced by the Surge defendants is relevant in this regard as the Surge defendants have chosen to invite the court to conclude that they believed LCF to be a legitimate bona fide business at all times. It is for that reason that I say in part that it is close to the currently pleaded case but I think, on balance, the Surge defendants are correct to say that it should be pleaded out. I reach the same view in relation to the allegations referred to in paragraph 13(f) of the opening skeleton of the Surge defendants, which relates to a potential property transaction in the Isle of Wight from which Mr Careless and/or Surge stood to benefit and which potentially involved the use of monies from LCF. It seems to me, again, that that is a matter which it would be open to the claimants to raise in the course of evidence by way of rebuttal of the general defence put forward by the Surge defendants that they always believed LCF to be an honest and legitimate business, and possibly in relation to questions of Mr Careless' credibility as a witness. However, it seems to me that if the claimants wish to rely on it as the basis of a positive inference of knowledge of fraudulent trading, it should be pleaded and it is not pleaded at the moment.

The next objection at paragraph 13(b) is an allegation that concerns were raised on the Money Saving Expert forum. It is said that this is not pleaded. The claimants rely on paragraph 42(10) of

their particulars of claim, which refers to online posts. They also point out that this is addressed in the Surge defendants' witness statements. I consider that this aspect of the case is sufficiently pleaded. The claimants have referred to online posts and the documents that they refer to fall within that definition.

The next objection concerns an episode concerning the possibility of Surge becoming LCF's appointed representative and Mrs Venn's concerns about it. The real point of this part of the story from the claimants' point of view is the allegation that Mrs Venn said that LCF was a company that they did not trust. As I understood the submissions of the claimants, they were not relying on the status, or otherwise, of Surge as the proposed appointed representative of LCF. Rather, they relied on this as an example of the Surge defendants not trusting LCF or Mr Thomson. This is one example of a number of documents which the claimants rely on to contend that the Surge defendants did not trust Mr Thomson.

Again, the Surge defendants submit that it would be open on the pleadings for the claimants to explore this episode with the witnesses, either to rebut the defendants' case or in relation, possibly, to the credibility of witnesses. But, again, they say that it is not expressly part of the claimants' positive case from which an inference of knowledge of wrongful trading can be drawn.

It seems to me that, again, the Surge defendants are correct to say that this should be pleaded if it is to be relied upon. However, I wish to emphasise that it seems to me that it is very close to the line, in this sense: the Surge defendants have pleaded and adduced evidence that they believed at all times that LCF was a legitimate bona fide business and, clearly, evidence which suggests that they did not trust LCF is potentially probative to rebut that case. The rebuttal of that case is very close to the case of the claimants, that the Surge defendants knew of the fraudulent trading of the company. However, it does seem to me that, as a matter of the rules of pleading, if the claimants wish the court, at the end of the trial, to draw an inference that the Surge defendants knew of the fraudulent trading, that is something that should be spelled out in the pleading, to the extent that it turns on evidence that the Surge defendants did not trust what they were being told by LCF. The next point is that there is no pleaded allegation that the Surge defendants knew that the ISA bonds were not eligible for tax free status and the claims being made by LCF were untrue. It seems to me that this is essentially in the same category as the matter I have just dealt with. Again, the claimants are not relying, as I understand it, on the question of tax-free status or not, they wish to rely on the communications within Surge about what they understood LCF to be saying to them and their reactions to that. In particular, whether they thought that what was being said was honest and consistent.

It seems to me, again, that it is open to the claimants on the existing pleadings to explore these matters with the defendants in the course of cross-examination in rebuttal of the defendants' general case that they believed the business of LCF to be legitimate, bona fide and honest, and possibly in relation to questions of credibility. However, again, I think that the Surge defendants are right to say that this should be spelled out as a matter of pleading if the claimants seek to rely upon it at the end of the trial as part of their positive case.

The final matter of objection concerns allegations concerning what has been called LCF 2. This was a potential further enterprise for the raising of monies from investors. Under the documents, it appears to have been regarded as a form of contingency planning to cover the case of LCF being closed down.

It appears from the claimants' opening that they are not seeking to rely on the events concerning LCF 2 in order to suggest that it ever took place. It clearly did not, in the end, happen. They seek to rely upon it in order to throw light on the state of mind of the Surge defendants about LCF.

They say that, to the extent that the communications about LCF 2 show that the Surge defendants understood, for example, that monies were to be raised for the benefit of businesses connected with the other defendants, or that there would be payments made from the proposed LCF 2 to other defendants, that would be of relevance to their understanding of LCF. The situation is, again, the same as before. It seems to me that it is open to the claimants on the existing pleadings to explore these matters with the witnesses, at least by way of rebuttal of the defendants' general case that LCF was a legitimate, bona fide and honest business, and also, possibly, in relation to questions of credibility. However, again, it seems to me that if they wish to rely upon these matters as particulars of knowledge, then that needs to be pleaded.

To summarise, it seems to me that all of the matters that the claimants wish to rely upon are matters which they are entitled to explore further in evidence with the witnesses, but that, if they wish to rely upon them as the basis of a positive case of knowledge of fraudulent trading, that should be pleaded and I do not think that it is sufficiently pleaded at the moment. However, each of the matters seem to me to be very closely related to questions which are in issue in the existing pleadings by reason of the pleas which I have already referred to.

I turn to the question of authenticity of certain documents.

There are various allegations in the case of the deliberate backdating of documents. These include a number of transactional documents, both concerning borrowings from the alleged connected borrowers from LCF and/or LOG, and various sale and purchase agreements and similar documents which are referred to at length in the pleadings.

There are two particular documents which are, first, an MoU and, secondly, a sale and purchase agreement which purport on their face to have been created in July 2015. Those documents have been pleaded by a number of defendants, including the first defendant, who has alleged that they were indeed entered into in July 2015.

The authenticity of those documents has not been put in issue by the claimants' pleadings, unlike some of the other documents that I have referred to in compendious terms.

In the course of the oral opening, the claimants submitted that there was evidence that the two documents had, in fact, been created after the intervention of the FCA in the business of LCF. They say that there is metadata which shows that the MoU, in particular, was created in December 2018. That is to say several years after the date appearing on the face of the document. The first defendant contends that it is not open to the claimants to assert that the documents were created otherwise than on the date they purport to bear. The first defendant relies on the provisions of CPR 32.19, that provides:

"A party shall be deemed to admit the authenticity of a document disclosed to him under Part 31 (disclosure and inspection of documents) unless he serves notice that he wishes the document to be proved at trial." At subparagraph (2), he provides:

"A notice to prove a document must be served: (a) by the latest date for serving witness statements; or (b) within seven days of disclosure of the document, whichever is later."

The claimants contend that they should be allowed to conduct the trial on the basis that the two documents were later creations and were not created in July 2015. The claimants make four submissions in support of their position.

The first is that rule 32.19 applies only to documents disclosed to a party and does not apply to documents disclosed by a party. To make this intelligible, I will explain this by saying that the rule, on their submission, does not apply to documents disclosed by a party (A) but only to documents disclosed to that party by another (B).

They also contend that the rule only applies where the document is exclusively disclosed by party (B). They say that it does not apply where the document has been disclosed by party (A) and party (B). Here, the relevant documents have been disclosed by both the claimants and the first defendant to one another. They have also been disclosed by certain other defendants.

The claimants contend that this is a sensible interpretation, which gives practical effect to the rule. They point out that documents may be provided in a number of different forms: some, photocopies or PDFs; others, electronic. And they say it would be very surprising if the rule were to apply in a case where the relevant party which is supposed to have made the admission has itself disclosed a copy of the document. I am unable to accept this submission. It seems to me it is implicit in rule 32.19 that, where a party discloses a document to the other, that party is to be taken to be asserting its authenticity. The rule then says that the receiving party is deemed to admit that authenticity.

It must, therefore, be the case that the serving party is to be taken as asserting the authenticity of the document, as otherwise there is nothing for the receiving party to admit.

Putting it another way, the only thing that can be admitted is an assertion of some kind, and the structure of the rule, as it seems to me, means that the serving party must be taken to have made such an assertion. It also seems to me that this is a practical way of reading the rule. The purpose of it is to give parties notice of any case being advanced by any party that a disclosed document is not what it appears to be on its face. The rule is designed as a matter of fairness. It seems to me it would be surprising to require the receiving party to give prior notice that the document is disputed as to authenticity, but for the disclosing party not to have to do so.

There is a second point in relation to the first submission. It seems to me that, even if what I have said so far is not right, I cannot see a reason for reading down the rule in a case where there is mutual disclosure of the same document. In such a case, party (B) as well as party (A) has disclosed a document and, on its face, the rule then applies. I can see no reason, in order to give the rule a practical reading, to subject it to the proposed qualification. The claimants' second submission is that where an electronic document is disclosed with metadata which shows it not to have been created when it purports to have been created, the rule has no sensible application. The claimants' relied in this regard on CPR 31.4, which defines the document as including its metadata. The claimants said that where, for example, an agreement which was, on its face, dated July 2015, but where the metadata shows it was created in 2018, and a party wishes to say that the agreement was not created until 2018, there is no real question about a challenge to its authenticity as the metadata is just as much a part of the document as the apparent contents of the document as they would appear to a reader.

Again, I am unable to accept this submission. It seems to me that, giving the rule a reasonable reading in accordance with the overriding objective, it requires a party challenging the purported contents of a document, including its date, to serve a notice requiring it to be proved. Again, the purpose of the rule is to give a party advance notice that it will be required to prove the document as

authentic. It was common ground that, generally, a challenge to the date appearing on the face of the document is a challenge to its authenticity.

It appears to me that where there is a challenge to a document which bears a date on its face, that is to say within the document as it presents to a reader, one is within the ambit of the rule. The fact that there may be inconsistent metadata does not take it outside the rule. Indeed, the logical consequence of this submission is that, wherever a document is disclosed where there is a clash between the document as it presents and the metadata, there is never a question of authenticity.

It appears to me that that is an unrealistic reading of the rule and it proves too much.

The third submission is that notice has, in fact, been given and that the claimants have made it clear that the authenticity of the two agreements is in issue. They rely on the list of issues for trial. Issue 78 is whether the first defendant participated in the backdating of documents. Issue 81 is the first defendant's knowledge of the backdating of any documents. And at (xxi), there is a reference to the MoU and SPA purportedly dated 15 July 2015. The claimants also said that, at a CMC on 29-30 July 2021, the court adopted the claimants' general formulation of wording about the backdating of documents. That is to say that they were in issue, save in the case of the second and tenth defendants, where it was agreed that any such documents had to be specified. I accept that there is a general allegation of backdating and that the first defendant's knowledge of backdating of documents is an issue in the list of issues. However, I am unable to accept that this is a sufficient notice for the purposes of rule 32.19. The list of issues does not specify the disputed documents in the form of a notice, and I don't think that the general allegation about authenticity suffices. There is a reference to the purported date of the two agreements, but I do not think that is sufficient to amount to a notice for the purposes of rule 32.19. The fourth submission of the claimants is that they should be given permission to be allowed to withdraw the deemed admission under rule 32.19. The first question is as to the appropriate approach. I was taken to the case of McGann v Bisping [2017] EWHC 2951 (Comm) where the question was approached as one as relief from sanctions. And the principles in the case of Denton v White were applied.

The claimants submitted to me that this was the wrong approach, as rule 32.19 created a deemed admission and did not contain a sanction, whether express or implied, for non-compliance with a rule. The claimants relied on Eco3 Capital v Ludsin (2013) EWCA Civ. 413, at paragraph 108, where Lord Justice Jackson said that, had a point been made and taken at trial under Part 32.19, the judge would have had to decide whether to allow the admission to be withdrawn.

The advocate for the first defendant said that any application would, first, have to be made formally by application notice and, secondly, that it should address both the rules on the withdrawal of an admission and, secondly, the Denton v White criteria.

Counsel for the claimants said that there was no need for an application notice, the only material that was relied upon was in the trial bundle and no further evidence was relied upon in support of the application. He repeated that the appropriate approach was the rules concerning withdrawal of admissions rather than Denton v White.

On these preliminary points, I have decided that the claimants are able to make this application without a full application notice, it is an application in the course of the trial in relation to particular documents and the ability of the claimants to challenge their authenticity. It is the sort of point that very often comes up in the course of a trial and needs to be ruled upon quickly.

Moreover, the first defendant was not able to suggest that he would wish to put any evidence in on the application or that he was not able to deal with the application now.

As to the question of approach, I accept the submissions of the claimants that the matter is governed by the principles for permission to withdraw an admission rather than those concerning relief from sanctions. I agree with their submission that there is no sanction in rule 32.19; rather, what the rule does is create a deemed admission. It is similar to a case where something is admitted on a pleading and a party subsequently wishes to withdraw the admission. The advocate for the first defendant submitted that the application was made late and that that was a matter, therefore, that required relief from sanctions. I do not agree with that. It seems to me that the lateness, or otherwise, of the application is a matter going to the exercise of the court's discretion in relation to permission to withdraw from the deemed admission.

The rule governing applications for permission to withdraw an admission is now found in rule 14.5. I won't set out the rule in full but will refer to the various factors which are expressly listed in the rule. I also note that that list of factors is non-exclusive and that the court is required, under the rule, to consider all of the circumstances of the case. There are a number of general points to be made before considering the specific factors. First, in this case, the authenticity of documents is in play in a general sense. The claimants have made it clear that they are alleging that the first defendant has engaged in the backdating of documents, and that, indeed, is part of their case on fraudulent trading. Secondly, the list of issues refers to the date of the two agreements as a purported date. While I do not think that is a sufficient notice for the purposes of Part 32.19, I consider it is an important indicator that the date of those agreements was potentially in issue. Thirdly, this is a very large and complex case, involving a huge number of documents. As is frequently the case, points only emerge as the case is being prepared for trial. That is not an answer in itself, as in large and complex cases it is also important, with a view to fairness, that, where a document is challenged, that should be raised as early as possible with the other parties.

Fourthly, the electronic versions of the two documents which are in play, including their metadata, has been disclosed. So this is not a matter where there will have to be further disclosure of documents, at least on the claimants' part, concerning the date of creation of those documents. Put it another way, the points they are now making arise from the documents which appear in the trial bundle. I will come back to the question of whether there is any likely further disclosure from the first defendant in a moment. Fifthly, the first defendant has positively relied on the contested documents in his defence. That is to say, before disclosure was given in these proceedings. This is not, therefore, a case where the defendant can be said to have changed his case in reliance on some sort of assertion by the claimants of the authenticity of the documents. He pleaded the point before any disclosure had been made.

Against this general background, I turn to the specific factors.

First, the grounds for seeking to withdraw the admission. The claimants have not relied on any evidence in support of the application. What they say is that they have pieced together the picture in the course of preparing the full case, and the totality of the documents. I do not think this is a case in which there has been a deliberate holding back of the point and nor was that suggested by the first defendant. The grounds for seeking to withdraw the admission are to allow the claimants now to challenge the authenticity of the documents and to enable them to cross-examine the first defendant about them. The second factor, (b), is whether there is new evidence that was not available when the admission was made. The claimants did not suggest that they had come into possession of new evidence. The admission is treated as having been made at the date when witness

statements as between the claimants and the first defendant were served, which was in December 2023. They do not suggest that new evidence has come to light since then. Indeed, they accept that the documents were disclosed at an earlier stage. This is a point that weighs against the current application. Third, point (c), is the conduct of the parties. I have already said that I do not think this is a case where the claimants have deliberately held back this point. The claimants, for their part, contended that there had been delays in the provision of disclosure by the defendants. I don't consider this to be a point of any real weight, given that the documents including the relevant metadata were contained in the claimants' own disclosure.

Fourth, point (d), is any prejudice to any person if the admission is withdrawn or not permitted to be withdrawn. There would be, it seems to me, potential prejudice to the claimants if they were not able to withdraw the deemed admission. They would be required to accept a case which they say is contradicted by the documents, including the metadata, and would be forced to accept the documents, which they say are not genuine, are indeed genuine. So they say that, in that sense, to keep them to the admission would be something of a windfall for the first defendant.

Turning to possible prejudice to the first defendant. It was suggested at one point that there might have to be further disclosure of documents on the part of the first defendant. It was suggested that he might not have given full disclosure. I do not think that is a realistic suggestion. Disclosure issue 81 encompassed Mr Thomson's knowledge of the MoU and SPA purportedly dated July 2015. He would, therefore, have been required to provide documents concerning the two agreements, whenever they were created, including, on his case, in July 2015 or thereafter.

This point was not pressed after the first defendant was able to take further instructions.

In the end, the point taken by the first defendant was that there would be prejudice in the sense that this point had not been previously taken in the pleadings and, if the claimants were now able to allege the inauthenticity of the document, they would be able to run a case which was not pleaded.

I do not think that is relevant prejudice, if indeed it is really prejudice at all. The documents have been pleaded by the first defendant himself. Although the claimants have not expressly and specifically denied the documents, they have been relied upon as part of the first defendant's own positive case and, subject to the point about rule 32.19, it would obviously have been open to the claimants to challenge the first defendant about those documents. It would not have been open to the first defendant to object to any such challenge on the basis of the pleadings.

Therefore, it seems to me this is a point not about the pleadings, but about the effect of rule 32.19. In the circumstances, I do not think there is any prejudice to the first defendant, other than the general prejudice that applies to any party when an admission which has been made is withdrawn, which then puts in issue a point which was not previously in issue. It seems to me that kind of prejudice is of no real weight, because it is implicit in rule 14.5 that, in appropriate circumstances, admissions can be withdrawn. The next factor, at (e), is the stage the proceedings have reached. In particular whether a date or period has been fixed for trial. The application is being made in the course of the trial. It is therefore late in the day. It seems to me, generally, applications of this kind ought to be made promptly and I take into account the fact that the application for permission to withdraw the admission has been made late, in the sense that it is being made at the trial. On the other hand, I think there is some force in the point that, in very large cases of this kind, points do not always emerge until the parties have been able to piece together the whole case, including the whole mass of documents.

It seems to me, ultimately, this is a point which is closely related to point (d), namely, prejudice to a party if the admission is allowed to be withdrawn. It seems to me that it may well be of significant weight that the point is being made at trial if it might disrupt the trial or require the calling of further evidence, but there is no suggestion that any further evidence would be required on the part of the first defendant if the admission were allowed to be withdrawn. This is a case where the application is being made late in the day and that is a factor which weighs against permission being granted, but, in turn, that has to be weighed against the issues of prejudice and all the other circumstances.

The next point is the prospects of success of the claim or of the part of it to which the admission relates. This part of the rule is really framed in relation to, it seems to me, allegations and pleadings but, applying it by analogy, it seems to me that there is at least strong prima facie evidence that the relevant documents were created after the date on their face. It may be that there is an explanation of that and that, after the matter is explored in evidence, the point will be decided differently. But at least, at the moment, there is sufficient evidence to say there are at least good prospects of success in the claimants' establishing the inauthenticity of the document. That, as I say, is a matter that will have to be decided ultimately in the light of all of the evidence at trial. The final point is (g), the interests of the administration of justice. The claimants contend that it would be contrary to the interests of justice if they were unable to challenge the authenticity of these documents. They have been positively relied upon by the first defendant in his pleadings. If, in fact, they were of dubious authenticity, it would be contrary to the interests of justice to prevent the question being explored at the trial. They say the ultimate purpose of the trial is to determine the facts on the balance of probabilities and that it would be contrary to the interests of justice if the court were unable to do that.

This point, of course, has to be weighed against all of the others. It is right that the function of the court is to decide questions on the balance of probabilities in the light of all of the evidence, but the court's processes are also subject to the procedural requirements of the CPR. It cannot be enough simply to say that permission to withdraw a deemed admission under Part 32.19 should always be made in order that the court can see the full and true picture. There may well be cases where that would not be procedurally fair. Nonetheless, it seems to me that there is some force in the claimants' points.

It also seems to me, when considering the question of procedural fairness and the interests of the administration of justice under point (g), that it is relevant that, in the list of issues, the purported date of these two agreements was highlighted. This is a point I have already made. It is also of some materiality that the first defendant has known throughout that the claimants are alleging that it has been involved in the deliberate backdating of documents so that the element of surprise, if any, is a limited one.

I have stood back and considered all of these factors, some of which point one way, some of which point the other, and given them appropriate weight. In the exercise of my discretion, I consider, in all the circumstances of the case, that I should permit the claimants to withdraw from the admission and to contest the authenticity of the two documents.

Right.

MR ROBINS: My Lord, as regards the wording of the proposed amendments, in the case of the Surge defendants, we will provide Mr Ledgister with the draft wording as soon as possible after we rise today so that he can consider it. I heard his indication that his clients may consent.

MR JUSTICE MILES: Well, they will have to think about that.

MR ROBINS: The one point that I would make is that it might be said that it would be useful to deal with this matter definitively before the Easter vacation, because Mr Careless might say that there are two proposed amendments which he hasn't addressed in his witness evidence. He might say that he wishes to file a short supplemental witness statement confined to dealing with those two points. Obviously, the Easter vacation will provide an opportunity for him to do so. So I think, if it is not consented to, I would be asking your Lordship to find some time on Wednesday to deal with it, so that he has that opportunity over Easter if he wants to file a supplemental statement on those two points.

MR JUSTICE MILES: Well, I have heard what you have said. I think we will see whether that gives Mr Ledgister sufficient time, but there is some sense in what has been said, I think, Mr Ledgister.

MR LEDGISTER: Absolutely, my Lord. To make it very clear, you know, we submit that there will be some issues insofar as demonstrating prejudice. So we await the amended particulars and we will take the course. But certainly no objection is made to the proposed course.

MR JUSTICE MILES: Right.

Housekeeping

MR JUSTICE MILES: Now, what else are we dealing with now? There is the question of the strike-out application by the first defendant. I received the indication from the claimants that they weren't in a position to deal with that today and, indeed, it will -- if it is going to be -- sorry, when it is argued, it may take a little bit of time. It may be that there will be a preliminary objection on the basis of, essentially, case management-type considerations, but even that, it seems to me, may take a bit of time to argue, and the claimants need some time in order to prepare for that. Are there any proposals in relation to how that should be dealt with?

MS DWARKA: My Lord, before I go there, I didn't really make any submissions on the nominee point. I don't know if you want to hear from me in respect of that?

MR JUSTICE MILES: Well, I assumed, because of that, that you really didn't --

MS DWARKA: No, sorry, I should have.

MR JUSTICE MILES: Well, you should have done.

MS DWARKA: It's a very short point. I take -- if Mr Robins -- as Mr Robins explained the relevant part, we take issue -- sorry.

I have listened to Mr Robins on Thursday and understood that he is not really taking anything -- he's not alleging anything to do with the nomineeship in C4 and he has explained that they are taking issue and used those information in support of their pleaded allegation against Mr Golding. So, if that is the case, then we have nothing more to say on that.

MR JUSTICE MILES: As I understood it, it went a bit further than that. I understood him to be saying that there is a pleaded allegation that Mr Golding was a shadow director of the company.

MS DWARKA: Yes.

MR JUSTICE MILES: And it is part of that case that the first defendant acted on the whatever the statutory wording is, the directions or instructions of Mr Golding, because that is part of their case.

But that is not necessary for him to use the term "nominee" which is potentially a rather different sort of concept.

MS DWARKA: So our position is that the nominee point was not pleaded properly --

MR JUSTICE MILES: No, but I think he is saying -- is this right, Mr Robins? As I understood you, you weren't saying that you had to establish nomineeship but you had alleged shadow directorship and it is part of that allegation that Mr Thomson acted on the directions, et cetera, of Mr Golding. Is that right?

MR ROBINS: My Lord, that is absolutely right. "Nomineeship" is a red herring, it is not a term we have used.

MR JUSTICE MILES: So it is already part of the case that Mr Golding is a shadow director, and part of that is the case that Mr Thomson acted on the instructions of Mr Golding. So that is what I understand the case to be. They say they don't then need to say anything about nomineeship, but that is already in play. Sorry, I don't mean nomineeship is; shadow directorship is already in play, because it is pleaded.

MS DWARKA: I think our position is that that should have been made clear, my Lord, but I have no further submissions in respect of that.

MR JUSTICE MILES: Right. I will say no more about that.

MS DWARKA: In respect of the strike-out application, my Lord, I have received Mishcon de Reya's email explaining that Mr Robins won't be able to deal with the application and he would need more time. That is perfectly fair. I think our position is this: it is urgent because we will be applying for the injunction to be discharged, dependent upon what happens with the strike-out application. But we are perfectly happy for your Lordship to deal with the application immediately after Easter, before Mr Thomson resumes his evidence, and have some directions for Mr Robins to prepare and serve skeleton arguments over Easter, if that is possible, and we just want a couple of days to be able to receive that skeleton before we resume and deal with it first thing. Potentially, Thursday, 4 April, if it is possible.

MR JUSTICE MILES: 4 April, isn't that in the vacation? That is halfway through the vacation. Oh, you mean the skeleton.

MS DWARKA: I mean the skeleton.

MR JUSTICE MILES: Not the hearing. Sorry, I was at cross-purposes.

MS DWARKA: No. So, if the hearing be dealt with first thing after the vacation, but we get his skeleton in reply because we have filed and served a skeleton on Sunday so if we are able to see what is his position on it a couple of days before.

MR JUSTICE MILES: I understand. I will hear from Mr Robins.

MR ROBINS: My Lord, as your Lordship and I debated last week, there is a prior question of case management which must logically be addressed first, which is whether the strike-out application should be heard at all mid trial or, alternatively, addressed in closing submissions and decided by your Lordship as part of your Lordship's judgment following the conclusion of the trial. It is our position that this is not one of those rare and exceptional cases that would justify dealing with a strike-out application mid trial and that your Lordship should, instead, adopt the course of hearing

the argument as part of closing submissions and dealing with it in a judgment, so there is then a single judgment and, if any party wishes to appeal, a single appeals process following the trial.

I have submissions that I can make on that. I said to your Lordship last Thursday that I would be ready to deal with it today. I am ready to deal with that case management matter today. I am loth to do anything to delay the start of Mr Thomson's cross-examination. As I indicated on Thursday, we do have real concerns that this is all tactical and calculated to delay his cross-examination, so I am not positively inviting your Lordship to deal with the case management aspects this afternoon. We should get on with Mr Thomson's cross-examination. But it is a point that is going to have to be addressed at some point in this trial. We can't just simply, as my learned friend suggests, go into a substantive hearing of the strike-out application. That would omit, as I say, the important, logically, prior case management point.

MR JUSTICE MILES: I haven't reminded myself of the authorities on the case management point, or really, because of the way that this has been raised, I haven't really given it much prior thought. My concern is that it is now 12.50 pm and, if we embark on this, it could take a little bit of time.

MR ROBINS: Absolutely.

MR JUSTICE MILES: Part of the point of the submission is not to delay other steps in the proceedings. I mean, I am just trying to think if there is another practical way of dealing with it. Would it be possible to have this argument immediately after Easter --

MR ROBINS: Yes.

MR JUSTICE MILES: -- for a fairly short hearing, where you could put in a skeleton at least on the preliminary point --

MR ROBINS: Absolutely.

MR JUSTICE MILES: -- or points, and the court could then have perhaps quite a relatively short hearing at the beginning of next term. And then, if I find against you, a timetable for dealing with the substantive part of the strike-out application, relatively quickly thereafter, I don't want this hanging around.

MR ROBINS: No. Well certainly I can see that that would have much to commend it, including considerations of fairness to Ms Dwarka, who has no prior notice of what I am going to say on the case management points and may not be adequately armed to deal with them this afternoon. I think it would probably be of assistance to her to have some prior notice in the form of a skeleton argument.

MR JUSTICE MILES: Ms Dwarka, what do you think about that?

MS DWARKA: Yes, my Lord, I would welcome that.

MR JUSTICE MILES: Does that make sense, to take it in two bites?

MS DWARKA: I will welcome that, my Lord.

MR JUSTICE MILES: Let's do it that way, then. Since you have already prepared, it shouldn't take you too long to turn it into a skeleton argument.

MR ROBINS: No, I just need to tidy it up.

MR JUSTICE MILES: If that could be provided, then, to the first defendant's team pretty quickly.

MR ROBINS: Yes.

MR JUSTICE MILES: Then what we will do is we will deal with the preliminary point at the beginning of next term and then, if I find in favour of the first defendant on that, we will have to fix a hearing date for the strike out itself, but I would do so very soon after that. So it would be a matter of days, probably, after that, rather than it just drifting off.

MR ROBINS: Absolutely.

MS DWARKA: My Lord, before we start, I did have to address you in respect of the adjustment points and I have been asked to deal with some other minor points with you.

MR JUSTICE MILES: Yes. This is to do with the ...

MS DWARKA: The adjustments in respect of --

MR JUSTICE MILES: Of giving evidence?

MS DWARKA: Yes.

MR JUSTICE MILES: Okay. So we have dealt with the other procedural points so far?

MS DWARKA: Yes.

So I am meant to address you in respect of the adjustments and then I have six smaller points that I have been asked to raise with you, that have arisen over the weekend, which I would do in the afternoon, if I may.

MR JUSTICE MILES: Well, let's see how it goes. I am keen not to eat into the afternoon, if possible, so why don't you tell me what you have to say?

MS DWARKA: Should I give you the list of eight little points I need to deal with? Should I start with the adjustments?

MR JUSTICE MILES: Just start with the adjustment points. I am treating this as a sort of ground rules hearing about the way in which evidence is to be given. Taking into account the provisions of Practice Direction 1A of the CPR, which is to do with what is called vulnerable parties or witnesses, but that includes cases where there may be relevant physical impairment or health conditions or mental health conditions.

So, yes. So the question is, what adjustments should be made, if any?

MS DWARKA: A probably preliminary point, my Lord, I am just going to check that you have received the medical report, the witness statement which was filed and served?

MR JUSTICE MILES: Yes.

MS DWARKA: And just to confirm, at this stage, and up until now, the evidence was served on the court and the claimants due to the confidential and sensitive nature of the documents. So before I start talking about it, could I ask my Lord to either direct that the content of the medical reports and the witness statement of Mr Thomson are not discussed in open court or to make a reporting restriction order?

MR JUSTICE MILES: I am not sure about the reporting restriction, because it seems to me that it is of some public interest, this matter. You will have to persuade me of that.

I am prepared to direct that the evidence should not be generally available under the usual rules because it has been referred to in open court, and I would hope that counsel can make submissions without going into any of the more sensitive material. But I am concerned at the idea of imposing a blanket reporting restriction because it seems to me there is a good deal of public interest in this trial and, to the extent that your client is asking for things to happen because of his physical or mental health condition, then there is a public interest in reporting of that. So you will have to -- you will need to persuade me if you wanted to a general reporting restriction.

Applications by **MS DWARKA**

MS DWARKA: My Lord, our position is this. There is information in his medical reports which, if that does go out to members of the public, that will be used. He has already been subject to a campaign of vilification and attacks and he is due to give evidence, he will be coming to court and, in order for him to feel safe enough for him to be able to walk around, he would like to be in a position where some parts of his medical history are not in the public's domain and he doesn't feel that he needs to have to deal with consequences of this being in the transcription and then published en bloc for that matter.

So I will be talking about, generally, his health. What I plan to do is to refer to you the various paragraphs in the medical document and not read it loud and just make general submissions on it. But I am just a bit worried that if we do use certain of the information which are very sensitive, that that would affect his position.

MR JUSTICE MILES: Let's see how we go. It should be possible to do it in that way, without reading out the relevant passages, and I would hope that the counsel for the claimants would be able to follow the same course. If it gets to the point where, for some reason, you have to make specific submissions based on particular details about his condition, then it may be necessary to make an order in relation to those. But I am not, at the moment, persuaded that I should just make a general blanket restriction.

Can we look at it the other way around, what adjustments are you asking to be made? It may be that there is no real dispute and I have read the material. It may be that you are not pushing on a closed door.

MS DWARKA: My Lord, can I check that you have read the first and the second medical report as well, as he had referred to it as well.

MR JUSTICE MILES: Yes, I have.

As I understand it, Mr Thomson is going to be here to give evidence.

MS DWARKA: Yes.

MR JUSTICE MILES: He has spoken about certain adjustments. First of all, that he may require breaks in the evidence in order to be able to stand, move around and so on.

Second, that he has explained the effect of various painkilling medications that he has been taking, which could have an impact, possibly, on his ability to follow questions, which might require questions to be possibly rephrased. That is something that cross-examining counsel will have to take into account. He has also said that, in certain circumstances, he may, if it comes to it, have to seek emergency treatment. But that is clearly a matter that would have to be dealt with as and when it arose.

Is there anything more than that?

MS DWARKA: If I could just set out what we are saying and, specifically, the adjustments that we would like. So Mr Thomson would like to be given a high-backed chair that could increase orthopaedic support for his spine.

MR JUSTICE MILES: It is unfortunate that this has been raised quite so late, but the court will make an effort, over the short adjournment, to produce a chair which is similar to the one I am sitting in, which does have a higher back. And also, if possible, to find some sort of back-support cushion.

MS DWARKA: He will bring his own orthopaedic cushion.

MR JUSTICE MILES: He will bring that. Okay. So we will make an effort, over the short adjournment, to --

MS DWARKA: Just the high-backed chair. Then Mr Thomson would like to be allowed to sit for 30 minutes at a time and then get up and walk around in the witness box -- I think there is enough space. If not, just behind it. Or, alternatively, the court could adjourn after 30 minutes for about 5 minutes for him to stretch his legs.

MR JUSTICE MILES: Yes.

MS DWARKA: That is his second adjustment. If possible, if Mr Robins -- that is the third one, if Mr Robins could simplify the questions put to Mr Thomson in order to ensure that he had understood them.

And finally, Mr Thomson be given the right to let your Lordship know if he does experience any numbness or tingling in his legs over and above the ones that he has previously mentioned, and then to ask his Lordship to adjourn the session, in order for him to stop and contact the emergency services.

MR JUSTICE MILES: Yes.

MS DWARKA: My Lord, there is another further matter. Mr Thomson had produced psychiatric expert reports but not an orthopaedic expert report yet. He didn't think it was necessary because he was recovering very well but, with the recent appointment, he has become a bit scared about it. So, in light of that, we have sought to arrange for an appointment for him to meet Professor Hilali Noordeen, who is an internationally famous surgeon in this field, and he is meeting the professor at 9.00 am tomorrow. So this is one of the other minor points I needed to check with your Lordship, if we could resume at 11 o'clock tomorrow, to be able to make sure that he can come.

MR JUSTICE MILES: Yes.

MS DWARKA: But we are planning to get this expert report as soon as possible and provide it to the court in support of our request for an adjustment, because it is important to your Lordship and to Mr Thomson to know how bad it is.

MR JUSTICE MILES: I should say that I happen to know Professor Noordeen because we were at the same university and our children were at the same school. But I don't know him beyond that. I don't think that that should affect his evidence in any way, but I thought I ought to say that.

MS DWARKA: We will provide that report to you as soon as possible.

MR JUSTICE MILES: It seems to me, in relation to those adjustments, Mr Robins, they are to do with -- obviously, the chair, well, that goes without saying. The breaks every 30 minutes or so to enable Mr Thomson to stretch his legs, ensuring that the questions are understood, I mean, that is something that you should strive for in any event.

MR ROBINS: Yes.

MR JUSTICE MILES: But there may be moments when you may be required to reformulate the question. And then, if there is any unusual or abnormal numbness or tingling which might indicate something beyond Mr Thomson's general state, well, he must tell me and of course he must tell me.

MR ROBINS: Yes, absolutely.

MR JUSTICE MILES: Then, to start at 11 o'clock tomorrow.

MR ROBINS: Well, in light of the fact that the adjustments aren't contentious, we are not really sure what the additional medical evidence is for. We also don't understand why it wouldn't be possible for Mr Thomson to get any evidence that he needed from his consultant Mr Cato-Addison, who he has been under the care of in respect of this operation. We are really not sure whether that is justified. We don't understand, as I say, what the purpose of it is.

MR JUSTICE MILES: Well, are there any further adjustments that you will be seeking? I mean, in the light of the evidence and the position taken by the claimants, what would be the purpose of that?

MS DWARKA: It is only to ensure -- Mr Thomson is really worried because it came as a shock to him, and it is just for him to be able to seek expert evidence and also for your Lordship to know how severe it is. Because you haven't seen an orthopaedic report, yet. We just plan to just provide that to you shortly after, anyway.

MR JUSTICE MILES: What about the point that he has seen an orthopaedic specialist, in fact, the person who has been treating him recently.

MS DWARKA: I don't have instructions as to why --

MR JUSTICE MILES: Could he not provide a report?

MS DWARKA: I don't have instructions, my Lord, as to why he wasn't able to provide an expert report. I actually don't know why.

MR JUSTICE MILES: It wouldn't necessarily be an expert report, but it would be in the form of perhaps a letter which summarised the position. I mean, he is, after all, the surgeon who has been treating Mr Thomson and one would normally expect that to be the first port of call, as it were.

MS DWARKA: I can take instructions.

MR JUSTICE MILES: Can you take instructions on that and see whether there is anything more to be said? I think there is some force in the claimants' point that, at the moment, since the adjustments which are sought are not controversial, it is not clear why further evidence of that kind is needed, or at least why it should potentially eat into the court timetable.

MS DWARKA: My Lord, I had only asked for half an hour.

MR JUSTICE MILES: Yes. Well, why don't you come back to me on that and I will then decide whether to push things off by half an hour tomorrow.

MS DWARKA: I will do, my Lord.

MR JUSTICE MILES: What are your other points?

MS DWARKA: My other points are there are issues which have arisen over the weekend in respect of hotel and travel costs and I have some email correspondence between the parties to show you. Then there are practical implications.

MR JUSTICE MILES: What are you asking me to do in relation to that?

MS DWARKA: I am asking you to take a position on it, because, at the moment, there is a dispute between the two parties as to where Mr Thomson needs to stay and why the choice we made is not -- we say it is a good choice and they say it is not a good choice.

MR ROBINS: My Lord, can I attempt to cast some light on this? My clients offered to pay for Mr Thomson to stay in one of the closest hotels to this court at a cost of a little over £200 a night. We got an email back from Mr Slade's firm to say there was no need to worry about that because Mr Slade had arranged for Mr Thomson to stay at one of the most expensive hotels in the vicinity, The Rosewood, and, in fact, at a suite, as we understand it, at The Rosewood at a cost of something in the region of £700 a night, and that he had booked a chauffeur-driven limousine for Mr Thomson. Our concern is that these are not ordinary living expenses. If paid by Mr Thomson -- and it is not clear whether any money has been paid by him yet. But, if paid by Mr Thomson, they will result in him breaching his weekly spending limit and, as we understand it, the SFO has been asked to consent and has refused to consent to these extraordinary items of expenditure. So it seems to be suggested by Ms Dwarka that there will be an application put to your Lordship asking for Mr Thomson to be permitted to spend money on these items. They don't fall within the course of the phrase "ordinary living expenses" and they would, as I say, require an adjustment to the weekly expenditure limits. If any such application is made, we will obviously respond to it, but it hasn't been yet and it is difficult to see what utility it would serve in circumstances where the SFO has refused to consent.

MS DWARKA: My Lord, can I hand you a copy of the chain of emails for you to have a look as to these decisions?

MR JUSTICE MILES: Well, is it really -- I mean, how do you deal with the point that the SFO has refused to consent? Because, if the SFO has refused to consent, it is not going to happen.

MS DWARKA: The whole reason we asked for that hotel, we have chosen a specific hotel, and it is expensive, was because the hotel can cater for Mr Thomson's needs. It can provide an orthopaedic bed. And that was the only reason why we had asked for the hotel, my Lord. No other reason.

MR JUSTICE MILES: Well, has it been checked whether any other hotel can provide an orthopaedic bed?

MS DWARKA: I don't have instructions in respect of that. I think, when they enquired about it, they enquired if a hotel could do that. The claimant has provided two suggestions on Friday, I think in the evening, and at which point there was some exchange of emails between the claimants and the firm, Richard Slade and Partners about it. I wasn't copied on that one, but that is what I understand is the reason why we are here discussing about this.

I think that Richard Slade and Partners thought that that could have been agreed and I wouldn't have had to trouble your Lordship about this, but that is the reason why I am here asking about it.

MR JUSTICE MILES: Well, if I am going to rule on this, I will have to understand the factual position. I mean, it is no good just saying "We want this; the other side want that".

MS DWARKA: No, I intended to provide you a copy of the email for to you see exactly what has been said between the parties, my Lord. The main reason that we had chosen that hotel was because of the orthopaedic bed.

MR JUSTICE MILES: But has any enquiry been made to see whether there is a less expensive hotel where they can provide an orthopaedic bed?

MS DWARKA: I am not sure if it has. I can take instructions.

MR JUSTICE MILES: How, then, am I to decide that? If that is the point, then it seems to me that that is something on which I would need some evidence.

MS DWARKA: Yes, my Lord. I will have to take instructions.

MR JUSTICE MILES: All right. It may be we need to deal with this at the end of the day. Again, I am keen that it should not eat into the time for giving evidence. What is the next point?

MS DWARKA: The other point is there has been some correspondence in respect of living expenses allowance because Mr Thomson is likely going to be moving to his rented accommodation over the period of the vacation. I think this was mentioned before, but there is a one-off cost of moving, and then the rent, and there would need to be payment of the rent in advance. I am only mentioning it now, my Lord, because I have been asked to. It may that that will be agreed between the parties, but, if it is not, we will be making an application about that and potentially asking your Lordship to deal with it on paper.

The urgency is about them having to move over the vacation. That is another issue that I have to mention. I have been asked to check, my Lord, that is the next point, whether we can send transcripts to Mr Thomson of his evidence. I think he has access to the website, the trial bundle website.

MR JUSTICE MILES: During the --

MS DWARKA: During the evidence. I am told that some judges don't like it and others do, so I just --

MR JUSTICE MILES: Do you have a point about that? No. I don't see any problem about that. It is a transcript of his evidence and I think he should be allowed to see it.

MS DWARKA: Then there is some practical issues we need to deal with whilst my client is in purdah. Can I hand in an email where Mr Slade has written to Mishcon de Reya about the practical issues --

MR JUSTICE MILES: Well, have they responded? Is this not something they can agree?

MS DWARKA: They haven't responded.

MR JUSTICE MILES: It would be normal with this sort of thing to try and agree it with the other side. It is only if you can't reach agreement to then seek my guidance.

MS DWARKA: Yes, my Lord. I think they haven't responded.

MR JUSTICE MILES: When was it sent?

MS DWARKA: It was sent on the 23rd at 5.50 pm.

MR JUSTICE MILES: Right. Well, perhaps, Mr Robins, your team can have a look at that --

MR ROBINS: Yes, absolutely.

MR JUSTICE MILES: -- and try and agree it.

MS DWARKA: I think probably one final point, relevant to Mr Thomson's witness statement where he talks about feeling vulnerable to confront members of the public. We intend to send two trainees to go to the hotel to help him to come to court and then go back. Obviously, we are going to make sure that they don't talk about the case but we just want to make sure that is okay with your Lordship?

MR JUSTICE MILES: Yes, that is absolutely fine. It is fine for members of Mr Slade's firm to accompany him, help him to find his way here, make sure he feels safe, as long as they don't talk about his evidence or the case.

MS DWARKA: Yes.

MR JUSTICE MILES: In relation to that, I have seen his evidence in relation to that point and my clerk has made contact with security so they are aware of his concerns. Also, my clerk is monitoring the hearing remotely and, if anything were to happen, would immediately be in touch with security.

MS DWARKA: Thank you, my Lord. That is all.

MR JUSTICE MILES: Right. So we will return then at 2.00 pm, and that is when Mr Thomson will commence his evidence.

(1.15 pm)

(The short adjournment)

(2.00 pm)

MR JUSTICE MILES: Yes.

MS DWARKA: My Lord, I would like to call Mr Thomson, please.

MR MICHAEL ANDREW THOMSON (sworn)

MR JUSTICE MILES: Do sit down, Mr Thomson.

Examination-in-chief by **MS DWARKA**

MS DWARKA: Can you tell the court your name, please?

A. Michael Andrew Thomson.

Q. And address?

A. **********, East Sussex.

Q. Can we please look at <C2/1>. Has it appeared on your screen, Mr Thomson?

A. Yes.

Q. Do you recognise that document as your third witness statement in these proceedings?

A. Yes.

Q. Can we now look at page 65, please. Can you see the document?

A. Yes.

Q. Is that your signature?

A. Yes, it is.

Q. Is there anything that you would like to correct or clarify in your statement?

A. Yes. There, I made the statement largely from memory. Having read it through a couple of times since then, there are a number of things that are not quite as accurate as they could be: for example, Mr Hume-Kendall didn't introduce Mr Russell-Murphy, it was Mr Golding. I acknowledge I was paid by various different companies in my buy-out and I admitted that I forget which one but Mr Robins pointed it out. I accept that. So there are a number of, I believe, small things that aren't quite as accurate as they could be. I did it largely from memory.

Q. Do you otherwise take this statement as containing your true account of the events?

A. Yes, I do.

MS DWARKA: My Lord, I will ask that this statement be admitted as Mr Thomson's evidence in chief. Mr Thomson, if you could please stay there, my learned friend Mr Robins will have some questions for you.

Cross-examination by **MR ROBINS**

MR ROBINS: Mr Thomson, last Wednesday, your advocate, Ms Dwarka, told the court that you set up and ran the business of LCF honestly and with integrity. Is that what you ask the court to believe?

A. Yes, it is.

Q. Do you also ask the court to believe that you are a law-abiding citizen?

A. Yes.

Q. Do you remember being served with the particulars of claim in these proceedings towards the end of August 2020?

A. I remember the day, yes.

Q. Can we have a look at the document please, <B5/1> page 22. The previous page, please.

Do you see, at the bottom of the page, the claimants allege that you signed a written agreement between LCF and Surge which was purportedly dated 3 August 2015, but which was actually signed on behalf of LCF on or around 7 October 2016?

A. I can see that, yes.

Q. Do you remember reading that allegation?

A. I would have probably read it at the time or been taken through it by my lawyers.

Q. At the top of the next page, it says that the document was dishonestly backdated by you in order to deceive LCF's auditor, PricewaterhouseCoopers. Do you understand that is part of the claimants' case against you?

A. I believe so.

Q. In the next paragraph, on the right-hand side, do you see the claimants alleged that Kerry Graham, or Mrs Venn, as she is now, of Surge had not signed that agreement. You had added her signature to the document as part of your attempt to deceive PricewaterhouseCoopers?

A. Sorry, someone brought that up bigger. I am struggling to read it from so far away.

Q. Let's do that again.

A. Yes, I can see that.

Q. Do you remember reading that allegation?

A. I would have probably read it at the time.

Q. Do you understand it is part of the claimants' case against you?

A. I do, yes.

Q. Do you remember signing your defence in these proceedings, in July 2021?

A. I remember that I signed my defence. I couldn't remember the exact date.

Q. Do you remember the wording of the statement of truth?

A. Erm, I remember that there was a statement of truth. I couldn't tell you the exact wording, no.

Q. Let's have a look at it. <B5/4>, page 42. Could you read that to yourself and let me know when you have read it?

A. Could someone make that bigger? Sorry, I didn't think it would be that distant, so I haven't brought my glasses with me.

Thank you.

(Pause).

Yes, I have read that.

Q. So you signed the statement of truth to say the facts in this defence were true, didn't you?

A. Yes, I have signed that.

Q. You understood that signing this statement of truth was a serious matter?

A. I believe any statement of truth is a serious matter.

Q. You understood that proceedings for contempt of court could be brought against anyone who made a false statement of truth without an honest belief in its truth?

A. Yes, that's what it says.

Q. Can we look at page 35, please.

A. Sorry, could I have some water?

MR JUSTICE MILES: Yes, of course.

(Pause).

A. Sorry.

MR ROBINS: Perfectly all right.

Can you see paragraph 59.7.1? Has that come up on screen for you?

A. Yes, I am just reading it. Yes, I can see that.

Q. You understand you were denying the claimants' allegation that you had dishonestly backdated an agreement between LCF and Surge to deceive PwC?

A. I can see that.

Q. I am sorry, what did you say? Someone coughed as you spoke.

A. Yes, I said, "I can see that".

Q. You were specifically denying taking any steps to deceive PwC, weren't you?

A. Yes, that is, I believe, what it says.

Q. Then, if we could look at the paragraph below that, please, 59.7.2, you were saying:

"The Surge agreement already contained Mrs Venn's signature when it reached Mr Thomson."

Yes?

A. Yes, that is what that says, yes.

Q. Do you remember signing your third witness statement in these proceedings, which we looked at just a moment ago?

A. Yes.

Q. Do you remember signing the statement of truth on that document?

A. Yes.

Q. You were signing to say that the facts contained in that witness statement were true, weren't you?

A. Yes.

Q. Let's see what you said about the Surge agreement. Can we go to <C2/1>, page 15, please.

Could you read paragraph 38 to yourself, please, and let me know when you have finished it.

(Pause).

A. Yes.

Q. So your evidence is that the Surge agreement was not a fabrication, isn't it?

A. Yes.

Q. You say you received a document which bore a signature, apparently on behalf of Surge, and you countersigned it; yes?

A. Surge had sent over a number of agreements that were signed.

Q. You say you countersigned one of the agreements that they had already signed; yes?

A. Yes.

Q. And you say that is the document that you sent to PwC, do you?

A. I believe so.

Q. So this isn't one of the passages in the statement to which you referred a moment ago as being not quite as accurate as it should be, is it?

A. Sorry, can you go through that again?

Q. You said a moment ago, when Ms Dwarka was asking you questions, that there were some paragraphs in this witness statement that were not quite as accurate as they should be. This isn't one of the paragraphs that you were referring to on that occasion, is it?

A. Erm, I don't believe so.

Q. This is what you say happened, isn't it?

A. That I received various signed agreements from Surge and I signed one of them.

Q. Let's have a look at <D1-0000788> please. Do you see an email on the page from Kerry Graham, as she was at the time, to you?

A. That's not my email. Oh, hang on, the one at the top is. Sorry, I was reading the body of it down below.

Q. Do you see, "To: **********@gmail.com"? That is your email, isn't it?

A. Yes, what I am saying is the body of the email down below contained the incorrect email address, but it has been forwarded again at the top.

Q. It has been forwarded to the same email address, **********@gmail.

A. One has a P in it and the other one doesn't.

Q. Oh, I see what you are saying.

A. If it had a P in it, it wouldn't have arrived.

Q. It was sent to you on 3 August 2015?

A. Yes.

Q. In the final paragraph, do you see she says: "We need to put an introducer agreement in place between Surge Financial Limited and London Capital and Finance Limited ..."?

A. Sorry, I am just reading the whole email for context.

Q. Sure. Take your time.

MS DWARKA: My Lord, could I just ask that Mr Thomson brings the screen nearer to himself so that he can see it properly?

MR JUSTICE MILES: Perhaps someone could assist him in that.

MS DWARKA: Yes, please.

A. Yes, I can see what she said at the bottom.

MR ROBINS: So she was asking if you had a standard agreement that she could review; yes?

A. That is what the email says, yes.

Q. Do you remember you prepared a draft agreement between LCF and Surge?

A. I can remember there was various agreements. I can't -- it was so long ago.

Q. Let me bring it up. It is <D1-0000789>. This is the draft agreement that you prepared, isn't it?

A. It's a draft agreement that was prepared. I couldn't tell you that I wrote it, which is, I think, what you are trying to say.

Q. Okay. Let's have a look at page 12. Do you see it provided for, "Such fees and charges as may be agreed from time to time between the parties"?

A. Yes, I can see it says that.

Q. Do you remember drafting that?

A. I don't know if I drafted it. I may have very well had input into it. I may have updated the document, I can't remember now. It is that long ago.

Q. Okay. Let's look at <D1-0000790>. Do you see, at the top of the page, you replied to Kerry to say that you had attached a draft introducer agreement and you asked her to let you know what she thought?

A. Yes, I can see that.

Q. So, having had your memory jogged, do you accept that you sent the draft agreement to her for her comments?

A. Yes, I can accept that I sent it to her, but I think what you are trying to infer is that I drafted it myself, which I don't believe that I remember drafting the whole agreement myself. But I can see that I sent it to her. It is there in black and white.

Q. Do you remember she didn't sign it because she didn't like the wording of the schedule we looked at? She thought it was too imprecise?

A. Is that the email below?

Q. No. Perhaps we can have a look at <MDR00016773>. Paragraph 2. Let me know when you have read that.

A. Yes, I have read that.

Q. Do you remember that she wanted the schedule to the agreement to refer to the 25 per cent commission rate?

A. It doesn't say it specifically there, but she is asking for the information to be put in that appendix.

Q. That is what you understood her to be saying. She wanted the agreement to refer to the 25 per cent commission rate?

A. You are asking me to put a figure on it. I don't remember specifically putting a figure on it there. I can see what she is asking me, I don't remember, some nine years in the past, the specifics around this email. No.

Q. Okay let's have a look at <MDR00016800>. Do you see an email from you to Kerry?

A. Yes.

Q. Do you see that you were attaching a document?

A. I can. What was the date of the previous email, sorry?

Q. The date of the previous email was the previous day, the 24th?

A. Could I just have a look.

Q. Sure <MDR00016773>.

A. Yes. Thank you.

Q. So, the next day, you sent a revised agreement to her; yes?

A. Yes, that is what it says. Yes.

Q. Let's have a look at what you sent. It is <MDR00016803>. Can we look at page 12, please. So, the revised version that you sent referred in the appendix to a commission of 25 per cent of funds raised, being payable to the distributor when funds have cleared in the principal's bank account. That is what you had understood her to say should be added to this agreement; yes?

A. That's -- yes, that is indeed what it says, so that must be what it was.

Q. Do you remember Kerry sent this back to you a few days later?

A. Erm, if you have an email. I don't remember specifics at the time, sorry.

Q. Let's bring it up <MDR00016952>. Do you see she says: "I attached the signed contract, when you sign would you please scan and send me a copy."

Do you see that?

A. Yes, I can see that.

Q. Let's have a look at what she sent to you. <MDR00016953>. Can you see, on the front page, she has added the details in respect of Surge's name and address?

A. 1.2.

Q. Yes, that's right.

A. Yes.

Q. On page 11, can you see her signature?

A. I can see her signature, yes.

Q. Great. Can we go back to page 1, please. Do you see this version refers, in number 1, at the top of the page, to "London Capital Finance Limited"?

A. Yes.

Q. That was the name of the company at the time, wasn't it?

A. It was the name, I believe, before it changed to a Plc.

Q. That's right. Do you see it refers to "The Long Barn"?

A. Yes.

Q. That was the registered office of the company at that time, wasn't it?

A. I don't remember the registered office, but it is -- I am sure you would take me to something that shows that.

Q. Okay. Well, let's stick with this document for now. Can you see the paragraph that begins, "Whereas"?

A. Yes.

Q. Do you see it refers in the first line to loan notes?

A. Could you just make that bigger for me, sorry?

Q. Do you see that?

A. Yes, I can see that.

Q. Then, if we look at page 3, do you see that clause 4 refers to "Services" and says:

"The services ... are to introduce to the principal individual lenders who wish to lend monies to the principal upon the issue of the loan notes."

A. Yes, I can see that.

Q. Then, after clause 5, can we see over the page, do you see that -- over one further page, please [page 5] -- do you see that clause 6 is not headed "Insurance" is it? It says "Non-exclusivity". Do you see that?

A. Sorry, I missed your point. You said clause 6 is not headed "Insurance"?

Q. It is not headed "Insurance", it is headed "Non-exclusivity", isn't it?

A. It is headed that. Sorry, I missed your point about not "Insurance".

Q. Yes. You agree it says non-exclusivity?

A. Yes, but your point was -- sorry, I'm -- you're slightly confusing me. You said that 6 doesn't mention "Insurance".

Q. It doesn't, does it?

A. I don't see the point, sorry, that you are trying to make.

Q. Well, it doesn't mention "Insurance", does it?

A. It says "Non-exclusivity". Sorry, I am not following what you are asking me.

Q. Well, it doesn't mention "Insurance", does it? It says "Non-exclusivity".

A. That's what I have just said.

Q. Yes. You didn't countersign this and send it back to Kerry, did you?

A. You have shown me the back page, so it wasn't signed.

Q. And you didn't countersign this and send it back to her?

A. This document isn't countersigned. I can't -- I don't -- I can't remember.

Q. Let's look at <MDR00017384>. Do you see, at the top of the page, on 15 September 2015, she is asking: "Have you had a chance to sign this yet please?"

A. Yes, I can see that.

Q. So would you accept that you hadn't signed it and sent it back to her?

A. Yes, that must be what that is inferring.

Q. Let's have a look at <MDR00018729>. Do you see, at the top, she is chasing you again for a signed copy of the distributor agreement?

A. Yes, I can see she is chasing me for that.

Q. So you would accept that you still hadn't signed it by this point?

A. If she is chasing me, then, yes, I accept that. But I believe we were all acting in accordance with the agreement at the time.

Q. Now, you appointed PwC to audit LCF, didn't you?

A. Yes.

Q. Do you remember, in September 2016, PwC asked you for a copy of the contract between LCF and Surge?

A. I remember them asking for a copy.

Q. You didn't want to sign the agreement from the previous year that Kerry had already signed and give that to them, did you?

A. I can't remember at the time. I can see she is chasing me for it. There would have been a reason, but both companies acted in accordance with what the contract was set out to do. So both had agreed but I can see this is telling me I didn't sign it --

Q. In September -- sorry, carry on.

A. -- at that time.

Q. In September 2016, when PwC asked you for a copy of the contract between LCF and Surge, one of the things that you could potentially have done would have been to sign the agreement that already bore Kerry Graham's signature and send that to PwC; yes? That is one of the things you could potentially have done?

A. Sorry, say that again.

Q. You could have taken the agreement that had already been signed by Kerry, you could have applied your own signature to it and you could have sent that to PwC; yes?

A. Yes, if I hadn't already signed it, yes, I can see I could have done that.

Q. But that is not what you did, is it?

A. I don't remember at the time.

Q. Let me see if I can help you. You thought that the version that she had signed was out of date because it referred to London Capital & Finance Limited and to loan notes and you felt it didn't reflect the various services that Surge was providing?

A. Do you have -- sorry, you are referring to it, but you are not bringing me to anything to ...

Q. If you can't remember it, let's have a look <MDR00059585>. Do you see an email from you to Kerry on 28 September 2016?

A. Yes, I can see that.

Q. Can you see that the attachment is a Word document entitled "LCAF Surge agreement"?

A. Yes, I can see that.

Q. Let's have a look at what you sent to her. It is <MDR00059587>. Can you see, at the top of the page, that this version doesn't say "London Capital & Finance Limited", does it? It says "London Capital & Finance Plc"?

A. Yes, I can accept that. Yes.

Q. Do you see the reference to Wellington Gate?

A. Yes.

Q. That was LCF's new registered office address, wasn't it?

A. Yes, it is. That is the registered office. I don't remember when it was changed.

Q. Can we look at page 2. Do you see in the "Definitions" section, fourth down, there is a new definition of the term "Corporate bond"?

A. Yes, I can see that.

Q. Do you see, on page 3, if we could look at that, please, in clause 4, the description of the services has been expanded?

A. I don't remember the previous one so perhaps you can help me out with what it has been expanded on, sorry.

Q. Sure. We looked at it a moment ago. It was <MDR00016953> at page 3. Maybe we could bring them up side by side?

A. That would be useful, thank you.

Q. On the right-hand side, is the previous version from 2015. On the left hand side, is the new version from 2016.

A. Yes, I can see that. They have been expanded.

Q. That's right. So you amended the agreement because you felt the previous version was out of date?

A. I would concede the agreement was amended, I couldn't tell you if I did it.

Q. Well, you sent the amended version to Kerry; yes?

A. That was the email I believe you showed me before.

Q. So you sent the amended version to Kerry?

A. That was the email you showed me before that had this document that I sent to her?

Q. Looking at the --

A. Sorry, I just want to confirm that was the email that you showed me before that sent this document to Kerry?

Q. That's right.

A. Okay, thank you.

Q. So the answer to my question is yes, is it?

A. Yes, if that was the email you showed, yes.

Q. I am going to suggest that you felt that the version of the agreement signed by Kerry was out of date because it referred to London Capital & Finance Limited, it referred to loan notes and it didn't reflect the various services that you thought Surge was providing?

A. The services that Surge provided developed over time -- provided LCF developed over time and we both acted in accordance with what we had agreed.

Q. But you didn't want to countersign the version that Kerry had already signed because you thought it was out of date; yes?

A. Sorry, did you take me to an email that said that or ...

Q. I am showing you that you sent her -- when PwC asked you for a copy of the contract between LCF and Surge, you sent her a new version of the agreement that contained these various changes. So you must have felt that the previous version that she had signed was out of date; yes?

A. Sorry, the email that you took me to showed that I sent the revised version, I accept that. But what you are asking me is that I felt it was out of date, that is why I didn't sign it. But I don't think the email said that.

Q. No, but I am asking to you confirm that's why you sent her a new agreement; yes? You felt the previous one was out of date?

A. Well, looking at this, specifically the "Services" section, I can see that it was updated, yes. I am struggling with the point you are trying to ask me, sorry.

Q. Okay. Well, you asked Kerry to sign this new version of the agreement so you could give it to PwC?

A. I asked her to sign it because it needed signing, but both companies were acting in accordance with what the agreement was set out to do.

Q. Let's look at <MDR00059484>.

Do you see --

MR JUSTICE MILES: Mr Robins, just one second. Mr Thomson, when we -- before you started giving evidence, there was a discussion about any adjustments that needed to be made, including that you should be able to have brief breaks in order to stand or whatever. Rather than do it on the basis of a strict time, will you let me know if you require a break?

A. Yes.

MR JUSTICE MILES: If you tell me when, then we will consider it. I mean, obviously, one doesn't want -- we want to get through this, as you do, I am sure, as well as everyone else. But if you let me know when a break would be appropriate.

A. I would be grateful for one shortly.

MR JUSTICE MILES: Okay. Let's just -- Mr Robins is this a -- I am going to depend on you, to some extent, and the exercise of your judgment as to when is a good moment for a short break.

MR ROBINS: Yes. Well, shall we finish off this point and then have a break?

MR JUSTICE MILES: Yes.

MR ROBINS: Do you see, at the bottom of the page, an email from Jennifer Hale of PwC to you and Emma?

A. Yes.

Q. Do you see, at the top of this extract, we can see that it is dated 28 September 2016?

A. Yes.

Q. Do you see in the paragraph beginning "Secondly" Jennifer Hale of PwC says that she would "appreciate it if you could send across the contract in relation to Surge Financial"?

A. Yes, I can see that.

Q. So you would accept PwC were asking you for a copy of that contract on 28 September?

A. I remember them asking for a copy of it and I remember discussing it with our accountants.

Q. Well, this is 28 September. Can we go back to an email that we saw earlier, please, <MDR00059585>. This is the same date about two and a half hours later?

A. Yes.

Q. You sent the new version to Kerry, so my question to you was, when PwC asked you for a copy of the agreement, you provided Kerry with an updated version and asked her to sign it; yes?

A. I -- I can see that that's sending her a copy of it. There is no body to the email. Sorry to --

Q. The reason you were sending it to her is because you were asking her to sign it; yes?

A. I imagine so, yes. But I am just saying that the email doesn't confirm that. That's all.

Q. Were you not asking her to sign it?

A. No, I would have been -- I imagine that would have been sending the document to her to have a look at.

Q. Do you think you told her --

A. I probably spoke to her or Paul or someone else at Surge which we discussed things on a regular basis, and I would have -- if there is no body to the email, then I imagine there was a discussion had and I was just sending it on.

Q. Do you think you would have told her that you really needed it signed ASAP for your audit?

A. I could have done.

Q. Let's look at <MDR00059706>. Do you see the email from Kerry to you saying:

"Hi Andy.

"Sorry I know you really need this signed ASAP for your audit ..."?

A. Yes, I can see that.

Q. That is what you have told her; yes?

A. As I said before, it was probably discussed and the previous email was just forwarding the agreement on the back of discussions.

Q. What you have discussed is that you really needed it signed ASAP for your audit?

A. Well, that is what Kerry is saying to me. I am really sorry, that may not be what I said to Kerry. It is what she is saying to me in an email.

Q. You didn't reply to her to say, "No, I don't need it signed ASAP for my audit", did you?

A. No, but what you are trying to say is that I told her I needed it signed ASAP. What I am saying is this is her email back to me saying that she knows I need it signed ASAP.

Q. Because that is what you had told her; yes?

A. I had probably asked for it to be signed, yes.

Q. And you had asked for it to be signed ASAP for your audit. PwC had asked you --

A. Sorry, I think you are trying to put words in my mouth. That is what she is saying in an email back to me, but what you are trying to get me to agree to is that is what I had said to her.

Q. Yes, that's right. Do you agree to that?

A. I don't remember what I said to her at the time. I remember there was discussions with Kerry and Paul about the agreements and Surge and LCF working together, and we worked together in accordance with the agreement that we had, be it signed or unsigned. So -- but what you are trying to get me to say that I did was to put pressure on her to sign it ASAP from PwC, and what I am saying is that is not what this email says. This email is her emailing me saying, "Sorry I know you really need this signed ASAP".

Q. So, on 28 September, PwC asked you for a copy, you sent the updated version to Kerry and she said, "I know you really need this signed ASAP for your audit", because that is what you had told her?

A. Well, no. I have just tried to explain myself and perhaps I didn't do it correctly. Yes, there were conversations around the time, I had a conversation with my accountants at the time, what would happen if this wasn't signed and it would be a qualification in the audit that there was a draft agreement that was unsigned but they didn't think anything really turned on it. What you are trying to get me to admit is that I put pressure on Kerry to sign this and what I am saying is this email doesn't say that and what I am telling you is there was discussions at the time with not just Kerry, with others in Surge, around this document.

Q. May I just try to clarify one more time? Because I haven't said anything about pressure.

A. Well, inferring telling Kerry to sign it ASAP is pressure. Sorry to labour the point but ...

Q. All I am trying to establish is that you told her you needed it signed ASAP for your audit; yes?

A. Again, you are saying that you want me to admit that I told her I needed it signed ASAP, and what I am saying is I don't remember that. I remember discussions with Paul, Kerry and other members of the Surge around the agreements between the two companies but what you are trying to get me to say is, by telling her -- you are trying to get me to admit that I put pressure on her by saying, "I need you to sign it ASAP", and I am saying I don't remember that conversation. I remember speaking to Surge around this document, I remember speaking to our accountants about this document, but you are trying to get to me admit that I put pressure on Kerry to sign it and I don't remember asking her that. I remember discussing the document.

MR ROBINS: My Lord, I think I have taken this point as far as I can. I think it might be suitable to have a break now.

MR JUSTICE MILES: What we will do, Mr Thomson, is take -- would five minutes be sufficient, do you think?

A. Yes, I just need to go outside and walk around a bit.

MR JUSTICE MILES: Yes, a bit of stretching.

A. Yes, I would be grateful.

MR JUSTICE MILES: Let's, by that clock over there, we will come back at 2.50 pm.

A. Sorry to just ask, I have never taken the stand before so I understand there is some rules around I am not allowed to say --

MR JUSTICE MILES: I should have explained that. I thought it had been explained to you by your team, your legal team. While you are giving evidence, which means all of the breaks in between, it means overnight, it means everything, you are not to discuss the case or your evidence with anybody.

A. Okay.

MR JUSTICE MILES: There may be some qualifications to that in due course, but the key thing is you are not allowed to talk about your evidence. In other words, everything that you have already said in your witness statements or what is being discussed with counsel in court.

A. Okay, so safest, if anyone asks me, just say I can't talk about it?

MR JUSTICE MILES: Yes. You absolutely can't. That means everyone.

A. Yes, thank you.

(2.42 pm)

(A short break)

(2.50 pm)

MR ROBINS: Mr Thomson, before the short break, we saw that PwC had asked you for a copy of the contract between LCF and Surge. Do you remember telling PwC that you would take a copy of that agreement to their offices?

A. I don't remember specifically but if there is an email that refreshes my memory, then ...

Q. Let's have a look <MDR00059776>. At the bottom of page 3.

Do you see your email, on the left-hand side, to Jennifer Hale of PwC?

A. Yes.

Q. Do you see, in the second line of the first paragraph, you say:

"I will attend your offices with the original loan documents for you to view and also the original agreement with Surge Financial ..."

A. I can see that, yes.

Q. So, with your memory having been refreshed, you would agree that you told PwC that you would take the agreement to their offices?

A. Yes, that is what the email says, yes.

Q. You agreed to meet Jessica Miller at 9.00 am on 29 September to hand over this document. Do you remember that?

A. Indeed, if that is what the email says. I don't remember specifically the conversation.

Q. Let's have a look at <MDR00059780>.

Do you see, at the top of the page, James Hewer of PwC emails you and, at the end of the first line, he says:

"I gather Jess is going to meet you at 9am". Do you remember making arrangements to meet Jess at 9.00 am?

A. I met her several times, but, if this says I met her at 9.00 am -- sorry, I don't remember the specific arrangements, but it seems to suggest that.

Q. Can we go back, please to <MDR00059706>. We saw this earlier. Kerry said:

"Sorry I; know you really need this signed ASAP for your audit but I do have to run it by our solicitor." Do you remember her saying she couldn't sign it immediately, she was going to have to run it by her solicitor?

A. I can see that is what the email said, yes.

Q. Do you remember you thought she was being difficult about this?

A. I don't remember specifically, no, but ...

Q. Do you remember thinking she should just get on with it and sign your amended version of the agreement?

A. I don't specifically remember, but I imagine, from what you are saying, you will take me to something that suggests the same.

Q. Do you remember thinking that you were in a difficult position because you were meant to be taking it to PwC's offices but you didn't actually have a signed copy yet?

A. I -- I can see from the emails that you have shown me that I have agreed to see PwC the next day, I can see from the email that you have in front of me right now that Kerry is saying that I know I need it back ASAP.

Q. Do you remember getting in touch with Paul Careless to see if he could resolve this issue for you?

A. Well, that is what I said to you before we had the break. I spoke to Kerry and Paul about this -- about this agreement. So that is in line with what I said to you previously.

Q. Let's look at that at <D1-0002988>. Could we make that a bit larger, please.

A. Yes, please.

Q. Could you read that to yourself and let me know when you have had a chance to do so?

(Pause).

A. Yes, I have read it and I believe it confirms what I said to you before the break, that I had discussed this agreement with Paul. I believe it confirms that I have discussed it with our accountants and, if it wasn't signed, then we would get a qualification in our audit, which I think I mentioned before the break.

Q. So you felt it should have been an easy ask for Kerry to sign it so you could evidence it to PwC, and you felt, unfortunately, you were wrong about that?

A. Sorry, say again. Someone coughed.

Q. You felt it should have been an easy ask for Kerry to just sign it?

A. Yes, that is what the email --

Q. You mentioned a moment ago that, if she didn't sign it, someone from Surge didn't sign it, PwC would put a qualification in the audit, because LCF didn't have an agreement in place with a critical business supplier?

A. Yes. That is indeed what the email says, yes.

Q. Do you remember that Kerry got back in touch with you to say that her lawyers had looked at the agreement and had made some changes to it?

A. I remember there was some to-ing and -- there was some discussion on it. I remember discussing it with Paul, I remember discussing it with Kerry.

Q. Let's have a look at <MDR00060092>.

Do you see the email from Kerry to you on 2 October 2016?

(Pause).

A. Yes, I have read that.

Q. Do you see that she was sending you two attachments?

A. So the tracked changes one and the signed version?

Q. Yes, that's right.

A. Yes.

Q. She said that she had signed it, recognising that it is time critical.

You had, certainly by this point, made clear to her that you needed it signed ASAP for your audit, hadn't you?

A. That's the same thing that you mentioned before in your -- I believe -- apologies if I am labouring the point, but you are trying to put words in my mouth there. Yes, there was discussions around this. Yes, it was something that we wanted -- both companies wanted to have happen. I discussed it with Paul and I discussed it with Kerry, I discussed it with our accountants and our other directors. But what you are asking me to admit is that I put pressure on Kerry and asked her to sign it ASAP, which is, I think, the point we were talking about before.

Q. Nothing about pressure. I am asking you if you asked her to sign it ASAP so you could evidence it to PwC?

A. I think it is the same point. When you are telling someone you want it signed ASAP, that is applying pressure on them.

Q. Never mind the pressure, let's look at the purpose. The reason you wanted her to sign it ASAP was so you could evidence it to PwC and that's what you told her?

A. Well, again, you are trying to infer that I told her something. What I am telling you is I don't remember telling her that. I remember having discussions around this. Yes, I can see there is emails to-ing and fro-ing between both companies about this document, I can see there is emails from auditors, accountants discussing it, I can see there are meetings happening around it. But what you are trying to get me to say is that I told Kerry, "I need you to sign this ASAP", and what I am saying to you is I don't necessarily remember saying that at all. But you are trying to get me repeatedly to say the same thing.

Q. Let's look at the changes that Kerry and her solicitor had made. <MDR00060094>.

Can you see, at the top, at the end of 2, they have changed "distributor" to "intermediary"?

A. Yes, and changed the address as well.

Q. Yes, that's right. Can you see, on the rest of the page, there are also some further instances where they have changed "distributor" to "intermediary"?

A. In the blue, yes.

Q. Can we look at page 2, please. Can you see they have put back the definition of "loan notes"?

A. Yes, I can see that.

Q. Then on page 3, clause 4, can you see they have crossed out in red some of the things that had been added to the definition of "Services"?

A. Mmm hmm.

Q. Sorry. For the transcript, when you say "Mmm hmm", do you mean, "Yes"?

A. Sorry, yes.

Q. Thank you. Can we look just below that. Can you see they made some changes to clause 5 as well? (Pause).

A. Yes, I have read that.

Q. Thank you. Then, page 6, can you see they have added a new clause 6 "Obligations of the principle". (Pause).

A. Yes, I can see that.

Q. Then, at the bottom of the page, can you see they have made changes to clause 8 as well? Make that bigger, perhaps. "Liability", if we just make that bigger so Mr Thomson can see it.

A. Thank you.

(Pause).

Yes, I have read that.

Q. Thank you. Now, if we go to <MDR00060093> and look at page 11, this is the second attachment, the clean version that Kerry had already signed. Now, given that the document contained all those changes from Kerry's lawyer that we have just seen, you wouldn't just countersign this to resolve a problem with PwC, would you? You would want to send it to Alex Lee at Buss Murton to get his comments on the changes?

A. I can see me doing that.

Q. Can we look at <MDR00060232>. Can you see, at the top, an email from you to Alex Lee and then the subject, it says:

"Hi, please can you call me ASAP re the attached, cheers."

And the attached is the agreement from Kerry.

A. Yes.

Q. We will agree that you were sending it to Alex Lee so he could review it and comment on it?

A. Yes, give some input.

Q. And you were quite keen for him to get back to you quickly because you were being pushed by PwC for this?

A. I think that is just a turn of phrase. I don't think "being pushed" is a correct characterisation.

Q. Can we look at <MDR00060431>. It is an email from you to Mr Lee:

"How are you getting on with the Surge agreement, I am being pushed by PwC for it".

"Being pushed" is the correct characterisation, isn't it?

A. That's a turn of phrase, it doesn't necessarily imply a great deal of pressure, which is, I think, what you are trying to infer.

Q. Well, you were chasing him because you were being pushed by PwC for it?

A. Yeah. It doesn't infer a large amount of pressure from PwC. I had had conversations with our accountants what would happen if we didn't get this signed. As we were shown earlier, we would have just had a qualification in the audit.

Q. This was the one document you hadn't yet been able to provide to PwC?

A. Yes, but if we hadn't provided it, as I said to you before the break and, I believe, afterwards, we would have had a qualification in the audit. So I think you are trying to infer there was a lot of pressure on me to get it done and, actually, I had discussed with our accountants what would happen if I didn't get it done. We would have had a qualification in our audit. Okay, that was accepted. And I had discussed it with Paul, if we didn't get it signed, and there was -- you know, for Surge, we were their largest client and Paul told me he would get it signed.

Q. Is your evidence that, having a qualification in the audit regarding the robustness of LCF as a going concern was not of any particular importance to you?

A. I was advised by our accountants, Oliver Clive & Co, that if we had had a qualification in the audit that we had a draft agreement that was as yet unsigned, the qualification would sit there in the audit. It wouldn't have a disastrous effect, no. That was the conversations I had with our accountants.

Q. Mr Thomson, that is not true, is it? You were immensely concerned about the possibility of a qualification in the accounts?

A. Well, as I have just said to you, I've had the conversation with our accountants and they told me that it would simply be a qualification if I didn't. And I had had conversations with Mr Careless and Kerry Venn about that, and I remember standing at the end of my drive talking to Mr Careless and he said he would get it done.

Q. Well, there was increasing urgency about this, because it was the one document that you hadn't yet provided to PwC, wasn't it?

A. If that is what the emails that you have -- sorry, I don't quite remember them, but that is the emails that you have brought up. But you are trying to infer that there was a large amount of pressure on me to get it done and what I am trying to explain to you is that I had already qualified with our accountants what would happen if it wasn't done. And, if it wasn't signed, the directors believed that that was -- wasn't an enormous impact on the audited figures.

Q. Let's have a look at <MDR00060609>. Do you see an email from Jessica Miller of PwC to you?

(Pause).

A. Yes, I have read that.

Q. So you were still, at this point, intending to provide a copy of the agreement to PwC, weren't you?

A. At that time, yes, I can see that it was, as she says, the last document outstanding, she confirms that it will not lead to any additional work, we have actually answered all of their queries. She is just telling me it is a documentation that was required. I believe, in a previous email that you brought up that said that we would hand it to her personally, clearly, I think that was a couple of days before. It looks like that didn't happen. But this email doesn't read to me like there was a great deal of pressure here, which is what I think you are trying to suggest.

Q. Now, if you had wanted to reply honestly to this email, you would have said, "We don't have a signed agreement yet, Surge's solicitors have provided some tracked changes which my solicitors are reviewing", or something like that; yes?

A. Sorry, repeat the question.

Q. If you had wanted to reply honestly to this email, you would have said, "We don't have a signed agreement with Surge yet. Surge's solicitors have provided some tracked changes which my solicitors are reviewing". Something like that?

A. Not necessarily. I could have replied to her, "We are working on it. I will get back to you". I don't remember what the reply was to this email.

Q. Let's have a look. <MDR00060610>. You replied: "I completely forgot. I am out of the office at the moment but I will try to have a copy scanned over. If not I can do it first thing tomorrow morning."

A. Mmm hmm.

Q. You hadn't "completely forgot", had you? You had just sent Kerry's redraft to Alex Lee and were chasing him?

A. Can you bring up the previous email, sorry?

Q. Can we look at the email below.

A. Okay, can you go back to the other one. Sorry, can you make it bigger?

You can infer various different things into that: forgot to get back to her; forgot to get it to her. It is just ...

Q. You couldn't send a copy scanned over, you weren't in a position to do that. Alex Lee was still reviewing Surge's lawyers' changes, wasn't he?

A. So I am biding time.

Q. Well you are lying to PwC to bide time?

A. I wouldn't necessarily call that a lie I am just biding time. I don't infer much from that email, sorry.

Q. Can we look at <MDR00060631>. Do you see Alex Lee's email to you attaching a further draft of the Surge agreement?

(Pause).

A. Yes, I have read that.

Q. Thank you. Can we look at his attachment <MDR00060632>. If we look at page 3. Can we zoom in, please, on 5.1.1.

A. Sorry, could you capture the tracked changes to the right-hand side as well, please? Thank you.

Q. Do you see Mr Lee has deleted much of the new wording in clause 5?

A. Sorry, I am just reading his comments on the right, sorry.

Q. Sure.

A. Yes, I can see that.

Q. Thank you. Then, on page 4, can you see a new clause 6 headed "Insurance"?

(Pause).

A. Yes. I have read that.

Q. And you understand that would have required Surge to: "... maintain professional indemnity insurance with reputable insurers lawfully carrying on business in the United Kingdom, in an amount each year of not less than five million pounds for any one occurrence or series of occurrences arising out of one event for a period of twelve (12) years after the last date upon which the intermediary carries out the services ..."

A. Mmm hmm.

Q. Sorry, for the transcript --

A. Yes.

Q. Thank you. Then, page 7, do you see he has amended the clause relating to "Obligations of the Principle", which had been clause 6 but is now clause 7?

(Pause).

A. Yes, I have read that.

Q. You had amended the next clause as well. Let's have a look at that. "Liability", at the bottom of the page, which he had also changed. Do you see that?

A. Yes, I have read that.

Q. When you got that from Alex Lee, the next step would be for you to send it on to Kerry -- yes? -- so she could look at his changes?

A. Or discuss it with her, or discuss it with Paul.

Q. Okay. Well, I am going to suggest that you would have sent it to her straight away because PwC were expecting to get this document from you.

A. Again, following that, I discussed this with Paul and Kerry on a regular basis. You are trying to suggest that I sent it immediately on, I don't necessarily remember doing that.

Q. Well, PwC had completed the accounts, but had told you that they wouldn't release the accounts until they had a scan of the agreement?

A. And what I said before, and I think what has come up in emails, that you showed me and took me to previously that, if this wasn't signed, then we would have a qualification. So I think that has already been discussed.

Q. So PwC weren't telling you that they wouldn't release the accounts until they had a scan of the agreement?

A. That, I believe, is what the email said before, which I think you brought up, if I am correct.

Q. So PwC were telling you that they weren't going to release the accounts or --

A. Sorry, what I said is the email you previously brought up, is that what the email said?

Q. I am asking a different question. Did PwC tell you that they wouldn't release the accounts until they had a scan of the agreement?

A. I don't remember, to be honest. That is why I asked about the previous email that you brought up.

Q. Let's look at the email <MDR00060649>. At the bottom of the page is your email to Kerry:

"I've just received this, I haven't opened the doc yet as I am in the car but will have a look when I get home. Alex does in his email pose a couple of questions I think we need to address.

"The immediate issue is I have been able to put off PwC until now but they are expecting a doc first thing tomorrow, they have completed the accounts but won't release until [they] have a scan of the agreement." You were saying that because PwC had told you that they wouldn't release the accounts until they had a scan of the agreement; correct?

A. That may have had a conversation with them or it may have come through my -- through the accountants. I don't remember specifically that conversation, no.

Q. One way or another, that message had reached you?

A. I can see a conversation that, if that is the only thing that they were waiting for to then provide the accounts, that could be an outcome of that conversation. But, also, it is valid that I had had conversations with the accountants that they would provide the audited figures without a signed Surge agreement, but it would have to have a qualification in the audit. So I had discussed both.

Q. At this point, what you are telling Kerry is that PwC have completed the accounts but won't release them until they have a scan of the agreement. Were you saying that to her because it was true or do you think you might have been lying to her?

A. No, I wasn't lying. What I would prefer is a signed copy of the agreement. However, I do have another set of circumstances that the accountants have said, if you don't get it signed, you will have a qualification. The preference is a signed agreement. But if I don't get a signed agreement, there is also an option 2, which I had already covered off with our accountant.

Q. Do you remember that Kerry raised a particular concern with you about the new insurance clause?

A. I remember we discussed the document and I remember discussing it with Paul around that time. I couldn't remember a specific conversation about a specific point.

Q. Let's have a look at <MDR00060649> I think it might be the document we are looking at. It is just above the extract that has been highlighted.

Do you see she says, in the second paragraph: "We don't currently have the PI insurance at that level, I will look in to immediately. A 12-year policy might not be commercially viable ..."

Do you remember her raising that concern with you?

A. It is clear she has because the email is to me.

Q. Do you see, in the next paragraph, she talks about Alex's question concerning liability and says: "Possibly these sections need rewriting from scratch ..."

(Pause).

A. Yes, I have read that.

Q. Now, when you got comments like this from Kerry, you would have sent them on to Alex Lee for him to consider, wouldn't you?

A. Possibly, yes. And I would have also discussed them with Paul.

Q. Let's have a look at <MDR00060722>. Do you see Alex Lee replied with his thoughts and concludes in the final paragraph:

"Perhaps I have missed something but it seems that Surge are trying to say that they do not want to take the requisite responsibility for the work you are asking them to undertake. In which case I am struggling to advise you that such a contract is okay to enter into."

A. Yes, I can see he has written that, yes.

Q. That would have been a problem for you, wouldn't it, because you were trying to get a signed agreement in place that you could provide to PwC?

A. It brings up something that we are going to have to discuss with Surge. But, again, I go back to the point that I had already had the conversation with our accountants if we didn't get this signed. And the directors were comfortable that there would be a qualification if we couldn't get it resolved. As I said previously, the preference is to have a signed agreement. The alternative was to have a qualification. But also, with, you know, conversations at the time, the other side of the coin is the impact on Surge. So we are their biggest client, what happens if they don't sign this?

Q. When you got an email like this from Alex, you would have sent it on to Kerry to get her thoughts on what Alex was saying, wouldn't you?

A. Possibly. I don't remember at the time, but, if you can take me to something that refreshes my memory.

Q. <MDR00060723>. Do you see you told her you had sent the revised doc to your solicitors and he had "come back with the below". You were saying you were on a train but could "talk later this afternoon"?

A. Yes, I can see that, but there is no urgency in that email.

Q. Well, you were still very keen to get the signed agreement to PwC. In fact, you wanted to get it to them on the very same day, didn't you?

A. Again, I am just reading this email and you are trying to infer that I was under a lot of pressure to do this, and this email doesn't infer a lot of pressure. Again, I come back to we had two options, both of which the directors were comfortable with. We were in discussions with not just Kerry, with Paul as well, in getting this document signed.

Q. Let's have a look at <MDR00060730>. At the bottom of the page, do you see, you emailed Jess at PwC to say: "Sorry not to have sent the Surge doc over ..." Something has then gone wrong because you say: "... [at] some pointe the fan last night and I had to run off. I'm on my way back now and will get it sorted later today."

A. Sorry, can I have a look at the whole email?

Q. That is --

A. No, the bit above.

(Pause).

Okay, thank you. And then the bottom one. (Pause).

Q. My question was, you were telling PwC you would get a Surge agreement to them later today and they were saying, "That would be great if we can get it today". Yes?

A. Erm, yes. I say I will "get it sorted later today" and: "Aside from the above how are you getting on with the accounts?"

Again, I don't see any great pressure from PwC that you are continually inferring.

Q. Well, you weren't in a position to get it to them later today because you hadn't reached agreement with Kerry yet, had you?

A. Well, the other emails that you have shown me, no. However, I read that as a delay to see if I can get it sorted. But, again, there is no pressure there and I come back to the same point I keep making that we had, in terms of a group of directors, two options, which was one was, "Yes, Surge, sign the agreement" and the other is we have a qualification. Both of which the directors were comfortable with. I was discussing this with Kerry, I was discussing it with Paul. As I say, I remember having a conversation with Paul at the end of my driveway, on the phone. Told me he would get it signed.

Q. Do you remember that Kerry had a particular concern about Alex's clause on insurance?

A. I don't specifically remember it, but I am sure you will take me to something that jogs my memory.

Q. Let's have a look at <MDR00060823>, where, at the top of the page, she asked:

"Did you get any more information re if PI cover has to be 12 years after all?"

Do you see that?

A. Yes, I can see that.

Q. Then can we look at <MDR00060845>.

Sorry, Mr Thomson, do you need a moment --

A. Yes, I just need to take some pills, give me two seconds.

(Pause).

Sorry, could you repeat your question?

Q. Kerry had asked if it had been for 12 years. Do you see you said you had been messaging Mr Lee over the 12 years and he had confirmed a lesser period he believes would be okay as the term of the contract plus 6 years?

A. Erm, yes I can see that says that. Yes.

Q. The first paragraph, you say:

"This is a clean version my solicitors sent over." So you were sending a clean copy of Alex Lee's draft to her, weren't you?

A. That is indeed what it says, yes.

Q. Then <MDR00060851>. Do you see, at the top, she says: "Good news on PI 6 years."

So she is potentially happier with the six-year suggestion?

A. Mmm hmm.

Q. Sorry, for the transcript --

A. Sorry, my bad. Yes, I can see that.

Q. But she is going to review Mr Lee's draft and come back to you?

A. Yes, that is what it says.

Q. If we look at the top of the page, that is an email that she sent just after 6.00 pm on 6 October. Do you see that?

A. Yes, 6.02.

Q. Can we look now, please, at <MDR00060881>. Do you see the very next morning, at 8.31, your email to Jessica Miller of PwC --

A. Yes.

Q. -- saying:

"I finally got back to the office this morning (its been an entertaining week! ! !) and have scanned in the agreement below."

A. Yes.

Q. The attachment is at <MDR00060883>. Can we look at page 6. Do you see the clause headed "Insurance"?

A. Yes.

Q. That is the clause which Alex Lee had first sent to you on the previous day --

A. Mmm hmm.

Q. -- isn't it? 6 October?

A. Could you make it bigger, sorry?

Q. Do you remember we looked at this?

A. Yes.

Q. So he had sent that to you on 6 October. If we look back at the front page, it says at the top it is dated 3 August 2015?

A. Mmm hmm.

Q. Well, if it contained the clause first sent to you on 6 October 2016, it can't really have been signed on 3 August 2015, can it?

A. I think what that date is there to reflect is the broad agreement between the companies, which the majority of this follows.

Q. Well, you backdated this to fool PwC into thinking that it was an agreement that had been in place for a considerable period of time?

A. The companies had been in agreement for a considerable period of time, and I believe that date reflects when the companies got into agreement.

Q. Kerry hadn't agreed. If we go back to page 6, clause 6.1, Kerry hadn't agreed the 12 years, had she? We just saw you have made enquiries with Alex Lee, he had suggested six years, she said she would potentially be happier with that. So this isn't something she had agreed, is it?

A. The date reflects the broad spectrum of the companies working together, it reflects the terms -- the majority of terms of which they worked together, reflects how they got paid, it reflects how they received the funds and they acted in accordance with that. So the date, I believe, reflects when the companies actually agreed.

Q. But Kerry hadn't agreed this insurance wording about 12 years, had she? We've just seen --

A. No, on the email the day before, on the -- I can't remember the date of it, sorry. The one that you brought up.

Q. So it is not something she had agreed, is it?

A. The day before. Sorry, I don't remember the date of the two emails you just previously brought up.

Q. The day before was the 6th, just after 6 pm?

A. Mmm hmm.

Q. It is not something she had agreed, is it?

A. At that point.

Q. It is not something she agreed at all, is it?

A. We got a signed copy.

Q. Well, let's have a look at page 12.

A. Yes, that is my signature and I believe that is hers.

Q. You applied that signature to this document so that you could evidence the agreement to PwC?

A. I didn't apply that signature to the document.

Q. There is no email attaching a signed version of this agreement bearing Kerry's signature?

A. We received a signed document.

Q. You applied her signature to this and sent it to PwC?

A. I -- no, disagree with you.

Q. As far as Kerry was aware, there was still no signed agreement in place between LCF and Surge?

A. I had conversations with Mr Careless and he said he would get a signed agreement sent over. As I said to you probably, I think, ten minutes ago, 15 minutes ago, a conversation with him, I was on the phone with him at the end of my drive, he would get it done. We received a signed agreement. Both companies acted in accordance with that agreement and had done for months and months, since August 2015.

Q. Well, Kerry hadn't actually responded to you yet on the draft agreement that you had sent over to her on the previous day, had she?

A. The one on the 6th?

Q. That's right. She didn't respond to you on that?

A. I don't remember, I don't have my inbox. But, also, Surge corresponded with LCF. It wasn't just me they corresponded with. They corresponded with the office as well.

Q. It was your understanding that, as far as Kerry was aware, there was still no signed agreement in place between the two companies?

A. Sorry, say again?

Q. It was your understanding that, as far as Kerry was aware, there was still no signed agreement in place between the two companies?

A. On the 6th, but this is on the 7th and we received a signed agreement. As she had signed agreements before.

Q. You hadn't heard anything from her on that draft agreement that you sent over to her on the 6th?

A. No, I had spoken to Mr Careless and Kerry and they agreed to send the document over.

Q. You didn't know if she had any questions or was happy to agree it.

A. I don't remember the conversation at the time. But I can see that we were in correspondence about it and I can see, because you have taken me to the email, that I sent PwC this copy.

Q. Let's have a look at another document <SUR00051281-0001>. In the middle of the page, on 26 October 2016, you emailed Kerry and, in the second paragraph, you say:

"On a separate note, I haven't heard anything from you on the proposed agreement I sent over a couple of weeks ago? Do you have any questions or are you happy to agree?"

Do you see that?

A. Can I have a look at the whole email?

Q. Sure.

A. Sorry, could you make it bigger? Okay, now back to the other bit.

Yes, I have read that.

Q. Now, you were saying that you hadn't heard anything from her on the proposed agreement that you sent over a couple of weeks ago because you hadn't heard anything from her on the proposed agreements that you had sent over a couple of weeks ago, had you?

A. I don't remember the correspondence at the time. We, as companies, discuss things with each other on a regular basis, and discussions with Paul and Kerry, and I was told, "Yes, you will have the signed agreement". The signed agreement arrived. Yes, I can see that there are other things that we may very well have discussed with it. I think the email above goes into VAT issues that they were having. So perhaps the contract needed to be amended for that purpose.

Q. Well, you said you hadn't heard anything from her on Alex's draft, because that was right, she hadn't actually responded to you with any comments, had she?

A. No, I don't -- we would have discussed this. I talk to Kerry all the time, I talk to Paul all the time. Again, I come back to, I spoke to Paul, said we would have a signed contract, signed contract arrived.

Q. Mr Thomson, that is not true. You refer to it as a proposed agreement in your email because it was still a draft which she hadn't signed. That's correct, isn't it?

A. Yes, but then the body of the email above that goes into "Re the contract", I think -- sorry, can you go back to the other email? Yes, it says:

"Re the contract, this has been parked for a while to allow our accountant to investigate the VAT issue."

Q. Yes, so you had been expecting her to respond with comments but you hadn't heard anything from her on it. You chased her up and she was saying it had been parked for a while to allow Surge's accountants to investigate the VAT issue; yes?

A. That is what that says, yes.

Q. Well, you understood she was explaining why she hadn't responded with comments yet. Surge's accountants were investigating the VAT issue?

A. The conversations between the agreements between LCF and Surge were somewhat of a moving feast. We even went into them becoming an appointed representative, which was other agreements that we were looking into as well. However, I still stick to we received a signed agreement.

Q. That is later that you are talking about.

A. No, what I am trying to say is that Surge and LCF, their method of working, for want of a better word, evolved and there were other things that we worked with together.

Q. Mr Thomson, she hadn't signed the agreement that you sent to PwC and you were concerned that you still didn't have an agreement in place between LCF and Surge?

A. I don't see this email chain saying that. Again, I come back to Surge wanted these agreements signed, we were their largest client, I was told it was going to be signed, I received it, it got scanned to PwC. Yes, as two companies, our relationship evolved and there are other services that were provided. They had issues with VAT, which I believe their accountant brought up with them, so we had to look at that; they wanted, at a later date, to become an appointed representative. We received a signed agreement.

Q. Mr Thomson, you didn't receive a signed agreement. You applied Kerry's signature to the version that Mr Lee had prepared and you sent it to PwC to get out of a difficult spot, didn't you?

A. No.

Q. You were concerned that you didn't actually have any real agreement in place between LCF and Surge?

A. LCF and Surge had agreed the broad terms of their working together since 2015. The majority of the things that they did together, they adhered to that agreement.

Q. Well, we just looked at the email chain, there were extensive comments by Surge's solicitors, there were extensive changes by Mr Lee. You sent those to Kerry. You appreciated that she might need to speak to her advisors, but you were concerned that it had been weeks. Weeks had gone past and you still hadn't heard anything from her?

A. Mmm hmm.

Q. Do you agree?

A. That's this email, sorry, that you're --

Q. No, no, I am asking a question. You appreciated that Surge might need to speak to its advisors, but weeks passed without you hearing anything from Kerry on the draft contract?

A. Sorry, what date range are you talking about now?

Q. After the date on which you provided a version bearing Kerry's signature to PwC. So we are talking about October. Weeks were passing, you still hadn't heard back from Kerry and you were getting concerned about it?

A. Yes, this email, that's what I asked. The bottom one. 26 October. Is that -- that is the one you are referring to?

Q. Yes. You were concerned you hadn't heard anything from her on the proposed agreement. You wanted to know if she had any questions and was happy to agree it?

A. Again, I come back to, in discussions with various people from Surge, we received a signed agreement, as we had done before. Yes, there were other aspects of the agreement that needed to be dealt with, that we would be dealing with. You have picked on one of them, which is the indemnity, but it doesn't stop two companies getting into an agreement and then amending it later. Surge was -- we were their biggest client, they told us, "You will have a signed copy". We received a signed copy. The downside for LCF for not receiving a signed copy was simply that we would have a qualification in our audit, which the directors had already discussed with their accountants and had already accepted that, if that's what it is, that's what it is.

Surge is a company, we were their biggest client, I was told we would receive a signed copy. Yes, there are other things that we change and evolve, and I believe this is part of that.

Q. As far as Surge was aware, you didn't actually have any agreements in place?

A. I have just disagreed -- sorry, I have just disagreed with you.

Q. Let's have a look at <MDR00063304>.

MR JUSTICE MILES: Mr Thomson, are you in need of another break?

A. Yes please.

MR JUSTICE MILES: Right. We will take another break now, until 3.55 pm by that clock.

A. Thank you.

(3.47 pm)

(A short break)

(3.55 pm)

A. Would it be all right if I perched instead of sitting?

MR ROBINS: Absolutely fine, yes. We will just have to check the microphone is close enough to you.

A. Sorry.

MR ROBINS: Mr Thomson, to put the next email in context, do you remember, before the break, we saw you emailed Kerry to say:

"I haven't heard anything from you on the proposed agreement I sent over a couple of weeks ago, do you have any questions or are you happy to agree it?" And she replied to say it had been parked for a while to allow her accountants to investigate the VAT issue on the screen.

A. That was the last one you showed me, yes.

Q. Perfect. The next email is <MDR00063304>. It is the same at the top of the page. Let's zoom in on that. You replied:

"Appreciate you need to speak to your advisors but its been weeks now and I haven't heard anything and we don't have any agreement in place. I was put in an extremely difficult position with PWC over it which had the potential to damage everything, this needs resolving sooner rather than later can you please chase your advisors and advise of the urgency." So taking that one step at a time, you said it has been weeks now and you hadn't heard anything because weeks had gone by and you hadn't heard anything from her on the draft agreement that you sent over?

A. But that doesn't mean that we hadn't discussed it. In terms of LCF and Surge, we worked together quite a lot and I can see a set of circumstances that they signed and sent over the agreement and we then worked on various different amendments and things that needed changing at a later date, and I can see how we would want to get it done. I can see that -- me putting some urgency on her there. Absolutely, I can see that. But we were told that we would receive a signed copy, we received a signed copy, we were also working as two companies. The majority of that agreement, we had worked with together, we adhered to, specifically, the largest part is payment. They were happy to accept it. I can see a set of circumstances, they signed it, they sent it over and things can be amended afterwards, which, clearly, they needed to be.

Q. There hadn't been any discussions. You said you hadn't heard anything because you hadn't heard anything; correct?

A. I can see what the email says but I don't believe that there would have not been any discussions. I am referring to the advisors, have her advisors not come back to her, but I can't see a set of circumstances that this wouldn't have been discussed between LCF and Surge. And Surge isn't just Kerry.

Q. You said you didn't have any agreement in place because you didn't have any agreement in place; correct?

A. Well, again, we received a signed copy. That got signed by myself. I can see a set of circumstances that they wanted to help us out to get a signed agreement over to PwC. Did both companies act in accordance with that agreement? Yes, we did.

Q. When you say you can "see a set of circumstances", are you referring to things that aren't true but which you can contemplate or imagine?

A. We -- what I am telling you, as I have said before, we received a signed contract. Can I see Surge sending over a signed contract and then wanting to go through things differently in detail? Yes, I can. I don't remember -- you know, it was many years ago now. So the specifics of conversations around that time are a long time ago. We received a signed contract from Surge.

Q. Well, you didn't, because you didn't have any agreement in place, did you?

A. Well, again, we are going around the same thing. I have told you that we received one. I signed it and sent it on. I can see that there are things that we need changing dealing with, but then both companies work together.

Q. I know what you have said, Mr Thomson. What you have said is untrue, isn't it?

A. No.

Q. You say in this email that you are put in an extremely difficult position with PwC because they needed to see the agreement, but the agreement which they needed to see did not exist, did it? That is the difficult position that you are referring to?

A. I believe that they sent over the agreement because they knew we needed it and then we can work on things afterwards. Kerry sent over -- it was various different signed agreements she had sent over, over the course of the period of time.

Q. She hadn't sent over the version that you sent to PwC, had she?

A. We -- again, we received the signed document.

Q. You said that the extremely difficult position with PwC had the potential to damage everything because it would have been a disaster for LCF if the accounts had been qualified or if PwC had refused to release unqualified accounts?

A. My working relationship with Kerry Venn -- or Kerry Graham, at the time -- was, at times, strained, and I can see myself writing a strong email like that one is because we were at odds over various different things at times.

Q. You said it needed resolving sooner rather than later because it hadn't been resolved yet, she hadn't signed the version of the agreement Mr Lee had provided to you?

A. Surge provided us with a copy of the signed agreement. I have said that to you on a number of occasions. I am not going to change that.

Q. Mr Thomson, I don't accept your evidence. You got out of the extremely difficult position with PwC by forging the agreement, didn't you?

A. Again, no. Looking at Surge, we are their largest client, they want to keep us happy, send over a signed agreement while we deal with other things later. I can see that happening.

Q. You put Kerry's signature onto a version which she hadn't agreed, didn't you?

A. Again, you are asking me the same thing in a different way and I am not going to change my answer.

Q. You backdated it, because you wanted to deceive PwC into thinking there was a signed agreement in place since that date, when, in reality, there was not?

A. No. It was dated when the companies got into agreement and the date reflected the majority of that agreement, the largest part again being, as you pointed out previously, the amount of money that we paid them. We could have, if we wanted -- if we were under that much pressure from PwC, we could have told Surge we are stopping. And we are the largest client of Surge and then their income would have stopped. If I wanted to assert that amount of pressure, then me and the other directors at LCF could have done that.

Q. You wouldn't have done that, Mr Thomson, because LCF's income would have stopped as well, wouldn't it?

A. Well, LCF had, you know, funds in its account and I don't remember exactly what the funding situation was at that time. However, looking at the date, October 2016, we were well advanced with other fundraisings, we could have dealt with them. We were looking at regulated fundraisings. So Surge were our largest supplier. We could have exerted pressure, but we didn't. Both companies worked closely together and we received a signed copy.

Q. Mr Thomson, I don't accept that. As far as Kerry was aware, you hadn't been able to get a signed agreement in place before your audit?

A. Well, you have said that and I have given you my answer in various different ways.

Q. Do you remember Surge's solicitors were Macfarlanes?

A. I don't, but I am sure that you know who they are.

Q. Do you remember they took Alex Lee's draft of the agreement and worked on it?

A. If you say so. I don't remember that they are the solicitors. I am not saying that they are not. It is a long time ago.

Q. <MDR00092487>. Do you see, at the bottom, Kerry emailed you, on 30 June 2017, saying:

"Some good news long overdue but I do now have a services agreement for your review and signature. I have been conscious that we were not able to get this in place before your audit last year and have now made sure this is ready well in time of your next audit." Do you see that?

A. Mmm hmm. Yes, that is considerably later.

Q. But you hadn't told her that you had forged her signature to deceive PwC, had you?

A. Again, Mr Robins, how many times would you like me to deny your allegation? I didn't forge the signature. Both companies worked with each other quite closely. We received from Surge a signed agreement, which I signed and sent on. There, you are, what, some seven or eight months down the line? As I believe I have previously said to you, there are various different agreements that we worked on. They were looking at being an appointed representative, that didn't actually happen. As we touched on earlier, there were VAT implications that we worked on. I don't accept what you are saying. We worked together quite closely, we received a signed contract from Surge, I signed that. Both companies worked in accordance with that contract. They allowed us to monitor what they did, they accepted our compliance procedures that Kobus gave them. They certainly accepted the payment that was made to them. Largely, we worked in accordance with that agreement.

Q. Mr Thomson, I don't accept that for one moment, but we will move on to the next topic.

Do you remember that SAFE, as it was called at the time, started to lend to Sanctuary towards the end of 2013?

A. Sorry, Sanctuary PCC, was that?

Q. Yes, that's right.

A. Yes.

Q. Do you remember that you signed a form on behalf of Sanctuary applying to SAFE for a loan of £675,000?

A. I remember there was loan documents and I have seen them in the last couple of months. I can't remember the date on that, sorry.

Q. Let's have a look. <MDR00007911>.

Is this your handwriting?

A. It looks like it.

Q. If we look at the bottom left, do you see "Loan amount required £675,000"?

A. Yes, I can see that.

Q. Then, on page 4, is that your signature?

A. Yes, it is.

Q. Then the loan agreement you mentioned a moment ago, let's have a look at that. <MDR00007913>. Do you see that is dated 1 October 2013?

A. Yes.

Q. Then, if we look at page 3, can we zoom in on clause 3.1? Do you see the reference to --

A. Yes.

Q. -- a loan facility not exceeding £675,000?

A. Yes.

Q. Can we look at page 7. Is that your signature, at the top of the page, on behalf of Sanctuary?

A. Yes, it is.

Q. Is that Michael Peacock's signature on behalf of SAFE?

A. I couldn't tell you what his signature looked like. I can see his name written on the right-hand side.

Q. It says he is acting as an officer of the company. Was he an officer of SAFE?

A. For a period of time he worked with SAFE, yes.

Q. Do you remember that, by the end of April 2015, Sanctuary PCC owed almost £1.3 million to SAFE?

A. Sorry, the date was?

Q. The end of April 2015?

A. Yes, I am aware that the loan facility or amount went up.

Q. Let's have a look at the precise amount. <MDR00195285>. You have no reason to think that this is incorrect?

A. I don't remember the letter, but it is -- it looks (inaudible).

Q. SAFE's accountant was a firm called Oliver Clive & Company, wasn't it?

A. Erm, it became Oliver Clive, it wasn't their accountant before then, no. In what period are you talking about?

Q. October 2015, that sort of time?

A. I can't remember the exact date, but, yes, they did become LCF, as it is now. LCF's accountant.

Q. Were they also performing a first audit?

A. I can't remember if the year before it was audited or just accounts run. Companies House should tell you.

Q. I am not sure anything turns on it. Do you remember Nick Angel worked for Oliver Clive and company?

A. Yes, I remember Nick Angel.

Q. Do you remember him asking you for a copy of the facility agreement between SAFE and Sanctuary PCC?

A. I can imagine he would have done, I don't remember, specifically, the email or the request, but I can see that that would be a reasonable request from the accountant.

Q. Let me see if I can jog your memory <MDR00019239>. Do you see an email there from Nick Angel to you? Do you see paragraph 3 says:

"Could we have a signed copy of the loan agreement with Sanctuary?"

A. Sorry, could you make that bigger?

Q. Can we make paragraph 3 bigger? Just below that, paragraph 3, please.

A. Point 3, yes?

Q. Yes.

A. Yes, I can see that.

Q. Now, if you got an email like this from Nick, you would have probably asked your assistant, Katie Maddock, to help you answer the questions, wouldn't you?

A. Katie helped with the accounts and she did the back office side of things so I can imagine so, yes.

Q. Let's have a look at <MDR00019253>.

Do you see she replies to you with a draft email to Nick, and then, paragraph 3, says:

"Sanctuary loan agreement attached."

A. Yes, I can see that.

Q. Let's look at what she attached. <MDR00019260>. Do you recognise this as the document we looked at a moment ago?

A. Aside from the date is different.

Q. I think the date is the same?

A. I thought it was 3 October.

MR JUSTICE MILES: No, I think it was the 1st.

A. Was it the 1st?

MR ROBINS: Let's look at page 3. Do you recognise clause 3.1 as being the same as the document we looked at a moment ago?

A. I can -- yes, that was the paragraph.

Q. So that is what she sent to you. Look at <MDR00019297>. You emailed Nick Angel to say:

"Katie just mentioned she [doesn't] have a copy of the Sanctuary loan to hand ..."

Now, that --

A. Because we would have increased the limit.

Q. Well, she had just sent you the agreement that she had found?

A. As perhaps the original loan agreement, but we had increased the limit.

Q. That was the only agreement she sent to you because it was the only agreement that then existed?

A. But, at the time, the lending was 1.2 million, so we would have increased the limit earlier.

Q. You said:

"... I'm not in the office at the moment so only have an unsigned copy on my laptop, which I have included for your reference, I can get you a signed copy on Monday."

Let's have a look at the attachment <MDR00019298>. Do you see this is an agreement, dated

22 October 2013, between Sanctuary PCC and SAFE?

A. Yes.

Q. If we look at page 2, do you see, in clause 2.1, it provides for a loan in the sum of £2 million?

A. Yes.

Q. Then, if we look at page 6, the signature panels envisage again that you would sign on behalf of Sanctuary PCC. Do you see that?

A. Mmm hmm.

Q. In the bottom, it envisages you would sign on behalf of SAFE. Do you see that one?

A. I can see that.

Q. Now, these signature panels were blank in the document that you sent to Nick Angel --

A. Mmm hmm.

Q. -- because this document had never been signed, had it? You had just created it?

A. Erm, I remember the original loan agreement to Sanctuary, when it was put in place, was considered low. So it was agreed years before for a larger limit. I can't remember the documentation around that time because it was a long time ago.

Q. That's not true, is it? You put in place an agreement for £675,000. Sanctuary borrowed a lot more than that. The accountants at Oliver Clive asked you for a copy of the agreement. There was no agreement in place, so you created one?

A. No. The amount, the facility limit that it originally got was too low, so it was agreed -- essentially agreed inside the same group that it could borrow more.

Q. But no written agreement was put in place at that time?

A. I can remember agreements that were dealt with. I have not seen them since, so ...

Q. So is your evidence that you had signed this agreement at some point before you sent the draft to Nick Angel?

A. I can see I do remember that the amount that was agreed that Sanctuary could borrow was low, so it was agreed that, essentially, it could borrow more. There was paperwork at the time. I don't -- I have not seen that paperwork since. I have seen what you are showing me now. But it is a -- it would have been an easy thing to do to correct the paperwork at the time, which I think we did. But I can't find that and haven't seen that paperwork since. What you are showing me, these, myself and Mr Peacock worked together, although two different companies but worked in both, so it would have been a fairly simple thing to do to increase the loan limit.

Q. Let's look at <MDR00019406>. Do you see that, on 26 October 2015, you provided Katie Maddock with a PDF?

A. Yes. I can see that.

Q. Let's look at the PDF at <MDR00019412>. If we look at page 6, you can see that it is still unsigned?

A. Mmm hmm -- yes, sorry.

Q. If we then go to <MDR00019429>, do you see that Katie Maddock replied to you saying:

"Please find attached the signed Sanctuary loan agreement, please check over the signature page. Does it not need to say Michael Peacock for Sales Aid Finance rather than yourself? Or acting as an officer of the company?"

A. Yes, I can see that.

Q. Can we look at the attached document, please, <MDR00019430>. You see, at the top, it is still dated 2 October 2013?

A. Yes.

Q. And then, on page 6, we can see the signature blocks have been filled in.

Now, this isn't something that was actually signed on 2 October 2013, is it?

A. No, what I think this document is is because the other one couldn't be found. So all the same people redrafted what was agreed back in 2013. When I worked in the bank, the amount of loan documentation that went missing inside the bank, if all parties agreed that they were happy with it, they reproduced the document. I think that is what has happened here. I think what has happened is that the document that would have been in 2013 wasn't found, so we went back to the same parties and reproduced it. That doesn't mean that it wasn't done at the time. It doesn't mean it wasn't agreed at the time and both companies acted in accordance with the agreement.

Q. Mr Thomson, no one has disclosed any version of this agreement, whether draft or signed, that pre-dates October 2015. It is something that you were involved in creating at that time to deceive Oliver Clive & Company?

A. I disagree. It wouldn't have been hard, at the time, for Michael and I to complete loan documentation as it is now, but if we cannot find, several years later, that particular document, both parties agreeing and putting the document back in place because the other one couldn't be found, I don't see the harm in that. Again, in the bank, both the Bank of Scotland and RBS, that happened. I don't see -- both parties are in agreement that that is what happened shortly after. As I said to you before, when we originally put the 675 limit in place, it was agreed very shortly afterwards that that wasn't going to be sufficient so we agreed a larger limit. That documentation went missing so the same parties -- and that is why I think Katie is saying in the email, actually, Michael is the person, because he was at the time, that should be noted in there. So I think that is entirely reasonable. Just all parties agreed, I don't think anything turns on that. Both companies acting in accordance with it. So the documentation was reput back in place. Documents get lost in companies on a regular basis and they get redone.

Q. It had never previously existed, it was put in place for the first time in October 2015 to deceive the accountants, wasn't it?

A. Again, no. And, for the same reason, it wouldn't -- it doesn't follow that Mr Peacock and I wouldn't have done this at the time if we had agreed, which we did, that the facility wasn't large enough, so what I believe we have done there is just couldn't find the documentation so we put in place documentation that was at the time. Again, both parties agreed, both parties acted in accordance with the documentation, and I think that is why Katie, in her email, is pointing out that it actually should be Michael that dealt with this. Because that is how it was previously.

MR ROBINS: Mr Thomson, I don't accept that. My Lord, I see the time.

MR JUSTICE MILES: Let me just ask -- may I ask a question about this?

MR ROBINS: Yes.

MR JUSTICE MILES: How long after the original 675 limit do you say it was that the limit was increased to 2 million?

A. It was in conversations with -- inside the group working with us fairly shortly after.

MR JUSTICE MILES: How long?

A. Within a matter -- within -- my recollection is it was a short period of time, so I want to say a matter of months.

MR JUSTICE MILES: A matter of months. All right.

A. We wouldn't, my Lord, have had, working between us, any pushback on that.

(Pause).

MR JUSTICE MILES: Right. So, is that a good moment?

MR ROBINS: Yes, if I have any further questions, I will pick it up again tomorrow morning.

MR JUSTICE MILES: So, Mr Thomson, the same rules apply about not discussing the case or your evidence with anybody whilst giving your evidence. That is going to apply all the way through your giving evidence.

A. I understand. Thank you for letting me perch. It is more comfortable than that.

MR JUSTICE MILES: We will resume tomorrow. Sorry, Mr Thomson, you can stay there or you can move elsewhere in the court.

A. Perching like this is better.

MR JUSTICE MILES: You stay there. What is the position about tomorrow morning?

MS DWARKA: Yes, my Lord, you have asked me to enquire about whether we can get a letter from his surgeon that is following him. I am instructed that a request was made but the response received from the NHS was that they don't provide these letters, and that is the reason why an appointment was made for Mr Thomson to then go to see an expert.

MR JUSTICE MILES: Right. Is there any -- in the light of the adjustments that have been made, why is that needed before court tomorrow?

MS DWARKA: The only reason it was made, my Lord, is because you indicated originally, last week, that we hadn't put any expert evidence on that point. So the appointment was made.

MR JUSTICE MILES: I see. Well, I think that, in the light of the adjustments that have been made, which have not proved controversial, it is not necessary for the court to require that evidence at this stage. If anything changes and Mr Thomson says that the adjustments that are being made aren't sufficient or whatever, it may be necessary for there to be further evidence. But at the moment it seems to be working perfectly well and so I think we should resume at 10.30 am tomorrow. If, for separate reasons, Mr Thomson needs to see Professor Noordeen, then it should not happen during court hours. So if it were to happen after Wednesday, well, so be it, or if it happens outside court hours. But I would prefer to continue at 10.30 am tomorrow morning.

MS DWARKA: Yes, my Lord. Noted.

MR JUSTICE MILES: That is a matter of the kind that I am happy for you to, of course, discuss with Mr Thomson, because it is not something concerning his evidence or the case.

MS DWARKA: Thank you, my Lord.

MR ROBINS: My Lord, I have one further point to raise but we don't need to have Mr Thomson perching in the box for it, so I wonder if he could be --

A. This is more comfortable, perching, than sitting.

MR ROBINS: Fine. Stay there, that is fine, so long as we are not keeping him in an uncomfortable position. If I could just pass up a copy of the letter that we sent last Friday to Kingsley Napley. It is a fairly short letter.

(Document handed).

Rather than reading it out, could I just invite my Lord to read it.

(Pause).

MR JUSTICE MILES: Yes.

MR ROBINS: My Lord will see, all we are asking for at this stage is a witness statement explaining how this state of affairs has arisen. We asked to know by 12 noon today whether such a witness statement would be provided voluntarily. If it is not going to be provided then, as we say, we will have to make an application to the court under Practice Direction 57(a)(d) which gives the court power to require a party to provide a witness statement explaining the position in respect of their disclosure. I merely, at this stage, ask my learned friend Mr Ledgister to indicate whether a witness statement will be provided voluntarily because, if not, we are going to have to make an application.

MR LEDGISTER: I am grateful, my Lord. It is the first I have seen of this letter. Both myself and my learned junior have made some enquiries ourselves. In fact, the initial discovery was made by my learned junior, which gave rise to the further disclosure. So we will take instructions on this. I don't anticipate the necessity for any additional orders but we will take instructions and, indeed, if there needs to be further --

MR JUSTICE MILES: Right. Perhaps you could give me an update first thing tomorrow morning --

MR LEDGISTER: Indeed, my Lord.

MR JUSTICE MILES: -- about the letter.

MR LEDGISTER: Very well.

MR JUSTICE MILES: We will resume at 10.30 am tomorrow. Thank you.

(4.31 pm)

(The hearing adjourned until 10.30 am the following day)

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