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 22 - Wednesday, 10 April 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

Wednesday, 10 April 2024 (10.35 am)

Housekeeping

MR ROBINS: My Lord, there are four separate and unrelated items on the agenda this morning. I will tell your Lordship what they are, but I think it is ultimately for your Lordship to decide in which order to hear them. First, there is the question of case management of Mr Thomson's strike-out application. Essentially, that is the question of whether it should be heard in the near future, as Mr Thomson contends, or postponed until closing submissions, as we have submitted, and I think it is for your Lordship to hear from Ms Dwarka first on that.

Secondly, there is the application by the fifth and sixth defendants for an extension of time in which to file and serve the witness statement dealing with privilege, and I understand Mr Curry is going to address your Lordship on that. Obviously, I will respond to it in due course.

Thirdly, there is the claimants' application to amend as against the fifth and sixth defendants. We need to deal today at least with procedural aspects of that. I think it falls to me to explain the position and the directions that we seek.

Then, fourthly, a very late addition to the agenda: at 9.55 this morning, we were served with an application by Mr Thomson seeking permission from the court to pay for a room at the Rosewood Hotel for the duration of his evidence.

Obviously, your Lordship cannot deal with that substantively today. We have only just received it and I have not even read it yet, and we will want to file and serve some evidence in response, but I think it probably would be sensible to take this opportunity to decide when it will be heard and to set a timetable for evidence in response.

MR JUSTICE MILES: Right. Okay, I think I will deal with them in that order. The order you have just given.

MR ROBINS: I am grateful. In which case, I will sit down and allow Ms Dwarka to make her submissions on case management.

MR JUSTICE MILES: Yes.

Submissions by **MS DWARKA**

MS DWARKA: My Lord, the claimant has asked the court to consider a procedural point before hearing the first defendant's application to strike out some of the claims. Your Lordship had already indicated a measure of resistance to this application on the ground of timing. The first defendant made this application in full knowledge that he will have to overcome this procedural resistance. However, we say that there is no fundamental objection on the ground of timing. From the case cited by both sides in their skeletons, it is clear that it will be very rare that the court decides to strike-out a case on the summary basis, when it is already engaged on hearing the evidence and determining the case at trial. The purpose of the summary remedy is to avoid the need for a trial. If the trial is already taking place, why, it may be asked, do you need the summary remedy? The reason we say is that there will be the occasional case where something slips through and the case arrives before the trial judge only for one party to jump up and say "Stop. This case must be struck out". Normally, the answer is that it is all a matter of the court's assessment of the evidence and that the party who said "Stop" must simply wait patiently for the result at the end of the trial, but that is not this case.

Here we say, my Lord, that it is genuinely unfair for the case to continue without the strike-out because the case cannot be tried fairly as it is. If Mr Thomson is right, and we say he is, and that, first, the claims in breach of duty, knowing receipt and dishonest assistance are so badly pleaded that they cannot be tried fairly; and, second, if the claim in knowing receipt is bad in law, then it would not be right to try those claims without considering whether it should be struck out first.

We understand that this should have happened before the trial -- at the latest, at the PTR -- but it didn't, my Lord. At this juncture, we say the least bad course would be to pause and consider whether the claim should be struck out, rather than to continue with the trial. That is all we are asking the court to do. Dealing specifically with the points raised by the claimants, the claimants have raised nine procedural objections in their skeleton. I will address each in turn and some of them very briefly. Their first one is they say the first defendant has conceded that the claimants' proprietary claims raise a triable issue at various points during the case. They refer to six points to support their argument. Concession is a big word, my Lord. It means, in my understanding, that one side accepts something as being the case and may never come back and argue the contrary. That clearly is not the position here. All that we are dealing with here is the position where the concession was made for the purpose of a particular hearing or in a particular context. It is conceded in that context, or for that hearing, but that is not a forever concession, as we say in our skeleton.

On the contrary, it is a limited concession and we say that that is the most that has happened here. So there is nothing which prevent us from saying now that the claimants' proprietary claims are bad. If your Lordship were to find that the knowing receipt claim was bad in law and bound to fail, are the other side saying that any sort of concession, limited or unlimited, would prevent the court from striking out a claim which was bad and bound to fail? That cannot be right.

If a claim is bad, then it is just that: bad. It is in everyone's interests that such claims are struck out because no more time and money will be spent on them. In Khosravi v Al Aqili Trading LLC and others -- my Lord, I have only taken a paragraph from it at paragraph 41.

MR JUSTICE MILES: Is this in the bundle?

MS DWARKA: It is in the trial bundle and it is in the authorities bundle that we prepared for you.

MR JUSTICE MILES: Yes. Sorry, which case is this?

MS DWARKA: This is the case of Khosravi v Al Aqili Trading LLC and others.

MR JUSTICE MILES: I have been given a paginated bundle which goes all the way through, helpfully, consecutively numbered and ...

MS DWARKA: You requested a soft copy of the authorities bundle. Is that the one --

MR JUSTICE MILES: That is the one I am looking at.

MS DWARKA: Yes.

MR JUSTICE MILES: Here it is, right. Let me just have a quick ...

MS DWARKA: Paragraph 41 is the paragraph.

MR JUSTICE MILES: I just want to look at the top of the case.

MS DWARKA: Sure. (Pause).

MR JUSTICE MILES: Yes, sorry, which paragraph?

MS DWARKA: 41, my Lord.

MR JUSTICE MILES: 41. Yes.

MS DWARKA: Sir David Eady, sitting as a High Court judge, said:

"... the defendants too are entitled to consideration and fair treatment in the litigation process. The longer the case is allowed to drag on, the greater the time and expenditure they will have to devote to it (with little prospect of recovering their costs if ultimately successful). They are entitled not only to clarity in the formulation of the claim, but also to be able to see at least the prospect of light at the end of the tunnel."

Dealing next with the their next two objections, which is, they say, there is no justification for failing to apply sooner, and, third, that the application is too late, I can see, my Lord, that the passage of time can have an impact on the court's exercise of its case management powers. If a party delays so long, the court would be entitled to say, "Ah, well, they cannot really be that interested", but this is different, my Lord, because this is black and white, we say.

If a claim is bad today, it is bad at any time -- last week, last year, next week, next year. Such claims should be struck out.

Dealing next with their fourth objection which they say is disruption of the trial, this is potentially a better point for the claimants, but there is no real risk of disruption here. The trial was listed for 22 weeks and it is already clear that it is not going to last for anything like that. There is plenty of time, and the day which it would take to hear our application is not going to affect the trial that much in the grand scheme of things.

Their fifth objection is the prospect of a --

MR JUSTICE MILES: Did we have a fourth one? Sorry.

MS DWARKA: The second and third, what I have done is I have put the second and third together.

MR JUSTICE MILES: Second and third go together.

MS DWARKA: Yes, it's no justification for failing to apply sooner and application is too late, so it is essentially the same point.

MR JUSTICE MILES: Yes, sorry, the fifth is ...?

MS DWARKA: The fifth is prospect of a mid-trial appeal.

MR JUSTICE MILES: Yes.

MS DWARKA: The claimants say that, whatever the outcome of the application, the losing party will appeal, but the safeguard is that, in our system of procedural law, an appellant needs permission to appeal. On a strike-out application, it is, I venture to suggest, highly unlikely that your Lordship will give permission to appeal. The same is possibly true midway through a trial of the Court of Appeal. So, in my submission, my Lord, this is not a strong point.

Dealing with their sixth objection, my Lord, which is they say a realistic time of day is needed excluding the delivery of a judgment. I have already dealt with that point, my Lord. In the context of this trial, a day will not make much of a difference. If the claims are struck out, the saving of time later will be much more than a day.

Dealing now with their seventh objection, they say that the strike-out application will not reduce the scope of the trial. That cannot be right, whichever way we look at it. The trial has been affected by every change of circumstances. We didn't use our summons; three days were saved. The second and tenth defendants settled. That reduced the scheduled duration of the trial by seven days. If three out of the four remaining claims are struck out, that will make a further substantial reduction.

Their eighth objection, my Lord, is, they say, the court will require the claimants' claim to go to trial in any event. This is the same point in a different wrapper, my Lord. I accept, of course, that I am not seeking to strike out the fraudulent trading claim. It was a borderline decision. For the reasons I explained in opening, the fraudulent trading claim is badly pleaded and I will say in closing that it cannot succeed on the pleadings. But I accept that that is a more complex argument.

In the case of breach of duty, I say that it is clear. There is no proper pleading of the duties, the breaches, causation or loss. Nothing at all. The same goes for dishonest assistance: a single sentence, not more than that.

The knowing receipt claim is slightly more involved. It is pleaded at great length but it is just plain wrong in law, we say. The claimants have referred in their skeleton to the case of Byers v Saudi National Bank, but that case does not improve their position. We say, on the contrary, it makes it worse.

In that case, the Supreme Court affirmed the orthodoxy, to succeed in a claim for knowing receipt, the claimant has to show that it was still beneficial owner of the money or property at the time the tort or, as Lord Burrows puts it, the equitable wrong was committed. That is the very point at issue. Here, my Lord, they cannot show that, because the money was loaned and that simple point is the fatal flaw in their case.

My Lord, I appreciate that this stage is solely concerned with case management and not the merits, but I think that I should make just a few points about the decision of the Supreme Court in Byers v Saudi National Bank just because that case has such a prominent place in the claimants' skeleton.

They have used this case to tell that you the first defendant is wrong about the law, but the irony, my Lord, is that in Byers the Supreme Court said two things: first, the Supreme Court said that they were not deciding anything about the situation in which a company sues in knowing receipt and alleges that the misappropriation was made by a director of the company in breach of duty. My Lord, that situation, which was excluded by the Supreme Court from the scope of its decision in Byers is precisely the situation we have in this case.

Second, the single point that the Supreme Court did decide in Byers was that it is an essential element of the tort or equitable wrong that the company has not parted with its beneficial title prior to the commission of the tort or wrong. My Lord, that is the point we make on the strike-out. So Byers is a decision in our favour --

MR JUSTICE MILES: But not in the case of a director, because it doesn't decide -- you just told me it doesn't decide that point.

MS DWARKA: It doesn't, but in respect of the point about the essential element of the tort, it is a case that shows that that is a prerequisite.

MR JUSTICE MILES: But not in a case where the claim is against the director or other fiduciary. That is a case where the -- it is a case where the recipient was a third party -- in fact, a bank, as I recall.

MS DWARKA: But it sets down the rule about what the continuing equity --

MR JUSTICE MILES: It does in the case where the property comes into the hands of a third party and then the third party can say, "Well, in that case, I was effectively a bona fide purchaser for value without notice; therefore, any equitable claim is defeated", but the Supreme Court said it was -- I mean you have just told me this, that the Supreme Court was not dealing with a case where the property was received by a director.

MS DWARKA: No, because there was no equity to begin with, that is why.

MR JUSTICE MILES: Well, there was --

MS DWARKA: They refer to --

MR JUSTICE MILES: The third party was not a director or other form of fiduciary.

MS DWARKA: We say they look at the criterion, they look at the analogy of criterion and then they make a comment about it, but they state the law about the existence and the need for continuing equity to exist when the asset or the money gets into the hands of a third party or a director.

MR JUSTICE MILES: Okay.

MS DWARKA: That is my point on the eighth objection, my Lord.

MR JUSTICE MILES: Okay.

MS DWARKA: The ninth objection, they say, is the irrelevance of the proprietary freezing order. The court is required to discharge any freezing order promptly and whenever it is no longer warranted. The reason is obvious: a freezing order is a serious and substantial restriction on the liberties of an individual and the burden is on the claimant to show such a restriction is still warranted. The moment it is not, they are supposed to apply.

They should have made this application, my Lord, but they didn't. The only reason that they had not is because the continuation of the injunction has given them a huge inbuilt advantage in this case. They should not have that advantage.

They say that the injunction was made by consent. We say that it was made unopposed, which is not quite the same, but it doesn't really matter, my Lord. If it is no longer warranted, it must be discharged. Here, there is a good case for striking out the only proprietary claim. If they go, the injunction goes. Overall, my Lord, this is a matter of case management for you to decide with the overriding objective firmly in your mind of doing justice to both parties. You can hear and decide the application now; you can hear and decide it at the end. On Mr Thomson's behalf, I ask you to hear and decide it now but, ultimately, it is a matter for you.

Unless I can assist you any further, those are my submissions on the case management point.

MR JUSTICE MILES: Thank you very much. That is very helpful, thank you.

MS DWARKA: Thank you.

MR ROBINS: My Lord --

MR JUSTICE MILES: Mr Robins, I think you can be fairly brief because I have read your skeleton argument and, in fact, very helpfully, Ms Dwarka has been through your list of points.

MR ROBINS: That is what struck me, listening to her submissions.

MR JUSTICE MILES: So I have them in mind, but -- of course, you must make your points, but I will indicate that you can do so fairly briefly.

MR ROBINS: I am grateful. And, my Lord, the same thing crossed my mind hearing Ms Dwarka's submissions, which were essentially by way of reply to what we say in our skeleton argument.

Submissions by **MR ROBINS**

MR ROBINS: My Lord has seen it is common ground that the court will only hear a strike-out application after the commencement of a trial in rare circumstances. The normal course, as emphasised in authorities, is for any strike-out application to be heard well in advance of the trial. The question is whether there are any circumstances which take the case out of the norm, so as to justify such an exceptional step.

Our position, as my Lord has seen, is that Mr Thomson has not identified any exceptional circumstances; he hasn't even attempted to identify any. He has filed no evidence seeking to identify any exceptional circumstances. The evidence in support is contained in the application notice itself, which simply makes the point that if the strike-out application is successful, then the struck out parts of the claim will not proceed any further. That is obviously right, it is an inexorable feature of any strike-out application, whether mid trial or not. It doesn't amount to exceptional circumstances to justify an exceptional step.

In addition to the evidence, Mr Thomson has filed three skeleton arguments. None of them seeks to identify any exceptional circumstances. The first, running to 14 pages, deals with the substantive legal points, not the relevant case management test. The second, running to a further seven pages, has only three paragraphs dealing with case management. The rest addresses the substantive legal points under the heading substantive issues. The third, running to a further 11 pages doesn't deal with case management points at all, it doesn't address the exceptional circumstances test; it is instead seeking to address substantive points, developing an argument which is said to reconcile the decision of the Court of Appeal in Akindele with the decision of the House of Lords in Criterion and the decision of the Supreme Court in Byers.

MR JUSTICE MILES: I don't think I have seen the second of those three skeleton arguments.

MR ROBINS: The second?

MR JUSTICE MILES: I have seen the -- I have read the one --

MR ROBINS: It is in the trial bundle. As I say, it is short --

MR JUSTICE MILES: I do seem to have it.

MR ROBINS: It is <P10/5>, page 1.

MR JUSTICE MILES: Let me read that. (Pause). Yes, I have read that.

MR ROBINS: I am grateful. My Lord will have seen it is only really paragraphs 4, 5 and 6 which deal with case management at all, but those dates seem to meet the applicable test, even though that test is said to be common ground in paragraph 2.

The material before the court doesn't establish any exceptional circumstances for case management purposes to justify the taking of a step that should only be taken rarely.

That could be the end of the matter, but we have gone on to submit that, far from there being any exceptional circumstances to justify the mid-trial hearing of a strike-out application, there are, in fact, strong reasons in the present case why, as a matter of case management, it would be profoundly wrong to do so. These are not, as Ms Dwarka characterised them, procedural objections, they are nine points showing, far from being exceptional circumstances, they are in favour of the course advocated by Mr Thomson. It would be, as I say, profoundly wrong to do so.

We have set those out in our skeleton argument. Ms Dwarka has replied to them. I don't want to waste time by making submissions unnecessarily, and I am obviously happy to deal with any particular questions that your Lordship may have or to give your Lordship any assistance that your Lordship may require, but I am really in your Lordship's hands whether you want to hear from me further on any of those.

MR JUSTICE MILES: Yes, can you just remind me when the trial started, the date? Actually in court.

MR ROBINS: 19 February.

MR JUSTICE MILES: When the strike-out application was made, that was -- was it during Mr Thomson's evidence? 21 March.

MR ROBINS: 21 March. We can go into bundle A where, in bundle A1, there is an updated trial timetable which --

MR JUSTICE MILES: So where were we then?

MR ROBINS: That is <A1/11/1>. My Lord will see 21 March was --

MR JUSTICE MILES: We were still dealing with -- that was during your witnesses; is that right?

MR ROBINS: Yes, that's right, it was the same day our witnesses were being cross-examined by Ms Dwarka.

MR JUSTICE MILES: Yes. Yes, okay.

Just one question. On the pleadings, just remind me how the case for the proprietary claims is put against Mr Thomson, just as a matter of analysis? Is it called knowing receipt, is it called a constructive trust, is it called --

MR ROBINS: The proprietary claim is a claim to recover the assets held by him on a constructive trust as a defaulting fiduciary --

MR JUSTICE MILES: Can you just show me the pleading?

MR ROBINS: Yes. Let me just get the reference. It is at <B1/2>, page 59. (Pause).

MR JUSTICE MILES: Yes.

MR ROBINS: For Mr Thomson, the key point in paragraph 64 is that the payments were made by him in breach of duty, to the extent he was paying it to himself as a defaulting fiduciary. He holds any gains, including any improper profits, on constructive trust for his principal. Our point about -- obviously, we don't need to get into this now, but our point about the intermediate recipients is that they are not bona fide purchasers for value without notice, so they don't defeat LCF's equitable interest in the property.

MR JUSTICE MILES: Yes, all right. I don't think I need to hear further from you, Mr Robins.

MR ROBINS: I am grateful.

MR JUSTICE MILES: Ms Dwarka, do you want to say anything more? I have said to Mr Robins that I do not need to hear further from him but, on the points he did make, the sort of introductory points, is there anything more you wish to say?

Submissions in reply by **MS DWARKA**

MS DWARKA: Just one thing, my Lord. Maybe the exceptional circumstances we talk about, and we say that Mr Thomson was not represented for the most part and we only became on record since last August, so if we were to put an exceptional circumstance, we would say it is that: that he would not have been able to find or to read all these documents and to figure out where the points were and what the problem would have been with the pleadings. We were instructed last August and we had all sorts of financial funding problems and the only time we could ever look at it would have been once we were properly instructed and counsel were briefly instructed for a period, which was December/January. So we made the point about it in our written submissions.

MR JUSTICE MILES: Can you remind me how long he was earlier represented for? Because there was a period, obviously, earlier on --

MS DWARKA: So the client approached us end of July --

MR JUSTICE MILES: No, sorry, I don't mean more recently, I mean earlier in the case. I mean -- can we just look at his defence, just to remind me.

MS DWARKA: I think he was represented by Peters & Peters at the very beginning. He was then represented by Bivonas at some point but, due to funding, they couldn't vary the freezing order to actually cover their costs and they came off the record.

MR ROBINS: That is not quite right, my Lord. Can I assist: he was represented by Bivonas and my Lord may recall Mr Quirk KC, from August 2020 to October 2021. They came off the record not because they couldn't obtain a variation of the freezing order, but because your Lordship held the court had no jurisdiction to proleptically immunise solicitors from receipt-based liability.

MR JUSTICE MILES: Mr Quirk, did he sign the defence?

MR ROBINS: Yes, yes. And they were, of course, on the record during the formulation of the list of issues for trial, the list of issues for disclosure, all the early CMCs, et cetera.

MR JUSTICE MILES: How many CMCs were there before he ceased to be -- before he instructed lawyers?

MR ROBINS: I am going to need to work that out. There was one before Mr Justice Mann. There was, I think, only one before Mr Justice Mann -- we think three. We think there were two before your Lordship.

MR JUSTICE MILES: Was it at the third one --

MR ROBINS: No, sorry, I am corrected. I am told it was just two before they came off the --

MR JUSTICE MILES: Was it at the second one where I ruled on the proprietary claim point?

MR ROBINS: That was a separate hearing before your Lordship.

MR JUSTICE MILES: So there were two CMCs and, at the second one, I dealt with disclosure issues; is that right?

MR ROBINS: There were two at which your Lordship dealt with disclosure issues: one in July 2021; and March 2022. So he wasn't represented at the second. He was not represented at the second of those, my Lord. But the wording of the issues was agreed by them before they came off the record.

MR JUSTICE MILES: I see. So -- and the July 2021 hearing you have just referred to is what you have also called the second CMC?

MR ROBINS: Yes, and that was the main CMC for settling the disclosure issues and the issues for trial. I think it lasted for about three days, it took place remotely because we were still in the tail end of the arrangements for remote hearings.

MR JUSTICE MILES: Was that also the hearing -- was it also at that time that the proprietary injunction was imposed or was that earlier?

MR ROBINS: Yes, it was --

MR JUSTICE MILES: That was done on paper, was it?

MR ROBINS: On paper. At the end of June -- it was certainly around the same time. I certainly don't think it was raised at that remote hearing.

MR JUSTICE MILES: But it was done on the papers, I think.

MR ROBINS: Yes, and all the correspondence in relation to it took place with Bivonas.

MR JUSTICE MILES: Sorry, Ms Dwarka, but that was helpful to understand the chronology.

MS DWARKA: They are much more aware of the case than I am, in terms of procedure.

MR JUSTICE MILES: Yes.

MS DWARKA: The point is he was not represented throughout the six years that have gone by and, as you are aware, my Lord, he also suffers from medical issues, which we have presented to the court previously --

MR JUSTICE MILES: Yes.

MS DWARKA: -- which shows that he doesn't necessarily -- can cope with volume amounts of work and he has actually made representations in his evidence about how he dealt with the previous CMC, previously. So, on that basis, we say those are exceptional circumstances.

MR JUSTICE MILES: Thank you.

(11.09 am)

Judgment was given (awaiting approval)

(11.57 am)

MR ROBINS: My Lord, as regards the costs of that, we ask merely that they be reserved.

MR JUSTICE MILES: All right. I will reserve those costs. What do we turn to next?

MR ROBINS: My Lord --

MR JUSTICE MILES: Is the timing of the --

MR ROBINS: I don't know whether the shorthand writer wants a break or not?

MR JUSTICE MILES: Yes, we will take a break until 12.05. (11.59 am)

(A short adjournment)

(12.06 pm)

Application by **MR CURRY**

MR CURRY: My Lord, this is the Surge defendants' application for an extension of time to comply with your Lordship's order to file a witness statement dealing with disclosure. The application notice, which I am sure your Lordship has seen but it would probably be helpful to have up on the screen, is at <P11/1>. The overarching reason for the application is that, in order to provide a full answer to the questions that the Surge defendants have been ordered to answer, it is necessary to obtain some input from the disclosure provider OpenText.

As you can see from the application notice, the extension of time is sought, or was sought, to 19 April, that is this coming Friday. My first point, my Lord, is that, following further discussions between those instructing me and OpenText, OpenText have said that they will be able to provide the information that those instructing me are seeking by Monday. On that basis, the extension is now only sought to this coming Tuesday, which is Tuesday, 16 April. Of course, if those instructing me are given the replies by OpenText early enough in the day on Monday to provide the witness statement then, then no doubt they will do so. That is the first point. The second point is that this application was made before time to file the evidence had expired on Thursday, 4 April. That was the day after the end of -- sorry, that was the day before the deadline was going to expire on Friday, 5 April, and the third point is that, in the period between then and your Lordship initially making the order requiring the witness statement to be filed, the Surge defendants had not been sitting on their hands. I will take you through the chronology of this very quickly, my Lord, but your Lordship can see it in paragraphs 3, 4 and 5 of the witness evidence in support of the application, which can be seen on page 3 of the application notice that you have in front of you.

In short, the issue of what was to be done about apparent deficiencies in the Surge defendants' disclosure came up on the last day of term. Your Lordship might recall that, as sitting that day went a little shorter than anticipated because of Mr Thomson's back difficulties, I had not had as long as might have been expected to take instructions from those instructing me as to how long, realistically, the Surge defendants needed to reply to this. In those circumstances, your Lordship made an order that the witness statement should be filed by Friday, 5 April. That was giving the Surge defendants, bearing in mind, the two holidays over Easter, four clear working days to produce the evidence.

As your Lordship can see from Mr Clayman's evidence, he started working on the witness statement immediately and a draft of it was provided to the third-party disclosure provider, OpenText, on the Saturday before Easter. He heard back from them in the middle of the next week, on 3 April, at which point they said they needed more time to answer the questions. So those are my second and third points: that the application had been made in time before the expiry of the deadline and, third, that the Surge defendants have not been sitting on their hands in respect of this evidence.

Fourth, the reasons that OpenText have given for needing more time to reply are, clearly, the Surge defendants are not in a position to interrogate them to any significant degree, but prima facie they

make sense. They say that they need to consult their own records and, of particular importance, they say they need to contact someone who no longer works for them. Finally, they say they need to refer the matter to their own legal department. In my submission, those explanations are ones that make sense.

So that is the fourth point when it comes to exercising your Lordship's discretion to extend time. Fifth, and moving on here to the substantive issue rather more, the question really is, should those instructing me be directed to provide, as soon as possible, ie by the end of today or tomorrow, a witness statement dealing with what they can say at this stage, which is inevitably going to be caveated in respect of those matters where they still need to hear from OpenText; or is the overriding objective, and specifically the management of the disclosure process in this trial better served by simply extending time to Tuesday to allow the Surge defendants, as they expect to be, to be in a position to provide a full answer at that point.

In my submission, the better course is to provide the extension of time. There are really two substantial underlying issues here. If your Lordship would like me to take you in a bit more detail through the disclosure process, I will, but in the interests of time I am just going to plunge on to say what I say those substantial issues are.

The first is, what is the explanation for the recent disclosure during trial of an additional tranche of privileged documents, or documents that were initially tagged as privileged but turned out not to be privileged.

Now, the general answer to that can be given immediately and it is that those documents should have been the subject of further review on the question of privilege, on and before July last year, but, for some reason, got missed by some combination of OpenText and the Surge defendants' solicitors. But exactly what the detailed answer to that is is going to require input from OpenText.

The second substantive issue is, given what has happened, what confidence does the court have in the overall integrity of the disclosure process in respect of privileged documents, or potentially privileged documents, provided by the Surge defendants, and what is to be done about that process if the court does have outstanding concerns about what has gone on? Now, again, the Surge defendants can answer that in general terms by saying that the disclosure process has been correctly followed, so far as they are aware, in respect of identifying privileged or non-privileged documents. That has included a review of documents initially tagged as privileged but subsequently properly disclosed as not privileged. In order to provide a full explanation of why those documents were initially tagged as privileged, the Surge defendants need a more detailed input from OpenText than they currently have. And they anticipate getting that information in time to provide a witness statement early next week.

My Lord, my final point is this is, in my submission, not a case in which there has been any wilful or deliberate failure by the Surge defendants to comply with their disclosure obligations and, in those circumstances, I respectfully submit the court should not, at this point, be taking an unnecessarily punitive attitude to considering this application for an extension of time.

Your Lordship will appreciate that I have gone through that application at some speed. I can expand upon the various points if it would assist your Lordship, but this is, in my submission, a fairly straightforward application for an extension of time and those are the points relied on by the Surge defendants. In particular, I would invite your Lordship to assess this application, as it were, on its own merits, rather than by reference to any wider complaints about disclosure that the claimants might

have. If they do have those complaints and say that they are relevant to how your Lordship exercises your discretion now, then I will deal with them by way of reply.

MR JUSTICE MILES: There was a first draft of the order, which referred to the letter and there was another draft which sets out the points on the body of the order, which is something I required. Is that now agreed?

MR CURRY: My Lord, I imagine it is, although I can't actually recall seeing it myself but the principle of the change is certainly agreed.

MR JUSTICE MILES: Because that order should be sealed, obviously.

MR CURRY: My Lord, I have not seen the sealed order, but there is nothing between the parties, as far as I am aware, as to the substance of what the Surge defendants should now be doing.

MR JUSTICE MILES: Right.

Mr Robins?

Submissions by **MR ROBINS**

MR ROBINS: My Lord, the position is highly unsatisfactory. The issue did not come up on the last day of term, as Mr Curry suggested. My instructing solicitors sent the letter raising this issue to Kingsley Napley on 22 March, which was a Friday, Friday of the penultimate week of term, and they asked whether Kingsley Napley would voluntarily provide a witness statement within seven days. They asked for a response by 12 noon on Monday, the 25th. We didn't receive any response by that deadline and, therefore, I raised the matter with your Lordship at the end of the day on Monday, 25 March. Mr Ledgister said he would take instructions. Your Lordship asked him to provide an update at 10.30 on the following day, Tuesday, the 26th, and, at the start of that day, Mr Ledgister said that Kingsley Napley had prepared a letter in response which would be sent to Mishcon de Reya imminently. He said it would be sent during the course of the morning, or at least by the end of the day and, on that basis, your Lordship postponed further consideration of the matter.

We didn't receive any letter that morning or, indeed, during the course of the day. Therefore, I had to raise the matter again before your Lordship on Wednesday, the 27th, which was the last day of term, and we were seeking, at that point, an order requiring Kingsley Napley to provide a witness statement by Wednesday, 3 April. Your Lordship will recall Mr Curry said, on that occasion, it was "regrettable" that Kingsley Napley had not provided any response. He said that the answers to Mishcon de Reya's questions had been set out in a draft letter, which had taken some time to prepare and which he hoped would be sent before the end of the day. He sought to summarise the position on instructions. He resisted the idea of a witness statement. However, your Lordship ordered that the witness statement be provided. As to the timing, your Lordship held that this was a matter of some urgency, which had to be resolved in good time before the cross-examination of Mr Careless and Mrs Venn. So your Lordship imposed a deadline of Friday, 5 April. In doing so, your Lordship took into account that tranche 11 had been disclosed on 11 March and that the fifth and sixth defendants must by then have satisfied themselves that they had now given complete disclosure. We didn't hear anything until Wednesday, 3 April, when Kingsley Napley said that they needed an extension to Friday, 19 April. On the next day, they applied to the courts for an extension to that date. It is now 10 April, so they have had an extra five days already, effectively, by default, but they want even further time. Initially, they said to the 19th, and now it is said to be to the 16th.

We oppose the application for two reasons. First, the grounds for seeking the extension are insubstantial and insufficient.

Your Lordship ordered the fifth and sixth defendants to provide the witness statement answering the list of questions in Mishcon de Reya's letter of 22 March. Those questions were, as your Lordship requested, inserted into the draft order and in that process, some of the questions were broken out into more than one paragraph. As a result, there are a total of 17 questions in the draft order. Mr Clayman has said that he has prepared a draft witness statement answering those questions. He says it is in an advanced state. If it is in an advanced state, then, clearly, Mr Clayman must possess a substantial degree of knowledge and understanding about the disclosure process that has taken place and, in particular, relating to the answers to the 17 questions. That necessarily follows from the fact that he has been able to provide a draft witness statement which is now in an advanced state. But he has identified three particular matters on which he says he would like to have some input from OpenText. We can see those at <P11/1>, page 3.

In paragraph 4, in the final sentence, he says: "Mishcon de Reya's letter of 22 March raises queries which concern [first] my firm's instructions regarding treatment of privileged material, [secondly] details of the review process undertaken, and [thirdly] how Tranche 11 came to be separate from Tranche 4, given both Tranches relate to privilege."

That is obviously only a small number of points from the longer list of questions. Mr Clayman made clear in his email to Mishcon de Reya on 3 April that the witness statement would not be comprehensive without OpenText's input. We can see that at <P11/3>, page 7. You will appreciate we want the witness statement to be comprehensive. We do not consider the witness statement will be comprehensive without OpenTexts' input.

Mr Curry reiterated the point orally when he said to your Lordship that, without OpenText's input, Kingsley Napley would not be able to answer the questions fully.

So Kingsley Napley's position seems to be that they are not prepared to answer any of the questions until they are in a position to answer all of the questions, and we say that that is unsatisfactory, particularly given that we are concerned here with privilege. My Lord will know that under paragraph 3.1 of Practice Direction 57A, the parties owe duties to the court in respect of disclosure, and under paragraph 3.2, the parties' legal representatives separately owe separate duties to the court in relation to disclosure, and one of those duties, in paragraph 3.25, owed by legal representatives to the court, is a duty to undertake a review to satisfy themselves that any claim made by the party to privilege from disclosing a document is properly made and the reason for the claim to privilege is sufficiently explained. That is a duty owed to the court, in the present case, by Kingsley Napley. So our position, my Lord, is that Kingsley Napley should provide a witness statement now, answering the questions as set out in the draft order, insofar as those matters are within their knowledge and belief. They cannot seek to hide behind OpenText. To deal specifically with the three matters identified by Mr Clayman. First, Kingsley Napley must be able to say what instructions they gave to OpenText regarding the treatment of privileged material. That is not something uniquely within OpenText's knowledge. Kingsley Napley must know what instructions they gave. Obviously, it would be helpful to have confirmation from OpenText, when it is available, that what Kingsley Napley have said about those instructions is correct, but that is an added extra. It doesn't justify Kingsley Napley's refusal to answer this question insofar as the material is within their own knowledge and belief.

Secondly, Kingsley Napley must also have some knowledge or understanding of the review process undertaken by OpenText. It cannot be the position that they are unable to provide any information at

all. They oversaw the work of OpenText, they supervised it, and Mr Clayman must be able to say what he understands that review process to have involved and it is interesting to note, in that context, that Mr Clayman refers to details of the review process. It seems it is only matters of detail on which OpenText's input is required. Thirdly, Kingsley Napley must also be able to state their understanding of how tranche 11 came to be separate from tranche 4. OpenText can confirm that later. Again, that would be a helpful bonus, but it doesn't absolve Kingsley Napley from their obligation to set out their own understanding.

So that is why we say the reasons are insufficient. There is actually nothing to stop Mr Clayman from finalising the witness statement and signing it now, setting out his own understanding of the answer to these questions. He can say, "There are three particular points on which some matters of detail are not within my knowledge and I need clarification from OpenText", but that is not a reason for holding up the entire exercise. They shouldn't be entitled to say that they are not answering any of the questions until they can answer all of the questions.

The second point is that an extension of the length sought does not work in the context of the trial timetable. My Lord recognised, in my Lord's judgment at the last day of term, that this is a matter that has to be resolved sooner rather than later and it is a matter of some urgency. That is because the witness statement is potentially the first step. It is not necessarily the end of the matter. The contents of the witness statement may show that it is necessary for the fifth and sixth defendants to take further steps. The key question at the heart of this is, essentially, what went wrong? Has there been some defect in the process which continues to exist and which requires steps in the nature of rectification to be taken? As Mr Curry put it in his submissions to my Lord earlier, what confidence can the court have in the decisions that have been taken to withhold documents on the grounds of privilege in respect of documents which continue to be withheld. As Mr Curry also put it to my Lord, the question ultimately is, what, if anything, needs to be done? So we need to allow sufficient time between the delivery of the witness statement and the start of the cross-examination of Mr Careless and Mrs Venn in order for any further steps to be taken, if and insofar as it becomes apparent that they are necessary. The updated timetable that I mentioned earlier is at <A1/11/2>. My Lord will see, from the right-hand side of that, that Mr Careless is currently scheduled to be sworn in and to commence his cross-examination on 25 April -- that is in just over two weeks' time. A witness statement on the 16th really wouldn't allow enough time to consider that witness statement to have any debate about the further steps that might need to be taken and for those further steps to be taken. We need to ensure that there is a sufficient opportunity in the timetable for any further steps that need to be taken, to be taken.

There is no point answering the question posed by Mr Curry, "What is to be done?", only to say, "Well, never mind, there is not enough time, let's crack on". Equally, it would be unsatisfactory to say, "Well, let's now pause the trial for a considerable period to enable those steps to be taken".

So we do say that Kingsley Napley should provide the witness statement answering the questions to the best of their knowledge and belief within 24 hours. That is the step that needs to be taken to ensure that this matter remains on track and to avoid further disruption.

MR JUSTICE MILES: Right. Thank you.

Submissions in reply by **MR CURRY**

MR CURRY: My Lord, two points.

First, it is, in my submission, both wrong and unfair to characterise the Surge defendants as attempting to hide behind OpenText or to be refusing to provide information. The Surge defendants will, of course, comply with your Lordship's orders in this respect. They simply submit that the process can be managed most efficiently by having one witness statement that deals with all the issues.

The second point, on my learned friend's observation about needing time to debate the further steps that might need to be taken, any debate about further steps that need to be taken will, in my submission, inevitably turn for all the parties and the court, not simply on a statement by those instructing me as to what their current understanding of the disclosure process is, but on the details that they are now seeking from OpenText. My learned friend refers to there being three issues identified in Mr Clayman's statement. It is important to point out finally that those issues, and in particular the question of the details of how OpenText's disclosure model worked in relation to privilege and review for privilege, is an issue that is relevant to more than one of the questions that the claimants and the court are seeking answers to.

For those reasons, although I fully accept that the court will want to have full information about this as soon as possible, I maintain my submission that the appropriate order is to give the Surge defendants rather until tomorrow to say what they believe to be the case, to give them until Tuesday to reply with the benefit of further information from their third party provider. My Lord --

MR JUSTICE MILES: One question is this, that the evidence about how long OpenText say they need is very brief. Experience shows that, very often, people ask for more time than they actually need. What they actually are asking for is the time that they would like. OpenText here have been involved in this process. They are not legal representatives for your clients but they are nonetheless -- they provide services in relation to an important process, a court process, and the evidence consists of them saying that they need an extension until the 19th, which is quite a long extension, given that the matter was first raised on 22 March and, on your client's evidence, there was a witness statement that was provided to them on 30 March.

So they are looking for a period of almost three weeks from 30 March.

I know it is slightly shorter now, but it is still a substantial period. I am a bit troubled by the fact that your submission is, "Well, it should all wait until OpenText has given the information", and all I've got, as far as I can see, regarding OpenText, is a statement made by them that they need this amount of time.

MR CURRY: My Lord, that is all the Surge defendants have. It has since been shortened a bit. The key --

MR JUSTICE MILES: Sorry, but has it been explored with them? Has it been made clear just how urgent this is? I mean, it is a pretty substantial period to answer questions which ought to be relatively straightforward to answer.

MR CURRY: My Lord, first, there is the point that they need to contact someone who no longer works for them, which is of a nature of a problem that is likely to lengthen things. Second, those instructing me certainly have brought home to OpenText the need to reply as soon as possible.

My Lord, the Surge defendants are not trying to hide anything in this respect and of course, if your Lordship concludes that your Lordship wants a witness statement tomorrow, that can certainly be provided but it will, as I say, be subject to a variety of caveats in respect of information that is still to come.

MR JUSTICE MILES: Right. Okay. Thank you.

Decision

MR JUSTICE MILES: I will not give substantial reasons, I will simply say that I have carefully considered the submissions made on each side and that the main considerations that I bear in mind are these: first, that the questions that have been embodied in the order concern important matters to do with the previous withholding of privilege by these defendants, which it is now accepted was erroneous; second, that these matters were raised in a letter on 22 March and were then raised in court in the following week, and the indications given then were that a letter would be forthcoming. That didn't occur and, on 27 March, I made an order. I also indicated that I considered it was of some urgency because it was important for the claimants and the court to be able to determine whether a proper review of privileged material had now taken place reasonably well in advance of the date when these defendant's witnesses would be called to give evidence. Next, I take into account the fact, as Mr Curry pointed out, that the extension of time was sought before the deadline was reached, and that it appears on the evidence that Kingsley Napley themselves have treated the matter with proper urgency, in the sense of preparing a well-advanced witness statement. The next point is that I consider the evidence about the position of OpenText, which was an outsourced disclosure review provider, to be somewhat limited and unilluminating. It is said that OpenText stated to Kingsley Napley that they need an extension until 19 April. I am now told that they, in fact, consider they can provide the information by 15 April. However, given the importance of these points and the fact that they were first raised in a letter of 22 March, it seems to me that that is a fairly leisurely timetable and it may well be that the time sought by OpenText was the time that they would ideally like, rather than the shortest possible time in which they could provide the information. There is simply very limited evidence about that in the application notice. The next point is that I continue to consider that a reasonable time is needed between the service of the witness statement and the cross-examination of the Surge defendants' witnesses and that, if no evidence is served until 16 April, the time for considering its contents and taking any further steps would, I think, be unduly truncated.

The next point is that it seems to me that at least some of the questions raised in the order ought to be capable of being answered without the input of OpenText. It may be that some of them do require a qualification and that, ultimately, the full position will only be made clear once OpenText has provided the information to Kingsley Napley but, looking at the order, they include, for example, what steps have been put in place to ensure that any further documents have not been incorrectly withheld on the basis of legal professional privilege and what is a basis for claiming privilege in respect of a number of specified documents.

Another question is what events led to Kingsley Napley deciding to revisit the issue for a second time and reconsider, again, the claims to privilege.

It seems to me that at least some of these questions should be capable of being answered at once without further input from OpenText.

The next point is that, while I can see the force of the submission that it would be preferable, in an ideal world, for there to be a single, comprehensive witness statement, I do not think that is a complete answer. It seems to me that, given the circumstances, it would be helpful for the court and the claimants to be provided with a witness statement setting out the position to the best of Kingsley Napley's information and belief. In that witness statement, it will be open to the maker to explain

that there may be further information which might change the position once that has been provided by OpenText.

I ultimately accept the submission of the claimants that there should be a first round witness statement which should be served in short order and that, if a second witness statement is required, that should be provided by close of business on 16 April. I will briefly hear counsel for the Surge defendants as to whether the first statement can be done within 24 hours.

MR CURRY: My Lord, 4.00 pm tomorrow, which is slightly over 24 hours but ...

MR JUSTICE MILES: Yes, 4.00 pm tomorrow. That is the direction I am giving.

MR CURRY: I am grateful.

Submissions by **MR ROBINS**

MR ROBINS: My Lord, the third item on the agenda is, as I mentioned earlier, the claimants' amendment application. The claimants have applied for permission to amend their claims against the fifth and sixth defendants. There are four amendments in total. I can show your Lordship quickly, at <P12/3>, page 4.

MR JUSTICE MILES: Yes.

MR ROBINS: Has that come up? It has come up on everyone's screen except mine.

The first, as my Lord can see, in orange, next to "A" relates to the direct payment from LCF to Mr Golding. The second, "B", at the bottom of the page relates to the Isle of Wight. Then, over the page [page 5], the third, at the end of "(9)", in orange, relates to the lack of trust in LCF, including the position in respect of the ISA bonds. Then, just below that, the fourth, next to "(14)", relates to LCF too. In summary of the position, Kingsley Napley have said the fifth and sixth defendants consent to the first, third and fourth of those amendments. But they have said that the fifth and sixth defendants should have seven days from service of the re-amended particulars of claim to file their amended defence, then 21 days from that date to file supplemental witness statements dealing with the first, third and fourth amendments.

Kingsley Napley have also made clear that the fifth and sixth defendants do not --

MR JUSTICE MILES: So that is 28 days from --

MR ROBINS: No, I think it is 21 days from the same date as the seven days.

MR JUSTICE MILES: Right.

MR ROBINS: They have said the fifth and sixth defendants do not consent at all to the second amendment relating to the Isle of Wight. We were told that on 5 April, it was rather later than we had expected. Mr Ledgister said, on 27 March, that he would have instructions over the next 24 hours for sure, which we took to mean by close of business on 27 March.

So it is not clear why there was a delay until the substantive response on 5 April, which was a full nine days after the last day of term, but there it is, that is what we were told.

We need to deal with the procedural timetable regarding the three amendments to which they do consent. As regards the amended defence, we say it should be seven days from 5 April, when they consented, which would be this Friday at 4.00 pm. The amendments are very short, the position in

response will no doubt be set out very briefly. We don't understand why they need seven days from service of the re-amended particulars of claim.

21 days for a supplemental witness statement, or supplemental witness statements, obviously doesn't work. First, we don't really understand why supplemental witness statements are necessary in respect of the three amendments to which they consent. Mrs Venn has already dealt with the ISA bonds and LCF 2 in her trial witness statement and Mr Venn and Mr Careless have also explained that they thought LCF was legitimate and they said they had no reason to be mistrustful, but there we are, they say they want to file supplemental witness statements and it may be difficult for us to oppose that in principle.

But if they do want to file supplemental witness statements, these are three short points. The supplemental witness statements should be filed at the same time as the amended defence. If they are formulating the position for the purpose of verifying it with a statement of truth in a pleading, then, at the same time, they can put it in a short witness statement, strictly confined to dealing with those amendments and verify it by a statement of truth and serve two documents on us at the same time.

My Lord saw the timetable earlier. Mr Careless is due to be sworn in on 25 April, on the current timetable. We don't have 21 days for the luxury of preparing the supplemental witness statements without any sense of urgency, so we say it should be seven days from the 5th, when they consented, for any supplemental witness statements, which again brings us to 4.00 pm on Friday, and we think it would be helpful to make clear that any supplemental witness statements should be strictly confined to responding to the amendments, to the extent they are not addressed by the trial witness statements.

This is not carte blanche to put in lengthy supplemental witness statements dealing with other matters.

As regards the Isle of Wight, which my Lord saw as a second amendment next to B, we do seek permission. It is not something that can be delayed. The fifth and sixth defendants have said that they want to file a witness statement in opposition to the amendment application. It is not clear how long they want, in order to prepare and finalise that evidence, but they have hinted that they might be seeking a lengthy period of time to file evidence in opposition. We don't think that is necessary. They should be ready to deal with the point now. We are concerned they are trying to generate delay in the hope that it all becomes too late, so that they can rely on that to bolster their opposition to the amendment application. They could have prepared any witness statement in opposition over the Easter vacation, we gave the draft amendments to them on 26 March. They have had the draft amendments, therefore, for 15 days already. That is plenty of time to decide what they want to say in opposition to the one amendment to which they don't consent.

They shouldn't be encouraged to think that dragging their feet will give them any tactical advantage, so either this is a matter that we submit should be dealt with substantively today and your Lordship should grant permission today or, at the very least, we ask your Lordship to give directions for a hearing in the very near future to decide whether we should have permission in respect of this single, contested amendment, and any timetable for evidence and opposition should take account of the fact that they have had the draft amendment for 15 days already.

MR JUSTICE MILES: Right.

Submissions by **MR LEDGISTER**

MR LEDGISTER: My Lord, I have been criticised for giving the court false hope on timetabling thus far and I must apologise that, when I have given dates and times to the court, that isn't on the basis of instruction, and I would certainly ask to take instructions, insofar as the deadlines that need to be met in response to Mr Robins' complaint.

First of all, clearly, the 21 days doesn't work, I can see that. Something needs to be done to accommodate that.

Insofar as the witness statement in response being restricted to the amendments, no opposition to that at all -- it clearly has to be that way.

On the point of the amended defence, my Lord, we would ask that that be served on the court by Monday next week, as opposed to Friday.

MR JUSTICE MILES: This is the one in opposition to the Isle of Wight transaction?

MR LEDGISTER: No, my Lord, sorry.

MR JUSTICE MILES: No, sorry, say that again, I misheard you.

MR LEDGISTER: It is my fault, I am jumping around somewhat.

MR JUSTICE MILES: I see. Sorry, I just misheard you. On the amended defence, you say that should be --

MS DWARKA: Can be served on Monday. Mr Robins has asked for Friday. There is just a practical consideration that needs to be accommodated, and so we would ask for Monday for that.

MR JUSTICE MILES: So that is the 15th, is it?

MR LEDGISTER: I believe -- yes, my Lord, yes. On the point of the defence seeking to have some tactical advantage, I should make it very clear. The court process is not a game. It is not a game, and I made it very clear to the court before we broke off for the term break that there was unlikely to be any opposition to some of the proposed amendments and it was only the Isle of Wight matter that caused us some concern. The reason I did that was to put the claimants on notice, so they didn't need to do any additional work and also so the court could manage its diary accordingly.

As I say, it is not that we are trying to take a tactical advantage, but the Isle of Wight causes issues -- and I am happy to make it quite clear why that is right now, my Lord, so there is no surprise. We could have jumped up and down and complained about the other amendments. We didn't because, whilst it is unsatisfactory, we would say, to have them thrusted upon us at this juncture, it doesn't create any real prejudice to us. Isle of Wight is slightly different. We have made inquiries of our data discovery manager and, just by conducting an initial search, referencing the Isle of Wight and the related search terms, this has thrown up tens of thousands of documents, 19,000 unique documents, that we would need to consider. So it is not so much a matter of us not wanting to accept the amendment and to be difficult just for the sake of it. There are -- there is a significant time consideration here. We are in the process of trying to look at and prepare our defence case. We have got Mr Careless due to be in the box, as Mr Robins has pointed out, on 25 April, and we are working on that, and we -- unlike the claimants, we have a finite amount of resource. We have met a case that was opened or, rather, we have prepared a case that was served upon us in the re-amended

particulars in mind. We now have to revisit a number of those documents with Isle of Wight in mind. That takes time. That takes resource. The finite amount of resource we have available, that needs to be allocated very carefully over the amount of time that we have available to us. In the time that we have available to us. That has been considered and we have had a plan, and it is for this reason why the particulars of claim need to be very carefully constructed and served upon the defendants so we can properly meet the case. So it is not purely an evidential aspect that we need to consider. It is also a resource aspect that we need to consider. We simply don't have the resource to be able to answer the Isle of Wight amended point properly, and I use the word "properly" deliberately: of course we can try our best but that is not going to be with the full consideration of these 19,000 unique documents -- that simply cannot happen, we simply don't have the resource to do that. But, of course, we can try our best. So my Lord, that is the position, so there is no secret about it. Whether my Lord wants to have a full argument on this at some point, we are more than happy to do so and we of course --

MR JUSTICE MILES: Well, how long do you say you need in order to put in evidence in opposition to the amendment? If you want to. As I understood it from Mr Robins, your position was that you would want to put in evidence on this point and no doubt it would be on questions like the number of documents, how they have been identified so far, your point about resourcing, and so on. How long do you need for that?

MR LEDGISTER: To ...?

MR JUSTICE MILES: Well, I understood that you wanted to put in evidence on that?

MR LEDGISTER: My Lord, it is difficult to say. I mean it could be anywhere between a day, to two to three days.

MR JUSTICE MILES: Look, what I am going to do is rise now, subject to the fourth point, and what I would like is -- and I would like really clear instructions, because there has been an element -- and it is no criticism of you -- but there has been an element of shifting sands I am afraid --

MR LEDGISTER: Absolutely, my Lord.

MR JUSTICE MILES: -- in relation to the timing, which has been indicated by you.

I would like you to take really clear instructions, first of all on when you need, in order to put in evidence in opposition to the application to amend in relation to the Isle of Wight; second, how long your clients need in order to put in their supplemental witness statements in relation to the three matters where it is not contested.

MR LEDGISTER: My Lord, yes.

MR JUSTICE MILES: And I will hear from you at 2.00 on that. I don't want to spend too long on it because I want to get on with the evidence.

MR LEDGISTER: My Lord, yes.

MR JUSTICE MILES: But let's deal with that. The fourth matter is the question of Mr Thomson's living expenses.

MS DWARKA: Yes. We have an order which is more or less agreed, bar one item. So I am not really sure whether --

MR ROBINS: Was my Lord referring to the hotel expenses?

MS DWARKA: Sorry.

MR ROBINS: The application that is being made -- I think Ms Dwarka was addressing a separate point on which I am waiting for instructions.

MS DWARKA: Waiting for instructions.

In terms of the hotel, an application was made this morning, my Lord, I think at 9.55, in respect of the hotel expense, because the parties could not agree. So we probably need some directions from you as to how to --

MR JUSTICE MILES: What is proposed in relation to that?

MS DWARKA: So we are still asking for a variation of the order to allow Mr Thomson to be able to stay at Rosewood and a standalone payment of £5,021.20. We have provided the correspondence clip about the correspondence between the two parties as part of the application.

MR JUSTICE MILES: Mr Robins told me very briefly earlier on that he needs to think about this and possibly put in evidence.

So, Mr Robins, what do you say?

MR ROBINS: Can I just ... (Pause).

48 hours, my Lord.

MR JUSTICE MILES: 48 hours, I think that is too long. I think the problem is, presumably, Mr Thomson is staying somewhere at the moment.

MR ROBINS: He is staying at the Rosewood Hotel.

MR JUSTICE MILES: So I think I am going to say close of business tomorrow for your evidence.

MR ROBINS: Okay, we can do that.

MR JUSTICE MILES: Then there will be a question of when it should be dealt with. It may be possible to deal with this on Friday morning. I don't know whether that is difficult for anyone?

MS DWARKA: No, I think I can be here.

MR JUSTICE MILES: It might well be possible to deal with it on Friday morning.

MS DWARKA: My Lord, as an alternative, you can deal with it on paper, if that is something that you would consider?

MR JUSTICE MILES: I think that, given that everything is contentious in this matter, it may be better to hear brief submissions. I am not sure it is going to take the court all that long, one way or the other, but I think I would find it, actually, of assistance to hear even brief submissions.

MS DWARKA: Yes, my Lord.

MR JUSTICE MILES: In any case, I will say 4.00 tomorrow for your evidence.

MR ROBINS: Yes, we will do that.

MR JUSTICE MILES: I suppose that, if it is going to be dealt with on Friday morning, that doesn't give very long for --

MR ROBINS: I was just wondering about that. It doesn't, and obviously my learned friend doesn't know what I am going to say at this point.

MR JUSTICE MILES: No. You will want to have an opportunity to deal with their evidence. I think what I had better say is, actually, that you have until 4.00 on Friday to respond to any evidence the claimants put in and then it will have to be dealt with at some stage on Monday.

MS DWARKA: Sure. Thank you, my Lord.

MR JUSTICE MILES: But I don't want it eating too far into the continuation of the evidence.

MS DWARKA: I will keep my application brief, my Lord, as I have been.

MR JUSTICE MILES: Yes, thank you, I understand. Is Mr Thomson expected at 2.00 pm?

MS DWARKA: He has been here since 12.00. He is just sitting outside.

MR JUSTICE MILES: Okay, so we will resume the evidence at 2.00, subject to hearing anything from Mr Ledgister -- shall we get on with the evidence at 2.00 and then I will hear what you have to say about timing points at the end of the evidence, Mr Ledgister?

MR LEDGISTER: That would be more helpful, my Lord.

MR JUSTICE MILES: That will give you a bit more time. (1.06 pm)

(The Luncheon Adjournment)

(2.00 pm)

MR MICHAEL ANDREW THOMSON (continued)

MR JUSTICE MILES: Yes, Mr Robins?

Cross-examination by **MR ROBINS** (continued)

MR ROBINS: Mr Thomson, the company that came to be known as London Capital & Finance Plc, was previously known as Sales Aid Finance (England), wasn't it?

A. Yes.

Q. At the time that it was known by that name, people referred to it as SAFE, didn't they?

A. Yes, they abbreviated it, yes.

Q. You held 100 per cent of the shares in SAFE in your name, didn't you?

A. They were in my name, but the understanding was I was holding interests on trust for others.

Q. You were holding 100 per cent of the shares on trust for Mr Golding, weren't you?

A. It was Mr Golding and Mr Hume-Kendall.

Q. When do you say that was the understanding?

A. From the start.

Q. Could we look at <MDR00014315>, please. Do you see there is an email from Mr Sedgwick, copied to you, 27 December 2013 --

A. Yes.

Q. -- with the subject "Golding-Thomson Trust Deed?

A. Yes.

Q. He says:

"Please see draft trust deed in respect of all shares held by Andy for Spencer."

Do you see that?

A. Yes.

Q. Let's look at the attachment. That's <MDR00014316>. Do you see the draft trust deed in favour of Spencer Jon Golding?

A. Yes, I see that.

Q. Do you see your name and address?

A. Yes, that is my old address.

Q. Could we look at the next page, please. Do you see "Details of shares" under heading 5? 1,000 ordinary shares in SAFE. That is the entirety of the share capital in the company. You held the shares in SAFE on trust for Mr Golding alone, didn't you?

A. It was a verbal agreement with Mr Golding and Mr Hume-Kendall. The agreement -- the verbal agreement we had was it was the same as International Resorts Group above, that I was holding for Mr Golding. I had a 5 per cent and Mr Hume-Kendall had the rest and it was the Golding family as per other shares that I was holding.

Q. So do you say there was an oral agreement that was inconsistent with the written agreement?

A. It looks so in this case, yes.

Q. Mr Thomson, your story about the oral agreement is not true, is it, the written agreement records the correct position?

A. No. The conversations that we had as a group, we operate as a group and everything else that we did was as a group and the shares in the companies followed through throughout. I appreciate what this says here, but that wasn't the verbal agreement that we had, and the understanding.

Q. As regards the 71,250 shares in International Resorts Group Plc, you accept that you held those solely on trust for Mr Golding?

A. And his family.

Q. Could we just look at the previous page --

A. Sorry, what is that squeaking?

MR JUSTICE MILES: Is there a phone ringing?

MR ROBINS: It is a hearing aid.

MR JUSTICE MILES: Thank you.

MR ROBINS: Do you see clause 1 says:

"The nominee declares that the shares registered in the nominee's name listed below ... are held by the nominee on trust for Spencer Jon Golding ..." Do you see that? (Pause).

A. Yes, I can see that, but that wasn't -- that doesn't follow the other trust deeds that we have in place with the other companies. They should have done. I can't remember why this was done, it was that many years ago. I can't say why it was drafted this way. There was obviously a reason at the time, but that wasn't the understanding of the parties.

Q. It was done this way because that was the position that you agreed at the time.

A. Well, Mr Robins, I have given you my explanation. I am not going to change it.

Q. Okay. We might come back to that.

You say, don't you, that Mr Russell-Murphy was apparently a connection of Mr Golding?

A. Yes. Do you mind if I stand, sorry?

MR JUSTICE MILES: Please do.

MR ROBINS: You say Mr Hume-Kendall and Mr Golding brought Mr Russell-Murphy into SAFE?

A. It was probably more Mr Golding than Mr Hume-Kendall. I understood that they had known each other for a number of years.

Q. So, was it Mr Hume-Kendall at all? I am not clear on your evidence.

A. It was that many years ago, they both knew him, can I say that it was one or the other that brought him in first? I know Mr Golding had known him for a good number of years. I do know Mr Hume-Kendall knew him as well. Can I remember which one introduced him? I can't remember. It was one of them, it could have been both of them at the same time.

Q. And you say that Mr Russell-Murphy wrote a bond which would be issued by SAFE, don't you?

A. Predominantly, yes, it was his drafting, but everyone else in the group had input into that.

Q. That is what you ask the court to believe, is it?

A. That is -- you know, I played the role of -- I had a hand in drafting it. I consolidated everything. Lots of people had input into that, yes.

Q. You mentioned earlier that Mr Hume-Kendall and Mr Golding knew Mr Russell-Murphy. You also knew him as well, didn't you, from your involvement in Lakeview?

A. Early on, I didn't know him, I emailed -- I believe I had email correspondence with him. I think he referred me to Jo Baldock and we -- if I remember correctly, I think the name was Crystal Mortgages, that we looked for some financing. I don't think it actually progressed. It got to an application.

Q. You also knew Mr Russell-Murphy from your involvement in Sanctuary, didn't you?

A. He was -- I don't know. I know definitely from Lakeview, because he introduced us to -- I don't know if I actually met him then or whether it was email introduction. I can't remember from the Sanctuary side of things, sorry.

Q. Let me see if I can assist. <D7D9-0000210>. There is an email from Mr Russell-Murphy to Simon Whittley and Andrew Meikle, saying that he has arranged for "Mark Ingham and Andy Thompson, the owners of the Sanctuary ... to meet [them] at 2 pm next Thursday". Do you remember Mr Russell-Murphy liaising to arrange a meeting for you with Mr Whittley and Mr Meikle?

A. Whittley, I seem to remember the name. Highgrove Securities, I remember that name, but I don't necessarily remember the other chap. I remember -- again, I don't particularly remember Mr Russell-Murphy at the time. It could be that he was, as I say, introduced.

Q. Let's look at <D7D9-0000293>, please. There is an email from you to Mr Russell-Murphy providing information about Sanctuary. Seeing this, do you accept he is someone you had dealings with, whom you knew from your involvement in Sanctuary?

A. I'm looking at the date. I had only just got involved in Sanctuary then. I would have sourced this information from others that had been involved in Sanctuary. I wasn't involved in Sanctuary until some point during 2013, I can't remember the exact date, and I would have been asked to send him this information.

Q. Now, you said regarding the brochure that Mr Russell-Murphy was principally responsible for writing the bond documentation. In fact --

A. Sorry, are we back to SAFE now, not Sanctuary?

Q. Back to SAFE, yes. In fact, you wrote the bond documentation for SAFE, didn't you?

A. I contributed to parts of it, as did lots of others.

Q. You wrote the first draft, and you asked other people to review it for you?

A. I coordinated. As I say, lots of people had a hand in it and a large hand of that was Mr Russell-Murphy. I have never written a bond before.

Q. Let's look at <D7D9-0000433>.

It is an email from Mr Hume-Kendall to Mr Russell-Murphy, at the top of the page. He is actually forwarding a draft email that he had previously provided to Mr Golding.

He says in the second paragraph:

"Re our mutual business, we thought yesterday was most productive and Andy Thomson is preparing a draft document for you for Sales Aid Finance (England) Limited (SAFE) ..."

That is what he said because that was the true position?

A. No, I stay with what I have previously said. What was the date on that, sorry? It has expanded over it. Yes, I disagree. There was numerous people that had a hand in this, one of which -- a large hand was Mr Russell-Murphy, who was -- he led what needed to go into it. I coordinated. I called in -- just because it says there I am preparing the draft, it doesn't say I actually wrote it.

Q. Let me show you the document. <MDR00013635>. This is the document that you drafted, isn't it?

MR JUSTICE MILES: Sorry, Mr Robins, can I just check this point: is that the document that is being referred to in that email? If you go back to that email.

MR ROBINS: Yes, that was the --

MR JUSTICE MILES: In fairness to the witness.

MR ROBINS: Yes.

MR JUSTICE MILES: That says, at the top, "1st draft - JR-M Agreement", in the subject line, and I just wondered whether it was attached or anything?

MR ROBINS: There is no attachment, my Lord.

A. So that could be a different document, then.

MR ROBINS. I take your point. We will investigate that, my Lord.

MR JUSTICE MILES: If you look at the text which you read out, Mr Robins, it says he is "preparing a draft document for you for Sales Aid Finance", et cetera, which could be consistent with it being some agreement?

MR ROBINS: I take the point. I had not spotted that. We will investigate that.

The document I was seeking to ask about, which this email may be irrelevant to, is <MDR00013635>. This is a document that you drafted, isn't it?

A. This is -- sorry, does it say Sales Aid Finance on there?

Q. Well, let's look at page 2, maybe. Have a look at that.

A. Yes. Top line. This would have been one of the documents, I imagine, that we all had a contributing effort into. Again, I stick by what I have said.

Q. Let's have a look at page 3, please. Mr Thomson, you drafted this, didn't you?

A. Mr Robins, I have told you several times, and I will stay with what I have said: it was a group effort led by Mr Russell-Murphy. He was the one that was taking this to his clients. He was the one that knew what his clients wanted and he was the driving force behind what it looked like and what was in it.

Q. But it was something that you were principally responsible for preparing and you prepared the first draft?

A. Again, Mr Robins, it was a group effort. Yes, I coordinated, but various -- lots of people had a hand in this.

Q. Could we look at <D7D9-0000439>, please. Do you see at the bottom, towards the middle of the page, there is an email from you to Mr Russell-Murphy attaching "SAFE Information Booklet v2 ..."

You say:

"Sorry this is later than expected, let me know your thoughts. It's still in rough word format, after we have agreed the content I will have the format and graphics sorted."

So it is a document that you prepared, you sent it to him asking for his thoughts, didn't you?

A. No, what that email is telling you is I am forwarding John a rough Word format of where it was at the time, because I needed his input. The graphics side of things, that would have gone to Rocky and Mark Ingham to deal with. So this is collaboration.

Q. You also asked Mr Sedgwick to review the document, didn't you?

A. He was one of the people, yes.

Q. Do you remember you also prepared a draft loan agreement between SAFE and investors?

A. There would have been one, yes. We would have worked on it. I imagine we had, you know, Mr Sedgwick's input on that. It is 11 years ago now, so ...

Q. Can we look at <MDR00013707>, please. Do you see there is an email from you to Mr Sedgwick attaching a SAFE loan note agreement. That is something you drafted and asked him to comment on, isn't it?

A. Just because I am forwarding it, doesn't mean I drafted it. Why would you deal with -- and I know I am not supposed to ask -- answer a question with a question -- draft something and then send it to a lawyer? You would get a lawyer to draft it, or it was an existing document that was pulled from somewhere else. I don't know. Just because I am forwarding it, asking him to have a look at it, doesn't mean I drafted it.

Q. Do you think you might have taken a standard-form American loan note agreement and adapted that for the purposes of SAFE?

A. Possibly. Again, it is 11 years ago. I don't remember.

Q. Can we look at <MDR00013715>, please. Mr Sedgwick replies to your email:

"I see you have nicked an American loan note agreement. I will translate it into English and tidy it up."

So you took an American version, adapted it for SAFE and sent it to Mr Sedgwick for comment, did you?

A. That is different to what you've said before, Mr Robins. You've said that I drafted it. This here clearly says I found one and I have sent it on to a lawyer to have a look at. That is hardly drafting. That's taking a document that I found, forwarding it to a lawyer and asking for his input.

Q. Now, despite what was in the information booklet about lending to SMEs, you knew from the very beginning that monies raised would be used in part to provide funds to Mr Golding and Mr Hume-Kendall, didn't you?

A. Funds were raised to go to the businesses that they were lent to.

Q. Is the answer to my question, "Yes"?

A. No, I said the funds that were raised by SAFE were lent to -- the first client was, I believe, Sanctuary PCC. I think we went through that when I was last on the stand.

Q. The intention is what I am asking you about, and the intention from the outset was that some of the money lent would be advanced to Mr Hume-Kendall and Mr Golding, isn't it?

A. No, the money that was lent to Sanctuary was lent for its commercial purposes.

Q. Can we look at <D7D9-0000453>, please. Mr Russell-Murphy is emailing you and he is commenting on the latest draft of the wording. If we look at the bottom, can you see it says:

"Hi John, does the below paragraph work for you?"

A. What does the below paragraph say?

Q. Can we look at that, please, on the next page.

A. Yes, and then when it says, "Hi John, does the below paragraph work for you", as I have said before, getting his input on the document.

Q. Yes. He replies on the left:

"The problem with what is being suggested is that the money may not be lent out in line with what's described in the prospectus ie cash for Simon and Spencer etc."

Do you see that?

A. It is not a prospectus. "Prospectus", it should be "an information memorandum". The "cash for Simon and Spencer" I think is loose language for their businesses.

Q. But that was the intention from the outset, was it, to lend to businesses of Simon and Spencer?

A. The first business that it lent to was Sanctuary PCC and, again, I think we have gone through that, and that was predominantly Simon and Spencer's business in terms of beneficial ownership. I think that's what he is saying there, not raising money and giving it to Simon and Spencer, which is, I think, what you are alluding to.

Q. But that is not what was set out in the draft information memorandum, is it?

A. To be honest, I don't remember the draft information memorandum. It said that we would lend to businesses and we lent to them.

Q. Let's look at the formatted version if you don't remember it. We can see the cover email. <D7D9-0000487>. You mentioned earlier that Rocky formatted it; that is Rocky O'Leary, isn't it?

A. Yes, he was, or is, a graphic designer.

Q. The attachment is at <D7D9-0000488>. Do you recognise this?

A. That was -- just back on that email, it said there was -- dealt with the graphics and also proofread. Proofread would have been input from everyone in the group.

Q. Do you recognise this?

A. I recognise the document, I think -- I recognise the logo.

Q. Can we look at page 2, please. Do you recognise this description of a proposed business of SAFE?

A. I don't recognise that one, with the clouds and everything else. Sorry.

Q. Do you recognise the words?

A. Not particularly, but it is -- I can see it is part of a document. I don't know if this was the document that actually was used. That was down to Mr Russell-Murphy.

Q. Well, you were a director of SAFE, weren't you, Mr Thomson?

A. Yes.

Q. At this time; yes?

A. Yes.

Q. So it was down to you what was being put out in the company's name, wasn't it?

A. Well, we are talking here -- what I said to you, I don't know if this is the document that actually went out, which is what I think you asked me. Yes, I was the director of SAFE. Everyone had an input. I was very aware that I held the shares trust for others and they were also having an input into this document. It was a group effort.

Q. Could we look at page 3, please. Do you remember the contents page?

A. Not particularly, no.

Q. Can we look at page 4. Now, you would agree that the text here was being set out because it was being said to prospective investors that SAFE would lend their money to SMEs.

A. That is what it said, the top line was taken from the Bank of England's "Trends on Lending".

Sorry, I don't know -- the question was?

Q. You would agree this was being said in this document because prospective investors were being told that SAFE would lend the money that they invested to SMEs?

A. Yes, that is what it says there.

Q. And on page 5, you see there, also, references to SMEs.

A. That, I believe, is taken directly from the Bank of England document.

Q. And the reference to SMEs is being included here because what SAFE was saying to prospective investors is that the money they provided would be lent out to these SMEs?

A. Lent out to an SME, yes. The European definition of an SME is quite wide.

Q. You would agree there is nothing in this brochure to tell prospective investors that the money they provided would be lent to Sanctuary International PCC?

A. No, I don't believe there is, but ...

Q. Can we look at page 8, please.

You agree this is included in the brochure so that SAFE could tell prospective investors that it would be lending their money to SMEs in the south-east?

A. I don't particularly remember the graphics, but the wording -- yes, the wording would have come from various places. I see there is a "Sources" section down there. So ...

Q. The message was that SAFE would lend the monies from investors to SMEs in the south-east to stimulate the local economy?

A. It says at the top there:

"The following sets out the business rationale for SAFE."

So this was written -- "created as a result of joint consultation ..."

Yes, SAFE grew out of the ashes of what would have been a county bank in conjunction with three local authorities, so it was building on that.

Q. Can we look at page 11, please. Could you read that and confirm that that was something that you, as a director of SAFE, were happy to be put out in the company's name? (Pause).

A. I don't know if this was the actual one that went out, but it looks like it is a document that we all worked on.

Q. So, on the assumption that it is the one that went out in either this form or substantially the same form, it is something you were happy to go out in SAFE's name?

A. That is an assumption, Mr Robins. I don't know if this was the actual document that went out. That would be a question for Mr Russell-Murphy.

Q. But on that assumption, let's assume that it was sent out, you see nothing wrong with what was being said to prospective investors here?

A. That is an assumption, Mr Robins.

Q. Yes, I am asking you to answer the question on that assumption; in other words, make the assumption. There is nothing here that you were unhappy to be put out in the company's name?

A. Well, back in 2013, my knowledge and experience was far different to what it is now. If you are asking me right now, would I put that out in the company's name, I wouldn't; back then, that was a different matter. Obviously, if this is the document that did go out, I was the director of the company. So ...

Q. Can we look at page 15, please.

Do you remember liaising with Mr Sedgwick about the wording of this letter?

A. I remember there was a letter, I remember I would have liaised with him.

Q. You see it is dated at the top, 28 August 2013?

A. Yes.

Q. Then, in the third paragraph, it says: "In addition to the security which the loans will provide, SAFE does have the benefit of guarantees for the following companies ..."

And those companies are Bewl Holiday Homes LLP, Lakeview Country Club Limited and Sanctuary International PCC Limited.

On the date of this letter, 28 August 2013, did SAFE have the benefit of such guarantees?

A. I can't remember. That would be -- I would ask Mr Sedgwick that question.

Q. Could we look at <MDR00013990>.

A. Sorry, could you just go back to that?

Q. Sure.

A. Sorry. (Pause).

Okay, thank you.

Q. <MDR00013990>, on page 2, we can see Mr Sedgwick sends you, on 29 August, a draft guarantee agreement and debenture in respect of the guarantees to SAFE Limited. The attachment, we can look

at it in a moment, relates to Lakeview Country Club limited. He says: "If you are happy with them then I will produce the additional documents for execution by Bewl Holiday Homes and Sanctuary International PCC."

Seeing that, do you accept that, on 28 August 2013, the date of the letter, SAFE did not have the benefit of any guarantees from those three companies?

A. Well, clearly, it says here they are only just being drafted.

Q. Do you accept that the guarantees were never executed?

A. I don't remember.

Q. Do you accept that in the case of Bewl Holiday Homes LLP, the documents were not even drafted?

A. Well, I left that between Mr Sedgwick and the owners of those companies.

Q. But you were happy, were you, for a brochure containing that letter to be provided to members of the public?

A. If they were not drafted, I naively relied on them to do what they said they would do.

Q. Do you remember Rocky O'Leary set up the SAFE website?

A. I remember that was one of the things that he did, was website creation and graphic design. So ...

Q. Do you remember that Mr Russell-Murphy and his colleague, Jo Baldock, started to sell the SAFE loan notes to members of the public?

A. Mr Russell-Murphy was the sole person that sold the SAFE bonds to his existing clients, was my understanding.

Q. It was your understanding he was the sole person, did you say?

A. Yes. That is why he had so much of a hand in the creation of the document. The idea was that he had a bank of clients and he would take the offer to those clients.

Q. So, did you not have any dealings with Jo Baldock?

A. As I said previously, I had dealings with Jo Baldock over Crystal Mortgages. Jo and John have worked, as I understand it, closely together for years, so where you usually find one, you would find the other.

Q. Is your evidence that you thought Mr Russell-Murphy was solely responsible for selling, but that he was assisted in some way by Jo Baldock?

A. That is what I said. Where you find one, you find the other, but my understanding was it was

Mr Russell-Murphy's client base at Grosvenor that he was taking this offer to, that is why he had so much of a hand in drafting it.

Q. Do you remember that you dealt principally with Jo Baldock on a day-to-day basis in respect of bond sales to clients?

A. Jo did more of the admin than John, so ...

Q. She would be the person who would tell you that they had received an application form and a cheque, for example?

A. Yes, John wasn't very admin-focused in that regard. Operationally, it would have been Jo Baldock. As I say, they worked closely together and where you found one, you found the other.

Q. Cheques from new investors were to be banked into Buss Murton's bank account, weren't they?

A. I believe that was the arrangement, yes.

Q. At this time, SAFE was paying commissions of 20 per cent to Mr Russell-Murphy for his sales activities, wasn't it?

A. The figure is, I believe, correct.

Q. That was 20 per cent of money from each investor?

A. Yes. That was, I believe, the going rate for the unregulated market.

Q. That was the going rate for Mr Russell-Murphy, wasn't it?

A. Well, the rate had already been agreed.

Q. It had been agreed between you and Mr Russell-Murphy?

A. I believe it had been agreed between Mr Russell-Murphy, Mr Golding and Mr Hume-Kendall, as the majority beneficial owners.

Q. But it was something that you were aware of?

A. Aware of, yes. And we paid it.

Q. As a director of SAFE, you were content with the agreement you said had been made?

A. That was what he wanted to be paid to introduce the business and raise the funds.

Q. You said that Jo Baldock was responsible for administration on Mr Russell-Murphy's side. You were responsible for ensuring that the commission was paid by SAFE, weren't you?

A. Some of the time, yes.

Q. During this period, SAFE was being run on a day-to-day basis by you and Mr Hume-Kendall, wasn't it?

A. Which period, can you be more specific?

Q. End of 2013, going into 2014.

A. Again, it was a group effort. So it was Mr Hume-Kendall, Mr Golding had some input, Mr Barker had some input, Mr Ingham had some input, so did Mr O'Leary, Mr Russell-Murphy had large input.

Q. In terms of Mr Russell-Murphy and Ms Baldock providing you with details about potential new investors, that is the sort of information they would send to you and Mr Hume-Kendall at the time?

A. Probably. It is -- again, we were all working together, so ...

Q. Mr Golding was essentially the boss of the operation, wasn't he?

A. I wouldn't say boss, I would say he had a strong input but it wasn't a "You do this", and -- he says this and you have to do it -- no, not at all.

Q. Well, you and Mr Hume-Kendall ran LCF in accordance with his directions and instructions; let's put it that way?

A. Sorry, are we LCF now or SAFE?

Q. Well done for picking me up, Mr Thomson. You ran SAFE in accordance with Mr Golding's directions and instructions?

A. We ran SAFE more -- yes, I appreciate that I was the sole director. Looking back now, something I probably shouldn't have done, but that is in the past. It was a group effort.

Q. But, for example, it was Mr Golding who decided that SAFE should make a special offer to attract new investors?

A. That, I believe, is something that he did with Mr Hume-Kendall and Mr Russell-Murphy.

Q. But he is the person who would have told you that it is what had been agreed between him and Mr Russell-Murphy?

A. It could have been. I don't have a recollection of it.

Q. Let's look at a document -- <D7D9-0000835>. It is an email from you to Mr Russell-Murphy: "I understand from Spence you need an email from SAFE this morning, if you can let me have the details I will organise it."

Whatever had been agreed between Mr Russell-Murphy and Mr Golding, you would implement it?

A. Generally, at that time, so December 2013, the decisions were across the group of companies, were Spencer and Mr Hume-Kendall. With regard to this, John had significant input into it. I think what you are going to allude to was the 10 per cent bonus that Mr Russell-Murphy wanted to introduce to his clients and I wasn't the first to have that conversation with him. I believe, as we can see here, Mr Golding was the first to have that conversation.

Q. And he was the person who agreed it with Mr Russell-Murphy?

A. They agreed it was a good idea and I went along with it.

Q. Do you remember that, by around the middle of April 2014, someone had agreed to increase Mr Russell-Murphy's commission to 25 per cent?

A. Just give me a moment.

Q. Sure. (Pause).

A. Sorry, can you repeat that?

Q. Do you remember that, by around the middle of April 2014, someone had agreed that SAFE would pay commission of 25 per cent to Mr Russell-Murphy?

A. I believe, yes, his commission went up.

Q. And in terms of who agreed that, was that you or Mr Hume-Kendall or Mr Golding or a group decision?

A. I think that was -- that would have been Mr Russell-Murphy, Mr Hume-Kendall and Mr Golding's decision.

Q. Another decision that you were happy to go along with?

A. I went along with it. As I say, before there was a -- yes. I went along with it.

Q. Now, Sanctuary, we discussed before Easter, was liable to pay £88,000 a month to the Sanctuary investors. I think your recollection is that SAFE started to lend to Sanctuary or its parent company towards the end of -- 2013, is it?

A. Was this the 675,000 loan document that was then replaced with the 2 million loan document?

Q. That's right. Initially, £675,000.

A. Yes. I can't remember the exact date, but we went through it a couple of weeks ago.

Q. We did and you signed on behalf of Sanctuary, didn't you?

A. I believe Mr Peacock signed as loan officer on behalf of SAFE.

Q. And you signed on behalf of Sanctuary?

A. Yes.

Q. I think we may have looked before Easter, as well, at the fact that Sanctuary asked for the monies that it drew down under the loan agreement to be paid to One Monday Limited?

A. Yes, there was an agency agreement, I believe, contained in the document, or a document.

Q. So the money from new SAFE investors had gone into the Buss Murton account and was then being paid out to the One Monday account, wasn't it?

A. Yes, because it was acting as agent for Sanctuary PCC.

Q. Then, do you remember, One Monday paid some of the money to Mr Golding and Mrs Hume-Kendall?

A. One Monday, as I believe --

MR JUSTICE MILES: Sorry, Mr Robins, can I just check that question, that you asked at line 19. You said that money from new SAFE investors had gone into that and then was being paid -- I thought you were just asking about money from -- sorry, I may have misunderstood this. I thought, just before that, you were asking about Sanctuary.

MR ROBINS: I was. There are the two different companies, but I think, Mr Thomson, you confirmed, didn't you, that money from new SAFE investors went into the Buss Murton client account?

A. Buss Murton collected the funds and then held them and paid them out on SAFE's instructions to its borrower. Its borrower was Sanctuary PCC. Sanctuary PCC had an agreement with One Monday to act as its payment agent.

MR JUSTICE MILES: Right.

MR ROBINS: Let's look at the Buss Murton client account. It is <MDR00015987>. We need to look at it in native form.

This, Mr Thomson, is the Buss Murton client account. Do you see column E is headed "Credit"?

A. Yes.

Q. The funds in, 40,000, 10,000, just over 60,000 ... that is money coming in from SAFE investors, isn't it?

A. I believe so. I am just looking at line 4, it says "Highgrove". That must have been Mr Whittley, I think you saw him before, but I did remember he was selling SAFE to his clients.

Q. Well, let's -- at E2, £40,000 is an investor called Cooke, does that ring a bell?

A. No, sorry.

Q. E3 --

A. Sorry, can we --

MR JUSTICE MILES: I hope that you can follow Mr Thomson. Don't worry if there is a little bit of noise.

MR ROBINS: Do you remember an investor called Constable?

A. I don't remember the investors' names, sorry.

Q. Or a Crosby?

A. Sorry, it is 11 years ago.

Q. But you think that is probably the money coming in from the SAFE investors?

A. Probably.

Q. And then, we can see, I think, also, commissions being paid out to Mr Russell-Murphy. So 5, "Russell-Murphy: commission due". That is his commission on the SAFE investments, isn't it?

A. I believe so. We would have got an invoice for that.

Q. Yes, I think D5 is 20 per cent of E2 and E4. Does that look about right?

A. Okay. I am just wondering what "money on account" is but ...

That will be a question for Mr Sedgwick, I imagine.

Q. That is the money in from Mr Constable.

A. Right, okay.

Q. Then we can see the payments out to One Monday that you referred to, for example, D6, let's look at that. That is one of the drawdowns that you referred to paid to One Monday Limited, isn't it?

A. It looks like that.

Q. I think there is another in D9, is there? Is that right? That is another drawdown, by Sanctuary, paid to One Monday?

A. It looks like that is what it is.

Q. And E -- D14, I think is another, is it?

A. Yes.

Q. Let's look at those in the One Monday account as well. <D2D10-00008623>.

We need to widen the columns, I am afraid, to see the content.

We also need to widen column C to see the narrative. So let's look at E62. There is the payment from Buss Murton. You accept that is the advance by SAFE to Sanctuary, that is, in practice, paid by Buss Murton to One Monday?

A. It looks that way.

Q. And E86, that is, well -- the one above it, I think there is more. Those are in the same category, are they?

A. It looks -- those are the funds coming from Buss Murton, so I would assume that that is what they are.

Q. Do you accept that One Monday paid some of those monies to Mr Golding and Mrs Hume-Kendall?

A. Well, as I think I told you last time, Mr Robins, I didn't run the One Monday account.

Q. Yes, you did. You caused One Monday to pay those sums to them?

A. No, I think we had this last time we spoke, Mr Robins. I didn't run the One Monday account. Mr Barker ran the One Monday account and, actually, the administrators in the group, I believe Nicola Wiseman and Lucy Sparks had the mandates on all the bank accounts and they took instructions from Mr Barker to make payments where they wanted them.

Q. That is not true, is it, Mr Thomson?

A. Actually, Mr Robins, it is, because, looking at the disclosed material, Mr Barker used to be the managing director of Ecoresorts Sales back in 2012. He was the main payment agent that -- all the distribution of Sanctuary International. And it was the same operation there, that Lucy Sparks and Nicola Wiseman acted on his instruction and paid everyone. It was a continuation here. I gave the company over. I do accept that then, and in the couple of years afterwards, I should have been taken off. I wasn't. There are some administrative things that I did. And I tidied it up at the end with the assistance of Oliver Clive & Co, but I didn't run the bank accounts and actually the Easter break has allowed me to go and have a look at quite a lot of the disclosed material on this, and there is a significant amount of it that shows Mr Barker giving instructions to Nicola Wiseman and Lucy Sparks to make payments. So I stand by what I said.

Q. Mr Thomson, you are aware, no doubt, that my clients made an application before Easter for what is known as a banker's trust order; are you aware of that?

A. I was not aware and I don't know what that is, sorry.

Q. You are aware your legal representatives had no objections to the making of that order?

A. I don't know what a banker's trust order is.

Q. It is an order against banks requiring them to provide their files.

A. Hmm.

Q. You referred to the mandate. Let's have a look at it. It is <MDR00227585>. Do you see, at the top, it says, "Customer details: One Monday Limited"?

A. Yes, and I gave the details to sign on and make payments to girls in the office when Mr Barker and Co came on as directors of the company.

Q. Let's look at who the authorised signatories were. Page 29. That is Katie Maddock's signature, isn't it?

A. It is, yes.

Q. Page 30, that is your signature, isn't it?

A. Yes.

Q. There are no other authorised signatories on the One Monday account, Mr Thomson.

A. That is not my writing. It is similar to my signature but not quite, and that is not my writing.

Q. But that is your signature at the top of the page?

A. Similar, but not sure.

Anyway, the girls in the office had the mandate to use it, they had my sign-on details and they operated the bank account. I shouldn't have given it to them, but I did.

I was elsewhere occupied with Lakeview, trying to refurbish a resort that was operational at the time. I left this to them.

Q. Mr Thomson, you and Katie Maddock were the only signatories on the bank account because you operated the One Monday bank account?

A. I will stick with what I told you, Mr Robins: naively, I gave them away. I shouldn't have done, but I can't change the past.

Q. I think you said before Easter you were aware of the payments that went through One Monday's bank account?

A. I don't think I said that.

Q. Could we go back to --

A. I was aware of funds going to One Monday, yes.

Q. And you were aware of what they were used for.

A. I was aware that One Monday was used as a payment agent for Sanctuary PCC, paying the things that Sanctuary PCC wanted/needed paying. Some of which were the Sanctuary investors, and others were -- various different things. Mr Peacock did the accounting for it. Mr Peacock held all of the details for the Sanctuary investors and what needed paying. He provided those details to the various girls in the office and Mr Barker, and payments were made. At that time, I was in court.

Q. But you knew, and I think you accept, that the money from the new SAFE investors was being used to pay the £88,000 a month interest to the existing Sanctuary investors?

A. I just said that.

Q. Yes. So I was just clarifying, your answer to my question is "Yes"?

A. Yes, Mr Peacock held all of those details. He provided the payment lists of what was needed to Nicola Wiseman and Lucy Sparks, Mr Barker approved it all and they were paid.

Q. You knew and accept then, that throughout the period, until at least October 2018, money from new investors in SAFE or LCF, as it came to be known, was used to pay interest to the Sanctuary investors on their deposits?

A. It was -- that's what its commercial purpose is. I don't remember when, or I don't know when, the Sanctuary investors finished paying or how many of them were paid. I have no visibility of that. I left that mid-2015.

Q. But when you left, you had no reason to think that had changed?

A. No, these are people that required paying, needed paying, the company agreed to pay them, so I have no reason to think that they weren't paid. Again, I left, so, after midway through 2015, I had no knowledge.

Q. You kept a close eye on receipt of new investor money by SAFE in, say, 2014, didn't you? That was part of your role?

A. I would know what money comes in, yes. Sorry, could we have a break in a minute?

MR JUSTICE MILES: Yes. We could -- all right, why don't we take a break now? We will take a five-minute break.

A. Thank you.

(2.58 pm)

(A short adjournment)

(3.05 pm)

MR JUSTICE MILES: Yes.

MR ROBINS: Mr Thomson, when it comes to choosing business names, you say, don't you, that you favour names which make clear what the business does?

A. Generally, yes. It does what it says on the tin.

Q. You say that, although classical names can sound great, they can fail to communicate what is on offer?

A. I don't remember saying that, but I appreciate that is -- yeah, that is generally what I think.

Q. Well, you wouldn't think much, for example, of the name Cicero Capital & Finance, would you?

A. No, it doesn't do what it says on the tin.

Q. And you say that, applying those principles, you devised the name London Capital & Finance, don't you?

A. And Leisure & Tourism Developments and International Resorts Group.

Q. Sticking with London Capital & Finance, you say you devised that name?

A. I believe I came up with it.

Q. You say it had nothing whatsoever to do with Simon Hume-Kendall's businesses?

A. No.

Q. You say it was purely geographic?

A. I thought it was a good name, like London Private Equity and other bits. It's ...

Q. In early 2015, Mr Hume-Kendall was in the process, wasn't he, of acquiring shares in a company called London Oil & Gas?

A. I believe -- I can't remember the exact date, but -- sorry, I can't remember the exact date. I know he did. I know he was trying to. I remember going to -- I went with him in early '15, I believe, to BP's offices and discussed various different oil and gas things with them.

Q. And London Oil & Gas Limited was going to be the vehicle for investments into various -- primarily, North Sea ventures, wasn't it?

A. I believe the first one was, I believe, Independent Oil & Gas which was referred to him by, I believe, BP, a guy called Richard ...

I forget his name, sorry. It will come to me.

Q. Do you remember the original London Oil & Gas Limited was a company owned by the Bosshard family?

A. Eric Bosshard, I believe.

Q. That's right. He was a director, wasn't he?

A. I seem to remember it was his company and had had it for years.

Q. Let's look at <A1/5/41>, just to be clear. This is the company we are talking about with the company number ending 629. You can see it was incorporated on 22 May 1990. Do you see that?

A. Yes. And it has changed its name lots.

Q. Yes, and from 3 November 1992 to 4 --

A. August '15, London Oil & Gas.

Q. Exactly. I think, if we look on the bottom of the page, we can see that Mr Bosshard was a director until 28 August 2015.

A. Yes.

Q. Mr Hume-Kendall became a director a little bit before that, 30 December 2014. Is that, perhaps, why you were hesitating over the date?

A. No, I genuinely don't remember the dates at all. If you had asked me when Mr Hume-Kendall became a director of London Oil & Gas, my answer would have been "I need to look at Companies House".

Q. If we look at the next page, and the page after, you can see the Bosshards are the directors, until, right at the bottom of the right-hand side, 1 September 2015. Sorry, shareholders, Mr Shaw corrects me. That was what you understood to be the position at the time, wasn't it?

A. I don't -- I know they had the company. I don't remember seeing this. I can't remember being involved in it that much, in terms of structuring, but I can see what it says.

Q. You say you cannot remember being involved that much in terms of structuring?

A. In terms of with the Bosshards and changing company names and things.

Q. But you had discussions in or around mid 2015 with Mr Sedgwick and Mr Hume-Kendall about the restructuring of London Oil & Gas Limited, didn't you?

A. That would have been before I exited, but I remember there was lots of restructuring discussions and this would have probably been one of them.

Q. Let's show documents if it can assist. <D8-0001012>. There is an email from Mr Sedgwick to Mr Hume-Kendall and you saying:

"Just a quick note to recap on our discussions on Thursday as to the restructuring of London Oil and Gas Limited ..."

Do you remember there had been some discussions on the previous Thursday?

A. Not particularly. There would have been discussions, but I don't particularly remember them. Things like this, I was copied into, but Simon led the charge on everything London Oil & Gas.

Q. But you accept you would have attended those discussions and participated in them?

A. Quite possibly. What I am saying is I don't specifically remember the meeting.

Q. Let me show you a document. It is not an email to you but it mentions you, so I am going to ask you about it. It is <D8-0001102>. It is an email from Eric Bosshard to Mr Sedgwick. In the second paragraph, he says: "At our meeting on Friday 5th in the Hotel du Vin in Tunbridge Wells, an organization chart of LTDG ... was disseminated in the information booklet prepared by Andy Thomson."

Just first, Hotel du Vin was a hotel you frequented fairly frequently, wasn't it?

A. Lots of people go to Hotel du Vin in Tunbridge Wells. It was generally a nice restaurant and it had meeting rooms. I went there when I was in the bank quite a lot, too. So it's -- I wouldn't read anything into that.

Q. Do you remember preparing an information booklet which included an organisation chart of LTDG?

A. I could well have done, but I don't remember it.

Q. Let's look at the attachment to the email to see if that jogs your memory. It is <D8-0001103>. Do you see it shows the intended Topco is the London Trading and Development Group?

A. Hmm.

Q. Do you see, in the middle, a subsidiary of that is London Capital & Finance, formerly SAFE?

A. I can see that is what the organisation chart says but I don't know if it is a subsidiary at that point.

Q. I think this is what was proposed, rather than a description of the position, but this is a chart that was in the booklet you prepared, wasn't it?

A. It could well have been. I created various different organisation charts.

Q. On the right-hand side, it shows London Oil & Gas Company and London Technology Company; do you see that?

A. Yes.

Q. So, Mr Thomson, you accept that the name London Capital & Finance had been decided on by 5 June, when this was given to Mr Bosshard in the Hotel du Vin?

A. And I came up with the name.

Q. So you say that, just as Mr Hume-Kendall was acquiring control of a company called London Oil & Gas, which was going to be a subsidiary of London Trading and Development Group, which in turn would have a subsidiary called London Technology Company, you came up with the name London Capital & Finance, but those things were not connected?

A. They could very well have been in discussions with the company, and thought -- look at it, going "That is a good name". I didn't particularly like the name SAFE. So I thought, "Wouldn't it be good to have a company with that name?". I don't see what relevance that is, sorry.

Q. It was going to be called that, London Capital & Finance because it was going to be the subsidiary of London Trading and Development Group and the sister company of London Oil & Gas; that is why it got that name, isn't it?

A. I have given you my answer, Mr Robins. I am not going to change it. I came up with the name. I thought it was a good name and that is what it was and ... I don't know what more else to say about that.

Q. Well, what I am putting to you, Mr Thomson, is what you said is not true, is it?

A. No, I came up with the name. I thought it was a good name. Was I influenced by seeing the company that said London Oil & Gas? Well, yes. I don't remember who came up with the name London Trading and Development Group either. I know I came up with London Capital & Finance, and I came up with International Resorts Group. I came up with Leisure & Tourism Developments. It does what it says on the tin.

Q. In your witness statement, Mr Thomson, you said: "The use of the name London had nothing whatsoever to do with Simon's businesses."

I am saying to you that is not true, is it, and you are saying you stick by your evidence, do you?

A. I thought it was a good name. That is it. Just ...

Q. Can we look at, just for completeness, <D8-0001104>. That is Mr Sedgwick's response to Mr Bosshard. He says the organisation chart showed the end position for the structure. So what was discussed and what was set out in that structure chart that we were just looking at was the intended end position, wasn't it? That is why you put it in that booklet?

A. Yes, that is what it is saying and, for all I know, for all I remember, I may have come up with the top company name as well. I just -- I don't know. I know I came up with London Capital & Finance and that is where it was at the time, just before London Capital & Finance got split out from it.

Q. Do you remember the name of SAFE was changed to LCF by resolution at the end of June 2015?

A. I don't particularly remember it, but I know it was because I have seen it on Companies House.

Q. Do you remember Mr Peacock told you about that?

A. Not particularly, no. But at that time, it was Mr Peacock dealt with accounts for all companies and had the sign-on details for all of them for Companies House for filings and everything else. So he is the one that changed everything. Robert tended to be the person that created the company and, yes, they were back officed by Mike.

Q. Could we look at <EB0004203>, please. <EB0004203>. It is a bit small. I don't know if we can zoom in. There is an email from Mr Peacock to Mr Hume-Kendall, you and Mr Barker, and he says: "SAFE has now been renamed as requested." You accept that it was something happened at the end of June or beginning of July 2015?

A. Well, clearly, it says it here, so ...

Q. That is well before, on your own case, the date on which you say you took control of the company, isn't it?

A. Well, that is 1 July. If he did it then, then -- I can't remember the exact date that my buy-out was, but it was later on in July.

Q. So your evidence that you took over the company and you changed the name to London Capital & Finance and it had nothing to do with Mr Hume-Kendall's businesses, just isn't true, is it?

A. No, I came up with the name and Michael has changed it. Okay, there is a timing issue of a month, but I don't think much turns on that.

Q. You say, don't you, that, after taking over LCF, you decided to outsource the distribution and related compliance function.

A. To GCEN eventually. Sorry, do you have a --

Q. You say that -- I am just asking about your evidence --

A. (Overspeaking) sentence.

Q. You decided to outsource distribution and compliance function?

A. I had a conversation with our accountant, Steven Davidson, and, on his recommendation, outsourced as much as possible. So that is what I looked into.

Q. And you say you interviewed three distribution companies, don't you?

A. Yes. One was called Black Swan. The other one is Surge. Surge were already doing stuff for SAFE. I can't remember the third one, it was outside of Manchester.

Q. You say that their proposed charges were all in the range of 21 to 25 per cent of funds raised?

A. Yes, they were all in the 20s.

Q. You say that appeared to you to be the industry norm?

A. From what I found, yes, and my experience of Mr Russell-Murphy for the two years before that, yes.

Q. Your evidence is that you decided to appoint Surge. It was your decision, was it?

A. They were already working. I didn't know that they were already working on SAFE into LCF. I became aware of that later. They were already doing things. I was introduced to them. They gave me a presentation. They said they -- they explained what they had already done under Mr Russell-Murphy. Again, I didn't know what they were doing before that.

I considered it, I spoke to Steven about it. I saw the two other companies -- Black Swan, they were just outside of Waterloo, and I don't remember the last company, they were just outside of Manchester. So I could have, if I wanted to, have gone with the other two, but -- one of the other two and not continued with Surge. Surge were already there. I liked their proposal, they were quite close, so we stayed.

Q. Mr Thomson, the entirety of that evidence is a fabrication, isn't it?

A. No.

Q. The reality is that SAFE was already paying 25 per cent to Mr Russell-Murphy and he had attended with Mr Hume-Kendall and Mr Golding, at least two meetings with Mr Careless, which you hadn't attended?

A. Because I didn't know they were happening. I think Mr Careless' own evidence confirms I didn't meet him until halfway through the year. I have seen from Mr Careless' evidence that they were involved in SAFE far earlier than that. I see I have been brought up in some emails that confirms I didn't attend the meetings. So I met Mr Careless for the first time in Eastbourne. They gave us a presentation. I had already discussed with Steven Davidson outsourcing, as much as possible. I saw two other companies and stayed with Surge.

Q. That is not true. The reality is that, before you had even met Mr Careless, a decision had been taken, without any involvement on your part, that LCF, as it had become, would move forward at some pace with Surge?

A. And I could have stopped that, but I chose not to.

Q. But you accept that, before you even met Mr Careless, a decision was taken without your involvement that LCF would move forward at some pace with Surge?

A. That is when it was SAFE and it was owned by, beneficially, Hume-Kendall, myself and Mr Golding and, as we have discussed before, the commission structures were already in place with Mr Russell-Murphy. I didn't know Mr Russell-Murphy was engaging with Surge. That came out later.

I met Surge for the first time in Eastbourne, halfway through the year, I can't remember the exact date. I met them, I met with Black Swan, and the other company that I don't remember.

Surge were slightly more toppy than the others, but they were closer, I liked their presentation, so I decided to continue with them. I could have not done.

Q. Mr Thomson, you didn't interview Surge, did you?

A. No, as I said, they presented to me.

Q. But you didn't interview Surge?

A. As I just said, they presented to me.

Q. You didn't interview Black Swan, either?

A. I went to see them. They presented to me. I liked what they did. I preferred Surge.

Q. Mr Thomson, there is no document in disclosure mentioning a company called Black Swan. You didn't have any dealings with them at all, did you?

A. Well, with respect, Mr Robins, you say there is no document in place that says LTD default notice, but there blatantly is --

MR JUSTICE MILES: Just answer the question, Mr Thomson. I say that because I don't want you getting into spats with counsel.

A. I apologise, my Lord.

MR JUSTICE MILES: That is all right. It is not a criticism, but just try and stick to the question. The question concerned Black Swan.

A. I have seen emails with Black Swan. I don't know why they haven't come up in your disclosure. There wasn't a lot of them. I got referred to them by -- I can't remember. Nice offices just outside of Waterloo.

Q. You didn't interview a third company whose name you have forgotten either. They didn't exist.

A. I went and was presented to them -- by them. I didn't interview them.

Q. Mr Thomson, let me just show you why I keep saying interview. <C2/1>, page 13. Paragraph (4), you say: "I decided to outsource distribution and related compliance function. I interviewed three companies ..."

A. It is a turn of words; "presented to", "interviewed" --

Q. You agree it is not an accurate --

A. I went there --

Q. -- phrase?

A. -- they explained to me what they could do, they showed me what they could do, they showed me the cost of it. Call it an "interview", call it a "presentation", in my mind, it is the same thing.

Q. The reality, Mr Thomson, is that you didn't have any role or any choice in the matter. It had already been decided that Surge would be selling the bonds before you even met Mr Careless?

A. Mr Robins, you are wrong.

Q. Can we look, please, at <D7D9-0001923>.

A. Can I add something, reading this? I also went at the same time and met with Wealth & Finance, and that is where we get the in-house start of 30 to 40 per cent. I met with their group CFO and discussed what it would be, what it would cost to bring all that function in-house, and it could very well be them that referred me to Black Swan. I don't remember.

Q. Can we look at <D7D9-0001923>, please. It is an email from you on 9 July 2015, so this is after the name change to LCF, to Mr Careless, and you say: "Hi Paul, we've not met yet, I'm the MD of London Capital & Finance, John Russell-Murphy may have mentioned me. I understand that we are to be moving forward at some pace together which all looks very promising."

Do you see that?

A. Yes.

Q. So my question was you didn't have any role or choice in the matter, it had already been decided, before you met Mr Careless, that Surge would be selling bonds for LCF?

A. I mean this email is, yes, we are continuing, but it doesn't mean that we are -- that is not going to stop. I am not sure what we are talking about, "moving forward at some pace". I know they did some marketing for us. I know they did various different bits in the early days.

This is not a "You are going to be doing everything", I don't believe. What does the invoice say?

Q. Your memory is correct. One of the things they were going to be doing was improving LCF's online presence and corporate profile; do you remember that?

A. I remember something like that.

Q. Let's look at <EB0004450>. Do you remember dealing with Steve Jones?

A. I remember he was the FD, I dealt with him on a number of things, but I don't particularly remember this email. But yeah, "Invoice for Rebranding", I know we looked at that.

Q. I think you said --

A. It doesn't mean that I had agreed at that point -- I can't remember when the decision was made to continue.

Q. I think you said you wanted to look at the invoice. Let's look at that. <EB0004453>, please. Do you remember being told that Surge would be doing this work for LCF?

A. Possibly. Looking at the email before, that was 10 July '15, and I don't believe I had taken the company but ...

Q. You were still a director at this point, weren't you?

A. I was still a director, but your point is -- my point to you previously was I made the decision to continue with Surge after looking at these other companies, but if we look at the time, this is the beginning. I can't remember the date of my buy-out but I think it was towards the middle or end of July.

Q. My question was just, do you remember being told that Surge would be doing this work for LCF?

A. I know they did work for LCF, yes. I don't particularly remember the invoice. I know they did this type of thing.

Q. Do you remember they reformatted the brochure?

A. I know they worked on the brochure.

Q. Let's look at <SUR00129115-0001>. Do you remember seeing the reformatted document from Surge?

A. Possibly. I do not have -- it shouldn't say "prospectus" on it, because it is not.

I know they did work. I can't remember this specifically, but I know they did rebranding.

Q. Can we look at page 13, please.

Do you remember reviewing this?

A. Nice picture of me. And my name isn't spelt directly. I imagine I would have looked at it at the time, yes.

Q. Do you remember --

A. They got the picture wrong.

Q. Do you remember Surge put together a website for LCF?

A. Yes, they were good at building websites.

Q. Let's look at <MDR00016475>.

If we look at page 3 to begin with, right at the bottom of the page, it is from Steve Jones to you and Mr Russell-Murphy. He says:

"... the website, the brochure and the application form are now completed and ready for your approval. "The website is behind logins until you have approved it ..."

He gives you the log-in details and says the brochure is downloadable. Do you remember downloading the brochure and having a look at it?

A. I probably did. Would you mind going back to the previous email? The one just before that. I probably did. So, that is me asking Elten pay something.

Q. Yes, I will ask you about that in a moment.

A. We would have had things from them and clearly I wouldn't have approved the one they sent over because it is blatantly not me.

Q. At the top, on the right, you say:

"Broadly I'm happy, not sure if you want to go with the photos though as these are not of Paul and I but I understand there is a S21 except bond being put together in the background to say the proposed will only be live for a couple of weeks."

It looks from that as if you were happy to go along with the photos for a couple of weeks?

A. I wouldn't have let my photo go out like that, or misspelling my name.

Q. You accept that this is an email you sent?

A. Yes, "Broadly happy" is not, "Yeah, go with it". But I can see I sent it. And I am asking for input from John. So --

Q. You are looking at Mr Jones' email on the left, I think. He says:

"Hi Andy.

"I am pleased to hear that you are happy with the work we have done, the photos used were taken from the existing SAFE brochure ..."

A. No, they weren't. I would never let a brochure go out with a photo like that, and misspelling my name.

Q. Do you remember Mr Jones saying he was pleased to hear you were happy and asking you to pay the balance of the invoice?

A. I remember him asking me to pay the invoice, I believe. I know we saw that before and I know we paid.

Q. You had to ask Mr Barker to arrange for it to be paid, didn't you?

A. Yes, that is because he dealt with all the banking and approved the payments, which is what I think we talked about before.

Q. So, even on 24 July 2015, you say Mr Barker was a person who was authorising payments on behalf of LCF?

A. Yes, and he paid some stuff after I took over as well. There was a handover period, six, eight months, that they paid for things for LCF whilst we found our feet. There was a period of collaboration, say six to eight months, they paid some things, they allowed us to have office space but Elten was the person historically, and at that point, that paid things.

Q. You have mentioned a few times the term "buy-out". Are you saying you actually paid some money to someone for LCF?

A. No. So I got -- there is a group of companies. I split with them and took LCF and they bought me out of my shareholding in the other companies and I took LCF as my own. That is why I refer to it as "buy-out".

Q. Let's look at the agreement, please. It is <D8-0001352>.

So this is Mr Sedgwick emailing Mr Golding, Mr Hume-Kendall and copying you, on 16 July 2015. He says:

"Please find an agreement which I have prepared to reflect what I understand to be agreed between you." Do you remember receiving the draft agreement from Mr Sedgwick?

A. I think, at the time, Mr Hume-Kendall and Mr Golding were debating splitting up. It was quite a turbulent time in the office, for want of a better word. I believe that could be what he is referring to, seeing as the attachment says Golding-SHK agreement. I don't think that is -- that is not the agreement that I am referring to.

Q. Let's have a look at this agreement. It was sent to Katie. I will show you the covering email first, <D8-0001654>.

Do you see there Mr Sedgwick is sending it to Katie Maddock on 27 July 2015?

A. Yes, I see that.

Q. The attachment is <D8-0001655> and, at the bottom of the page, at clause 6, it says:

"Andy Thomson shall be entitled to a 5 per cent holding in LTDG in non-voting shares and shall be entitled to all the shares in London Capital & Finance Limited which shall enter into an agreement with LTDG to be responsible for all fund raising for LTDG and its group of companies."

Do you see that?

A. I do see it.

Q. Do you remember seeing a copy of this agreement back in July 2015?

A. I was included on the copy on that, so I would have seen it. I am not sure if this is the buy-out agreement I had, but ...

Q. This is what you understood to be the agreement that entitled you to all the shares in LCF?

A. I don't think that is the agreement that I've got on copy back at home.

Q. Let's have a look at --

A. I am not a signatory to that.

Q. That's right. Let's look at an email that you sent to Mr Barker. It is <EB0018295>.

Can we zoom in, it is from you to Mr Barker, 18 April 2016. And you say, in the second paragraph: "After you left, I dug out a copy of the doc we talked through, it is an unsigned copy as I didn't have to sign it so I don't have a signed copy but in the first paragraph at the top of page 2 it confirms that all the shares in LCF be passed to me." Let's look at the attachment. It is <EB0018297>. On the next page, we see the -- clause 6. Do you see that?

A. Yes.

Q. What you were referring to. So, you understood this to be the agreement that entitled you to all the shares in LCF?

A. No. That is an agreement I think we were discussing at the time between them. I don't think that is the actual buy-out agreement. And there is also a memorandum of understanding that goes with it. I signed my buy-out agreement, so I am not on the signature list there.

Q. Let's just look at what you say in your -- just to -- I think you answered my question. The answer to my question was "No", wasn't it?

A. Yes.

Q. Let's look at what you say in your witness statement. It is going to be <C2/1>, page 10 or 11, I am guessing, looking for paragraph 24. Previous page. Previous page.

So paragraph 24 [page 7], you say that you -- you had discussions with Simon, Elten and the others. Just to be clear, who are you referring to as "the others"?

A. That would have been --

Q. My screen has gone blank again.

That would have been ...?

A. Mr Golding.

Q. And anyone else?

A. I don't remember.

Q. You say you entered into two written agreements which were signed on 15 July 2015. So, is that what you are asking the court to believe, there were two written agreements, which were signed on 15 July 2015?

A. I signed the agreements, and sitting here without them in front of me, is July 2015 the right date? If I had them in front of me, I would tell you.

Q. You asked the court to accept that those documents are a memorandum of understanding and a share purchase agreement?

A. Those are the documents that I signed.

Q. And you say that the memorandum of agreement, a memorandum of understanding, rather, was an agreement by which you would withdraw from the businesses that you had set up or developed together; again, that is what you ask the court to believe, is it?

A. Yes. Sorry.

Q. You say the share purchase agreement was an agreement where you would sell your interest to Simon and Elten for a price capped at £5 million; yes?

A. That is, I believe, what the agreement says that I had in my possession.

Q. No doubt, you have had a chance to reflect carefully on your evidence. You maintain that that is truthful, do you?

A. I signed that agreement and we split. I can't tell you why this other agreement came up and why we were discussing it.

Q. Let's just look at the two documents to which you refer, the first is <MDR00212115>.

That is the memorandum of understanding to which you refer in your witness statement, isn't it?

A. I believe so.

Q. And at <MDR00212306>, that is the SPA to which you refer, isn't it?

A. Is that the signed copy?

Q. Can we have a look at the signature page, please.

A. I believe so. I do not have an electronic copy of it, I only have a hard copy.

Q. If we go back, please, Mr Thomson, to paragraph 24 of your witness statement, which we looked at a moment ago -- it was -- I can read out the reference again, if necessary. It was <C2/1>, I can't remember the page number, page 9 or 10.

Mr Thomson, what you say there in paragraph 24 is entirely untrue, isn't it?

A. No, I think the document that you just brought up showed it was 15 July.

Q. The documents that we just looked at were created after the FCA raid in December 2018, weren't they?

A. I only ever had a hard copy of them. I gave that hard copy, or gave a copy of that hard copy, to, I believe, Mr Hume-Kendall, late on in 2018. I only retained hard copies. I never had an electronic copy.

Q. They didn't exist in -- at any point in 2015. They were created after the FCA raid and dishonestly backdated, weren't they?

A. No, they absolutely were executed midway through July 2015. I remember doing it.

Q. The FCA raid took place on 10 December 2018, didn't it?

A. Yes, it did.

Q. Could we look, please, at <D8-0044884>, please. Now, do you see this is a draft of the MOU?

A. I can see that, yes.

Q. Do you see that in clause 1 it says: "... cooperate ..."

A. Yes.

Q. Do you see in clause 2 it refers to proportions of 50:45:5?

A. Yes, but this has to be read in conjunction with the agreement to buy me out.

Q. But you see those ratios?

A. I do, yes.

Q. And do you see, in clause 4, it refers to an "active role in the businesses"?

A. "... MAT shall not take any active role in the businesses ..."

Is that the point you are referring to?

Q. Yes, do you see that?

A. Yes.

Q. There is no clause 5, is there?

A. Blatantly not, no.

Q. Could we open the document in native form, please. If we look at the properties, the document properties, I think you go to "File", and then, on the right, do you see, Mr Thomson, it says "Document was created on 11 December 2018"?

A. Yes.

Q. That was the day after the FCA raid, wasn't it?

A. That was the day after the FCA raid.

Q. That is the first time this document ever came into existence, isn't it?

A. The author is Mr Sedgwick and I believe he has taken the document that I gave them and recreated it. On 11 December 2018, I wasn't in a fit state to see anyone. So I certainly wouldn't have been meeting with Robert Sedgwick to discuss this. I couldn't tell you why he has drafted it.

Q. He has drafted it because you wanted to have a document that could enable you to explain to the FCA why you had received so much money originating from LCF?

A. No, that is incorrect. I signed that agreement midway through 2015, sorry. I only ever had a hard copy. I gave them a copy of my hard copy. I don't remember the exact date.

I don't know why they have drafted this or Robert, rather, has drafted this. I couldn't answer the question. That would be a question for Mr Sedgwick.

Q. Could we look please at <MDR00195589>. Do you remember attending a meeting with the FCA on 10 December 2018?

A. I remember it, yes.

Q. Do you remember you joined the meeting a bit late?

A. Yes, I had to get back from Wales.

Q. Can we look at page 4, please. Towards -- two-thirds down the page, it says "Andy joined the meeting".

A. Yes.

Q. Do you remember joining that meeting and commencing your discussions with the FCA?

A. I remember we had a meeting. I remember it was very long and very stressy. I don't remember a whole lot of it, to be honest.

Q. Can we look at page 6, please. Do you remember, middle of the page, telling the FCA about the borrowing companies?

A. We would have discussed them. Again, my memory on that meeting is, yes ...

Q. At the bottom of the page, Ed from the FCA asks: "Have either of you received anything back from the companies in remuneration/financial benefit?" Do you remember Ed asking that question to you and Kobus?

A. Not particularly.

Q. Do you think that you would have answered "Categorical NO"?

A. Kobus answered that question, but I don't remember it.

Q. It says "Kobus and Andy Categorical NO". Do you think that is what you might have said to the FCA?

A. I don't remember it, Mr Robins. I don't remember a whole lot of this meeting. I had just left my 12-year-old sons on the side of a mountain in Wales. I was intensely worried about them, my business was collapsing around me. I don't have a very good recollection of this meeting.

Q. Mr Thomson, you surely remember the FCA asking if you received anything back from any of the companies and telling them "Categorical NO"?

A. As I say, I don't remember a whole lot about the meeting.

Q. This is why Mr Sedgwick drafted that document on the 11th, isn't it?

A. I don't believe I saw anyone on the 11th. I spoke to Lewis Silkin a lot.

Q. Let's look at the first version of the SP**A.** It is <D8-0046802>. Do you see it is dated 10 August 2015?

A. I don't remember the ...

Q. Can we look at the signature page, please. That is your signature, isn't it?

A. That looks like the same signature as the previous document.

Q. Not quite, Mr Thomson. The signature, this time, doesn't extend beyond the dotted line. But that is your signature, isn't it?

A. Mr Hume-Kendall's is cut off at the bottom.

Q. Say that again?

A. Mr Hume-Kendall's looks like it is cut off at the bottom. Bottom right-hand side.

Q. But that is your signature at the top of the page, isn't it?

A. That is my signature at the top of the page. I don't remember that document at all. The date is not right. So ...

Q. Did you sign this document on 10 August 2015?

A. I signed my buy-out agreement midway through July '15. I don't remember this document.

Q. Could we look at the properties tab of this document, please, in the trial bundle. (Pause).

No, in the trial bundle itself.

Do you see the document date is the fourth or fifth down?

A. February '19.

Q. February 2019. Did you sign this document in or around 5 February 2019?

A. I don't remember that document.

Q. It was attached to an email dated 5 February 2019, which we haven't seen because it has been withheld on grounds of privilege. Do you remember receiving it attached to an email on or around that date?

A. February 2019, I was -- well, February '19 was not a particularly memorable time for me, Mr Robins. Because seven days after that, I was stood on the edge of Beachy Head, considering taking my own life, so I don't remember much of that time.

Q. Can we look at <EB0118238>, please.

A. Sorry, bringing up that memory, can we have a break, please, my Lord.

MR JUSTICE MILES: Well, if it is a matter of your memory, I think I will just give you a moment to pause, Mr Thomson, but I am not keen to have too many breaks, not least because it will extend your own --

A. Thank you, my Lord.

MR JUSTICE MILES: -- process of giving evidence. If you want a moment or two to collect yourself, then do so. If you need a bit longer, having done that, let me know.

A. Just a moment should be fine, thank you.

MR JUSTICE MILES: Thank you. (Pause).

Mr Robins, on that document, has the question of the claimed privilege of that email -- been pursued?

MR ROBINS: No. My Lord will recall Mr Sedgwick had withheld it on grounds of relevance and we challenged and then we were told it was on ground of privilege. We have not pursued it further.

MR JUSTICE MILES: Right.

MR ROBINS: I think we have asked him if he wants to disclose it and we have been told no.

MR JUSTICE MILES: Has there been any explanation at all of the ground of privilege?

MR ROBINS: I don't think so. I can check and we could come back to it.

MR JUSTICE MILES: Right.

MR ROBINS: Okay, we will check.

The document I was going to look at is ...

MR JUSTICE MILES: Just wait a moment, Mr Robins.

MR ROBINS: I am sorry.

MR JUSTICE MILES: Mr Thomson, are you able to go on?

A. Yes.

MR JUSTICE MILES: Thank you.

MR ROBINS: <EB0118238>.

It is not an email that was sent to you but you will see from the email that Mr Sayers was asking Mr Sedgwick for some information and the first point was agreement with MAT on his equity, "circa July 15 (Robert)". Do you remember any discussions around this time about how the SPA dated 10 August 2015 should actually be dated July 2015?

A. Mr Robins, as I have just explained to you, February 12, 2019, I was standing on the edge of a cliff at Beachy Head. I don't remember much. I remember I had to be pulled off by five policemen and taken to the secure psychiatric unit. I don't remember much at all.

Q. Okay.

Well, let's have a look at the second version of the SP**A.** It is <D8-0047170>. This is the one you saw earlier dated 15 July 2015 in typed script. If we look at the document date in the trial bundle, we can see the date of the document.

Do you see the date is 12 February 2019?

A. I do.

Q. It was attached to an email to Mr Hume-Kendall on that date. We can see that at --

A. Is that a PDF document?

Q. That's right, a PDF document.

A. Date created? Was it the 12th --

Q. February 2019.

A. So it could very well have just been scanned in that date, if it was a PDF. If you scan in a PDF, the day you create it is the date scanned.

Q. You say it could have been scanned in on that date?

A. That is just simple technology.

Q. If we look at the email <D2D10-00057223> I think it is <D2D10-00057223>.

Do you recall ever having seen this email before? Do you think you saw it at the time?

A. How many times would you like me to tell you, Mr Robins, where I was on that date. Or do you just want to continually bring it up? It is not something I really like discussing.

Q. Okay, let's move on. Let's look at the attachment itself, <D2D10-00057224>. This is a document we have seen before. Can we go to the signature page, please, just to show Mr Thomson his signature.

That is your signature there, isn't it?

A. It looks to be but Mr Hume-Kendall's signature is a bit off.

Q. But it is your signature there?

A. It looks to be but that signature page looks the same as lots of other signature pages. So they could have just taken one from the other. My view, looking at all of this, is they didn't have a copy of the buy-out agreement. They took the copy that I provided them, they saw everything that was going on, they couldn't find theirs, so they recreated it. That doesn't mean the one that I provided them with was not real. I had it for years.

Q. But this is the one you rely on in these proceedings?

A. I rely on the hard copy that I got in my possession, that I took a scan of in 2019 as well. So on my system it says "2019". I took a scan of it because I had to provide it to my solicitors at Peters & Peters, and I have had that hard copy for years.

Q. I don't think you say, do you, there is any difference between the scan that you rely on that is scanned in in February 2019 and this version we are looking at?

A. What I am saying is the document that I rely on is the hard copy I have got in my possession that I have had for years.

Q. Let's look at what this one says, at the top of page 4. Do you see it defines the sale shares to mean: "The shares representing five per cent in the value of the shares in the Companies [with a capital C] which are held by the buyers on trust for the seller."

A. I can see that, yes.

Q. The companies are in the schedule at page 9. Do you see they include, just over halfway down the page, Lakeview Country Club Limited?

A. Yes.

Q. On 15 July 2015, Mr Hume-Kendall and Mr Barker didn't hold any shares in LCCL, did they?

A. I don't know. That would be a question for Mr Sedgwick because he dealt with those.

Q. On that date, and until the completion of the Lakeview SPA, the shares in LCCL were held by you and Mrs Hume-Kendall, weren't they?

A. When they were sold. I don't remember the dates, no.

Q. Let's look at a draft of that at <D8-0001216>. This is the covering email, in fact -- do you see, from Mr Sedgwick, 8 July 2015? It is copied to you and it has various attachments.

A. Hmm.

Q. One of those attachments is <D8-0001218>. <D8-0001218>.

Do you remember seeing the draft Lakeview SPA?

A. I remember seeing various drafts of it. I can't remember the particulars of it.

Q. You understood at the time it was an agreement for you and Mrs Hume-Kendall to sell the shares in LCCL registered in your names to LTDG?

A. That is what it says, yes. Those shares I would have held on trust and there is a 5 per cent that I was bought out.

Q. So you were holding shares in trust --

A. The Golding family.

Q. For the Golding family?

A. Yes.

Q. And you were holding 5 per cent for yourself?

A. Well, if the date -- I can't remember the date of this transaction. If the date of this transaction was post my buy-out agreement, then I had effectively sold that 5 per cent and this is just an execution.

Q. Well, this is 8 July 2015.

A. Sorry, there was no date on the top of that.

Q. Sorry, if we could just go back to the email, please, <D8-0001216>.

So on 8 July 2015, there was a draft agreement for you and Mrs Hume-Kendall to sell 100 per cent, including your 5 per cent --

A. Yes.

Q. -- to LTDG.

A. Yes.

Q. You remember the various drafts of this agreement --

A. I remember this was all being discussed and dealt with at the time between Buss Murton, Lewis Silkin and the rest of us. As we can see, Simon is on copy and so am I.

Q. Let's have a look at another one. The email is <D8-0001354>.

Mr Sedgwick is circulating a revised version. Do you remember the price of just over 2.1 million in total?

A. Not particularly, but that is clearly what it says.

Q. Do you remember your entitlement was about £105,000?

A. That would have been the 5 per cent, so ...

Q. This is 16 July 2015; do you see the date at the top?

A. Yes, I see that.

Q. It is to you and Mr Hume-Kendall, in fact, isn't it?

A. And copied to Mr Barker and Mr Golding.

Q. Let's look at the attachment. It is <D8-0001355>, and I think if we look at --

A. Is that the same document we saw before?

Q. It has changed slightly because Mr Sedgwick has changed the amount. Let's look at clause -- I don't know what it is going to be, 2 or 3?

There we are, previous page.

At 3, point 1, he has changed the purchase price.

A. Do you remember what it was before? I don't recollect.

Q. 6.5.

A. Right.

Q. Do you remember it being revised down to that?

A. Not particularly but I can see he has done it.

Q. Do you remember this SPA was ultimately signed on 27 July 2015?

A. I don't remember it but it is -- I know that was going on at the same time. As I say, before there was a lot of turbulence going on in the office, which was one of the reasons why I wanted to leave. So there was lots going on.

Q. If we just go back to that SPA that you rely on, <D2D10-00057224>, and we look at the top of page 4 --

A. Sorry, is this the SPA that is taken from my disclosure or someone else's?

Q. I am not aware of any difference. I didn't think it was your case that there was any difference, Mr Thomson.

A. I don't know, I have not compared the documents, but you have shown me several SPAs and what I have said is I gave them a copy of my hard copy. I have not compared their disclosure to mine, so hence the question.

MR ROBINS: My Lord, that is an exercise we can perform overnight. I wonder, in light of that, whether it is a convenient point to break to hear from Mr Ledgister, or whether my Lord would like me to continue with the questioning?

MR JUSTICE MILES: I think it might make sense to do that. So if you could check that point overnight.

A. I am not saying that to be contentious, I just want to be correct.

MR JUSTICE MILES: I think this version is taken from the eighth defendant's disclosure, isn't it?

MR ROBINS: This version is the version that was from the Hume-Kendall's disclosure attached to the email to Mr Hume-Kendall on 12 February 2019, but we will check all versions. I was not aware that anyone was suggesting that there were any differences between the signed versions dated 15 --

MR JUSTICE MILES: I thought when we -- sorry. I thought when you went to the document and looked at the properties, that showed it to be the eighth defendant's disclosure? But perhaps that is --

MR ROBINS: There was another version we looked at.

MR JUSTICE MILES: May be I have missed ...

MR ROBINS: There were versions in various people's disclosure.

MR JUSTICE MILES: That looked as though it was the same as this one but --

MR ROBINS: Yes, we have looked at the version in the eighth defendant's disclosure, we have looked at the version in Mr Hume-Kendall's disclosure and I think we also earlier looked at a version in the claimants' disclosure but if it is being suggested there might be differences, we obviously just need to check them and see if there is any difference between the various versions. I was not aware of that suggestion before now.

MR JUSTICE MILES: Right, well, it seems to me that is a good moment to break.

So we will pause your evidence there, Mr Thomson, and the same rules apply as earlier in your evidence, that you must not discuss the case or your evidence with anyone else, and that means anyone?

A. Can I be excused now? I need to go.

MR JUSTICE MILES: Yes.

A. Thank you.

MR ROBINS: So I think we will hear from Mr Ledgister.

MR JUSTICE MILES: Yes.

Housekeeping

MR LEDGISTER: Thank you, my Lord.

We have had some difficulty, my Lord, in trying to obtain firm instructions, notwithstanding that we have been trying since we rose for the luncheon adjournment. The solicitor with conduct in this matter has been in meetings this afternoon, and my Lord may have seen some activity behind me from the solicitor's representative leaving the courtroom every now and again trying to make contact.

We have managed to speak to one of the other lawyers involved in this case and, in respect of the Isle of Wight filing, the response on the Isle of Wight matter, he has asked if we could have until Monday to reply on that. The reason for Monday is he knows not what the diary looks like for the person who is responsible for actually preparing that statement. So at the very least, they would have the weekend to compile the statement, so we can have it to the court first thing Monday morning.

Insofar as filing the evidence from the defendant, the witness statements in response to -- yes, my Lord, insofar as filing the responses, and the witness statements on those discrete points, can we ask until 22 April. The reason, again, why we have pushed the date out so far is we have been unable to take firm instructions on this and I don't want to be overly optimistic only to be rightly criticised for suggesting a date which cannot be met.

The 22nd is three days before Paul Careless goes in the witness box and, although it has been requested that we buy even more time than that, I don't see how that is possible, should there be any complication that arises and we need to take instructions -- clearly we can't do that whilst he is in the witness box. So clearly that needs to be done in ample time for the claimants to be aware of what it is he proposes to say before he goes into the box. So we have asked, or I am instructed to ask, until 22 April, which is also a Monday. So just to recap, insofar as the Isle of Wight is concerned, we ask until Monday, 15 April; to reply with the discrete points in the witness statements, can we have until 22 April, which is the following Monday. My Lord, I am acting on instructions and of course --

MR JUSTICE MILES: And the defence, I think you said before, was the 15 April?

MR LEDGISTER: The 15th is for the Isle of Wight response.

MR JUSTICE MILES: No, also for the defence.

MR LEDGISTER: Also for the defence, yes, my Lord.

MR JUSTICE MILES: Yes.

Right. Mr Robins?

MR ROBINS: I will just turn my back for a moment. (Pause). My Lord, we suggest 9.00 am on Monday for the evidence in opposition on the Isle of Wight amendment. It is something that has to be resolved sooner rather than later. If it comes in on Monday morning, we would have a chance of responding to it and having an effective hearing in respect of that single amendment before the end of next week.

In relation to the supplemental witness statements, I maintain that, if the position can be verified in a statement of truth in a defence by Monday, then witness statements should be served at the same time.

MR JUSTICE MILES: What I am going to do, I think, Mr Robins, is say that the defence should be by 4.00 pm on the 15th; the Isle of Wight evidence should be 9.00 am on the 15th; and I am going to give Mr Ledgister yet another opportunity to take further instructions by first thing tomorrow

morning. And I really mean it. I think your instructing solicitors do have to, to some extent, make themselves available to be able to give you instructions. It is rather unsatisfactory in the course of a trial like this to be told that they haven't been able to do so.

I think that to wait until 22 April is going to be too long. But I will listen to any further submission you might have first thing tomorrow morning about this, once you have had an opportunity to take instructions, but I really do emphasise that I am giving you a bit more of a chance to sort that out.

MR LEDGISTER: I am grateful, my Lord. Those who instruct me do have visibility of the transcript and they will see what my Lord has said. I am grateful.

MR JUSTICE MILES: So I will deal with that briefly first thing in the morning but I do think that your proposal of 22 April is too leisurely.

MR LEDGISTER: Very well, my Lord.

MR JUSTICE MILES: So we will deal with that then, Mr Robins.

MR ROBINS: I am grateful, my Lord.

MR JUSTICE MILES: Right, 10.30 tomorrow. (4.17 pm)

(The trial adjourned until 10.30 am the following day)

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