

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 23 - Thursday, 11 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

Thursday, 11 April 2024 (10.30 am)

(continued)

Cross-examination of **MR MICHAEL ANDREW THOMSON** by **MR ROBINS** (continued)

MR ROBINS: Mr Thomson, you raised the possibility, towards the end of the afternoon yesterday, that the version of the SPA on which you rely might not be the same as the version we were looking at, so we will just cover that point off first.

A. Yes, I just wanted to make sure it was the one from my disclosure.

Q. Absolutely. I will deal with that now. If we could bring up <D2D10-00057223>, please. This is a document we -- I think I mentioned it yesterday. It is an email from Mr Sedgwick to Mr Sayers, copying Mr Hume-Kendall, on 12 February 2019, attaching the signed SPA.

The attachment to that, we had it on screen yesterday. If we could have it up again, please, it is <D2D10-000357224>, and if we could look at the document properties, please. This is the version with the document date 12/02/2019 and the time is 11:46. I think, if we go back to the email that we had a moment ago, we can see that there is a slightly different time but it is broadly the same. Right at the bottom, do you see it says, "On 12/02/19, 11:43"? That is what we looked at yesterday. You said you couldn't recall anything about that date because you went to Beachy Head on that date with, I think, the idea of taking your own life. Is that correct?

A. That is what I said.

Q. But you also made the point yesterday, I think, that the fact that the SPA was scanned on 12 February 2019 doesn't mean it was created on 12 February '19?

A. That was just my point, that the PDF could very well be a scanned copy. Looking at my laptop that I've got, my copy that was disclosed to you, that was scanned in in 2021, so that was the document date for the document that I've got on my computer.

Q. That is not quite right, Mr Thomson. The version of the SPA in your disclosure, if we could bring it up, is <D1-0012931>.

I can tell you we have checked it; the contents are identical. This is from your disclosure. If we could look at the signature page, you can see that the signatures are the same, even the signature of Mr Hume-Kendall, which you said yesterday looked a bit off.

A. Yes.

Q. Could we look at the document properties, please? Do you see the document date, 12/02/19, 11:48?

A. I can see that, yes.

Q. So did Mr Sedgwick scan this SPA on the 12th and then you scanned the same document a few minutes later, and then you went to Beachy Head; is that what you think happened?

A. No. The document I looked at last night, that is this on my laptop, has got a date in 2021. Could Mr Sedgwick have forwarded me this one? I stick with what I said to you yesterday. I provided them a

copy of my buy-out agreement that I signed in 2015 and it could very well have been scanned on various different occasions, which is why it has the property date, and I would add to my assertion that I signed it in 2015 that your own written opening suggests otherwise, because in your own written opening, you refer to, and rely on, emails from, I believe, myself and Kerry Venn in early 2016, where I reference my buy-out agreement.

If it was created, as you assert, in 2019, I wouldn't have been discussing it early 2016 with Kerry Venn.

So I stick by what I said. I provided them with a copy and it has been scanned on several occasions. Why I have in my disclosure that one, it could very well have been forwarded to me. I also have another one that I have scanned on that is in 2021, which I looked at last night. It all looks to be the same document.

Q. Yes, it is identical. You said yesterday that your view was, "They didn't have a copy of the buyout agreement. They took the copy that I provided them. They couldn't find theirs, so they recreated it"?

A. That is just in an answer to what you said to me yesterday, that was my thinking with what you put to me yesterday.

Q. Is that still your thinking?

A. It makes sense. It is just that is -- you presented me with the documents and that was having a look at the documents and an answer to the question. I still assert that I signed it in 2015 and I've got a hard copy. That hard copy has been scanned.

Q. But if the document on which you rely is identical to what you say seems to you to be a post-dated recreation, then doesn't it mean that the document on which you rely is also a post-dated recreation?

A. I didn't say it was post-dated recreation. I said I signed it in 2015. It is referred to in emails in 2016, between myself and others, of which you rely on, and it has been scanned, it looks like, on a number of occasions, and what I said to you yesterday, being presented with the information in front of me, is it looks like I have given them the copy, because I have only got a hard copy -- excuse me -- I have only got a hard copy and it has been scanned on a number of occasions. Because I have received this one that looks like a scanned on the 12th, are you suggesting that I wasn't where I said I was?

Q. No. I am asking, given you said that the version I showed you yesterday looked like a recreation and given that that version is identical to the version you rely on, doesn't it follow that the version you rely on is also a recreation?

A. It is -- it looks to be a scanned copy of the one that I have at home, which I signed in 2015.

Q. You mentioned yesterday that you sent a scanned copy of the SPA to Peters & Peters?

A. No, it would have been the bonus. I got that wrong. I looked at the date on the version I have on my laptop in my hotel and that is 2021.

Q. When did you retain Peters & Peters?

A. I retained them December or early January 18/19.

Q. Are you aware that your emails to Peters & Peters have been, and indeed have been correctly, withheld on the basis of what is called legal professional privilege?

A. Yes, my understanding is privileged, anything between myself and my lawyers is privileged, yes.

Q. So if we go to <D1-0013187>, and could we look at the document properties, please.

(Pause).

You can see from the document type that it is an Outlook email. And do you see --

A. Sorry, what?

Q. On the right-hand side, if it could just be highlighted, please, it says "Outlook Email" the document we were looking at, fifth down, document type, where the mouse is hovering.

A. It says "Outlook Email".

Q. "Outlook Email", and so, the document that is withheld is an email and, if we look at the date and time, that is 29/03/19.

A. Yes.

Q. Do you think that is probably an email to Peters & Peters?

A. It doesn't say Peters -- it just says an Outlook email, sorry, I am ...

Q. Given it has been withheld on the basis of privilege at the time you were instructing Peters & Peters, do you think it is probably an email to Peters & Peters?

A. Oh, sorry. I now understand what you are asking me. Yes, if it has been withheld for privilege, then they were my lawyers at the time.

Q. The attachment has been disclosed. Let's go to that, that is <D1-0013190>.

You see this is the SPA dated 15 July 2015?

A. Yes.

Q. If we could look at the document properties, please, we can see "Document date" --

A. Yes.

Q. -- five down, you can see it is the version that was scanned in at 11:48 on 12 February 2019?

A. Yes, I can see that.

Q. So do you think that the document you provided to Peters & Peters was probably the version that was scanned in on 12 February 2019?

A. It looks that way. I would have received it somehow. I don't know how. As I say, that whole time is a bit of a grey area, for obvious reasons, but it doesn't detract from it was scanned in, I provided them a copy of the hard copy that I had. I must have scanned it on again to my laptop in 2021 and, as I say, that was the one that I signed in 2015, which I referred to in emails, which you rely on in your written opening.

Q. Do you think that what probably happened is that you were involved with Mr Sedgwick on 12 February in creating this document, he scanned it in, you scanned it in and then you went to Beachy Head?

A. Well, the days -- I couldn't tell you what I did from the beginning to the end of that date, being honest. I could very well, but my understanding -- I gave them earlier. I don't know why it is dated that day and that time. I stick with what I say. I signed it in 2015, provided them with a copy, and it looks like it has been scanned in multiple occasions and, indeed, I keep going back to the -- it is referred to in emails in early 2016 between myself and Kerry Venn -- or Graham, I think she was at the time -- and, as I say, that is in your written opening. So, if the document wasn't in existence, I wouldn't have been referring to it in 2016.

Q. Unless, Mr Thomson, you were referring to the document we looked at yesterday, which was an agreement between Mr Hume-Kendall and Mr Golding, which you didn't sign. That is probably what you were referring to to Kerry Venn, wasn't it?

A. My name was not on that document.

Q. You had a copy of it, didn't you?

A. My name was not on -- it wasn't my document.

Q. My question was you had a copy of it, didn't you?

A. I don't remember the emails that you flashed up yesterday. Perhaps you could bring those up again.

Q. We will look at them in a moment.

We looked, yesterday, at the terms of the SPA and you agree it is a document by which you apparently sold your shares in Lakeview Country Club Limited to Mr Hume-Kendall and Mr Barker?

A. That and other companies, yes.

Q. Yes, and other companies.

A. As I believe, there was a schedule attached.

Q. We saw, towards the end of the day yesterday, on 8 July 2015, you were copied in to an agreement by which you would sell your shares in Lakeview Country Club Limited to London Trading. Do you remember looking at that?

A. Yes, I remember looking at that, I remember the terms of it, we looked at it briefly.

Q. But you understand it was an agreement by which you would sell your shares in LCCL to London Trading?

A. I think that was what it was, but there were lots of agreements flying around at that time and it was very turbulent and not all of them got executed.

Q. That was one that got executed on 27 July 2015?

A. If you could take me to a signed copy.

Q. No one has disclosed the signed copy but we have an email which I can take you to now, if it jogs your memory. It is <MDR00016700>.

It is an email from Mr Sedgwick to you on 12 August 2015 and Mr Sedgwick gives you a brief summary and it says:

"1. You and Helen sold your shares in Lakeview Country Club Limited ... to London Trading ..." So that is a transaction which did complete, isn't it?

A. Again, if you could take me to a signed copy.

Q. As I said, Mr Thomson, no one has disclosed a signed copy. Do you have a signed copy?

A. If I had, it would have been in disclosure. But this is after -- as I said, there was lots of -- there was lots of turbulence at the time, which is one of the reasons that I left. There was various different agreements that I believe Mr Sedgwick came up with, with various different things. Not all got executed, so ...

Q. You accept, I think, that there was a draft agreement for you to sell your shares in Lakeview Country Club Limited to London Trading?

A. Was that the one that you brought up yesterday?

Q. Yes, we saw that yesterday. You accept that, don't you?

A. I saw the document. Was that the one that I wasn't named?

Q. No, we can go back to it. <D8-0001218>. This is the one we saw yesterday. You understand this is a draft agreement for the sale of your shares in Lakeview Country Club Limited to London Trading?

A. Sorry, I was confused with the other one you showed me that had other people signing and my name was not attached to it.

Q. That is perfectly all right. You must say if ever you are confused, because I am very happy to clarify any questions.

You received this on 8 July 2015, didn't you?

A. If you showed me an email yesterday of me receiving it --

Q. Let's go back to that, <D8-0001216>. This is the email attaching the document we just saw and you are copied into that, aren't you? So that is on the 8th, and then you say, on the 15th, you sold your shares in Lakeview Country Club Limited to Mr Hume-Kendall and Mr Barker under the SPA, don't you?

A. The SPA dated the 15th, yes.

Q. Which you say was signed on the 15th, don't you?

A. Yes, that is -- I remember so.

Q. On the very next day, the 16th, I think we saw again yesterday Mr Sedgwick sent you another draft of the SPA under which you would sell your shares in Lakeview Country Club Limited to London Trading, didn't he?

A. If you could bring that email up, sorry.

Q. <D8-0001354>. That is the email. Let's look at the attachment as well, <D8-0001355>.

A. Is that the same one?

Q. Yes. You may remember we saw, yesterday, the purchase price had been changed to a little over 2.1 million. Do you remember looking at that yesterday?

A. Yes.

Q. So the day after the signature of the agreement by which you say you sold your shares in Lakeview Country Club Limited to London Trading, you accept Mr Sedgwick was sending you a further draft of an agreement by which you would sell the very same shares to -- sorry, I got that wrong. Let me repeat that.

The day after signature of the agreement by which you sold your shares in Lakeview Country Club Limited to Mr Hume-Kendall and Mr Barker, the 15th, you accept Mr Sedgwick was sending you a further draft of an agreement by which you would sell the very same shares, so to a different purchaser, London Trading?

A. I was still the beneficial owner of that at the time, so I don't remember exactly what was going -- what was happening at the time. I did sign my buy-out agreement and I was still the beneficial owner of those shares because they hadn't made any payments whatsoever. So is this signing because I was still a beneficial owner?

Q. You are signing this because the SPA dated the 15th didn't exist.

A. It did exist.

Q. Now, in the event, you sold your shares in Lakeview Country Club Limited to London Trading, as we have just seen. You owned 5 per cent of London Trading, didn't you?

A. Part of my buy-out agreement was that I had 5 per cent in all of the shares. But I was being bought out of that.

Q. But you accept that, at least before the 15th, you had a 5 per cent interest in London Trading?

A. Before I got bought out, I had 5 per cent in everything.

Q. And, after the 15th, you continued to have a 5 per cent interest in London Trading -- you hadn't been bought out?

A. Well, they hadn't finished the buying out, but I had effectively sold -- I still had a beneficial ownership but I couldn't vote, couldn't this, couldn't that. It was -- I had left. There was a handover period and paperwork was being dealt with at the time. As I say, I -- yes, I was still a beneficial owner because they hadn't bought me out.

Q. Let's go to the agreement I mentioned earlier, I said we would come back to it, sent to you by Mr Sedgwick on the 16th.

It is <D8-0001655>. Do you see, at the top, the parties are Mr Golding, Mr Hume-Kendall, London Trading and Mr Barker? And Lakeview Country Club Limited, sorry, I had missed them out.

A. Yes, I see that.

Q. Do you see clause 2, which says:

"The parties will procure that London Trading & Development Group Limited (LTDG) will purchase all the shares in the company ..."

A. I can see that, yes.

Q. Do you see, at the top, in the parties at 3, the company is Lakeview Country Club Limited?

A. I can see that.

Q. And then, in clause 6, it says:

"Andy Thomson shall be entitled to a 5 per cent holding in LTDG in non-voting shares ..."

A. I can see that.

Q. This is something you got on the 16th, isn't it?

A. The buyout agreement is, any associated company -- that's my understanding of my buy-out agreement -- is any associated company that is associated with the companies I was involved in and had a 5 per cent holding, for the period of my buy out, I would effectively get a 5 per cent in all of them, if they subsequently created others that were linked to, to protect me up to a maximum of 5 million over a five-year period.

Q. So I think you are saying it is not much of a buy-out because you keep your 5 per cent even after the signature of the agreement. Is that what you are saying?

A. No, that is not how it worked.

It was if they -- if an associated company, so if a parent company or a subsidiary was created that was linked to one of the original companies that I had a 5 per cent shareholding in, I would have a beneficial, effectively, holding in that. It was captured under my buy-out agreement. And, effectively, it is a protection of them moving any assets or value into a different company that is not named.

But the ceiling is beneficially 5 per cent over everything, over a period of time. If I am making myself clear.

Q. You accept there is no suggestion in this draft agreement that there had been any signature of any buy-out agreement on the previous day?

A. No, it doesn't mention it.

Q. Because that hadn't happened?

A. It did happen. And I think this is just taking effect of what the parties were trying to achieve with the agreement.

As I say, I am not party to this. If I was still in all of these companies, I would be party to it. I am not party to it.

Q. But it was copied to you, wasn't it?

A. I think you showed that yesterday.

Q. And you retained a copy of it, didn't you?

A. I can't remember.

Q. We looked at it yesterday, <EB0018295>. The attachment is the unsigned agreement that we were just looking at. So you retained a copy of it, didn't you?

A. It shows me scanning it over to him, but I don't know if I retained it. I don't know if that proves I retained a copy. It's Mr Barker's disclosure, and I could very well have just scanned it to him, because it doesn't say I retained a copy.

Q. It says you "dug out a copy of the doc" that you talked through, so you did retain it, didn't you?

A. Well, "dug out" can mean numerous different things, I could have found it, I could have this, I could have that. I scanned him a copy over, it doesn't necessarily mean I retained a copy. I don't mean to be contentious, I am just trying to get to the right of it. I don't know if this was -- is in any of my disclosure at all.

Q. What the attached agreement shows is that you hadn't been bought out, you were retaining 5 per cent of everything going forward?

A. But that is -- that goes in line with my buy-out agreement, which says, any linked companies, I would effectively have the 5 per cent beneficial ownership of and, again, it is a protection for me. If they decide to move any value, I still capture that value, but it has a ceiling. So, if there is, as I have said before, a linked company, that is linked to the other companies I was bought out from, I would effectively have a 5 per cent ownership of that. It was put, it would be captured in what we were trying to achieve.

Q. Mr Thomson, that is all complete nonsense, isn't it?

A. No, Mr Robins, it isn't.

Q. Could we go back, please, to the SPA from your disclosure. That is <D1-0012931>.

MR JUSTICE MILES: Mr Robins, just a moment. (Discussion off the record re hyperlinking)

MR ROBINS: Can we go to page 9, please. We saw the schedule of companies and you see the second is London Oil & Gas Limited.

A. Yes.

Q. I think we saw yesterday, and I think you accept, that, on 15 July 2015, the shares in that company were still owned by the Bosshard family?

A. I think we went over that, yes.

Q. So you didn't have 5 per cent interest in London Oil & Gas on 15 July 2015, did you?

A. Again, what the parties were trying to achieve, it was recognised that they did have this, I appreciate that the housekeeping, that wasn't my department, that was Mr Sedgwick's, so that will be a question, no doubt, you will put to him.

What the buyout was endeavouring to achieve was I was associated with all of these companies, I had a 5 per cent beneficially in all of those companies and my buy-out recognised that and I was bought out over a period of time.

Granted, Mr Sedgwick's housekeeping isn't the best, which is why, I think, you have got numerous documents everywhere, but the parties were endeavouring to achieve what I have tried to explain to you and my buy-out agreement needs to be read in conjunction with the memorandum of understanding that went with it.

Q. Is an example of Mr Sedgwick's housekeeping not being the best, that he didn't actually draft this document until you worked on it with him in February 2019?

A. No, Mr Robins. As I have said to you before, I signed this in 2015, I have referred to it in email correspondence in 2016. I provided them a hard copy.

Q. Could we look at the top of page 4, please. So we looked at this yesterday, the "Sale Shares" is a term defined to mean the shares representing, "5 per cent in value of the shares in the companies, which are held by the buyers on trust for the seller." Now, the buyers are Mr Hume-Kendall and Mr Barker. On 15 July 2015, they didn't hold any shares in LOG on trust for you, did they?

A. That would depend on the LOG transactions they were doing that Mr Sedgwick should have done, so I can't answer that, but, again, I come back to recognise that I had a 5 per cent, beneficial ownership in all of those companies. I've mentioned Mr Sedgwick's housekeeping. That would be a question for him. But that is what it was designed to achieve.

Q. Could we look at page 5, please.

In clause 5, there is a warranty given by you and you warranted that the warranties were "true and accurate and not misleading", and the first of those was that you were the "sole beneficial owner of the sale shares"; do you see that?

A. Yes, I do.

Q. On 15 July 2015, you weren't the sole beneficial owner of 5 per cent of the shares in LOG, were you?

A. My understanding -- and, again, I didn't draft this and perhaps I should have paid a bit more attention -- my understanding, and it still is my understanding, that I held a 5 per cent beneficial ownership of all of the companies, whether it was in my name or others. It was recognised by all parties that were there that I held a 5 per cent in everything and that is what they were buying me out of.

Q. Is your evidence -- your understanding was you held 5 per cent of LOG, even before the Bosshards sold it?

A. Because that is what had been agreed previously -- the paperwork clearly hadn't been done, the paperwork was done later on, I don't know the date, but, again, what we were trying to achieve with that agreement was recognising that I did hold the 5 per cent position beneficially and they were buying me out of all of that.

Q. Could we go back to page 9, please.

Do you see it gives the registered office address for LOG as Wellington Gate, 7-9 Church Road, Tunbridge Wells, Kent?

A. Yes.

Q. Do you know that, on 15 July 2015, LOG's registered office address was actually 5-7 Linkfield Corner, Redhill, Surrey?

A. No, I don't.

Q. You know LOG didn't move its registered office address to Wellington Square until 4 August 2015?

A. No, I didn't know that. I left those things to Mr Sedgwick and Mr Peacock.

Q. Do you accept that this is a document that was not signed on 15 July 2015, but was created much later and backdated?

A. No, I don't accept that.

Q. After the acquisition of LOG from the Bosshards, it changed its name to London Group Limited, didn't it?

A. I don't know. I had left by then, so what they did in those companies, I left them to do.

Q. Well, you retained a beneficial interest in 5 per cent of the shares in London Group Limited, didn't you?

A. I retained, until they bought me out, a beneficial position in any of them. That doesn't mean I had -- and if you read the memorandum of understanding as well, in conjunction with the buyout agreement, I didn't have -- I stepped away.

Q. You retained the interest in London Group Limited because the buy-out agreement had never existed?

A. I don't know how many times you want me to tell you, Mr Robins, that it did exist and I signed it in 2015.

Q. Could we go back to page 5 of this document, please. Do you see it says:

"The seller agrees that his signature of this agreement shall constitute the resignation by him of all offices" --

A. Where is that?

Q. Clause 4.1.

A. Let me read that.

Q. "The seller agrees that his signature in this agreement shall constitute the resignation by him of all offices whether as director or secretary of each of the companies on the date hereof ..."

A. Yes, and I relied on Mr Sedgwick and Mr Peacock to deal with all of that.

Q. You say you signed this on 15 July 2015?

A. But I am aware that there are resignations that didn't happen and I had an issue with it, or I found that out late 2015, early 2016, and I was removed from then. I relied on other people, naively, I should have checked, but they said they were going to resign me, they dealt with all the Companies House filings and accounts -- relied on them to do this.

Q. If we go back to page 9, please, we see the list of the companies, so it is your position, is it, that, as of your signature of this, on 15 July 2015, as a matter of law, you had resigned as a director of these companies, even though it wasn't registered at Companies House until later?

A. They should have resigned me, yes. I relied on them to do it.

Q. With effect from 15 July 2015?

A. That is my understanding.

Q. Can we look at <MDR00058290>. This is an email from you to Mr Sedgwick on 16 September 2016?

A. Hmm.

Q. You say -- you have had a conversation with him about the fact you are still listed as a director, should have been removed, and you say:

"... below is a list of the directorships that I resigned from in June ..."

You say you had no involvement past June. Do you see that?

A. I do.

Q. You accept you didn't refer here to clause 4.1 of the SPA, did you?

A. No.

Q. You were not referring to the date 15 July 2015 either?

A. I don't remember the email.

Q. Do you think, if the SPA genuinely existed, you would probably have referred to it here?

A. I have written "June", I should have written "July". But what it is showing me is that I realised I should have been removed. I should have checked before and not relied on people, but it is showing that I am saying I should have been removed. Okay, I got the month wrong, but ...

Q. You didn't mention the SPA date of the 15th because it wasn't a document that existed?

A. No, but it is showing you that I am saying, "I should have been removed from these companies and I wasn't. Please, could you get on with it?"

Q. When you and Mr Sedgwick came to create the SPA in February 2019, you both remembered that there had been some failure to implement your resignation and decided to tidy that up in clause 4.1 of the SPA?

A. No.

Q. Now, the first time we see a signed version of the MOU on which you rely is 19 February 2018 [as spoken]. Let's go to that, it is <D2D10-00057591> This is identical to the document we saw yesterday that you confirmed --

MR JUSTICE MILES: Did you say 2018 or 2019?

MR ROBINS: I should have said 2019, we can check that in the properties tab, please, if we look at the document date.

It is <D2D10-00057591>. "Document date" -- yes, my Lord, 2019. Do you see that Mr Thomson?

A. Yes.

Q. You were copied -- you were not copied into the email but Mr Hume-Kendall sent it to LCF's administrators on that date.

If we could look at the document itself, please, I just want to compare it with the draft from 11 December 2018 that we looked at previously. Do you remember, yesterday, in clause 1 in the draft, it said "cooperate"?

A. I don't remember the wording but ...

Q. Do you remember any discussion about changing that to say "operate" to create the impression of distance between you, on the one hand, and Mr Barker and Mr Hume-Kendall on the other?

A. I haven't had those conversations.

Q. Do you remember, in clause 2, in the draft we looked at yesterday, it said in the proportions: EB, 50; SHK, 45; MAT, 5?

A. I remember we looked at a document with those figures. I can't remember the specifics of it.

Q. You see those figures don't appear in clause 2 of this version?

A. There are no figures there.

Q. Do you remember, in clause 4 of the draft we looked at yesterday, it said "any active role"?

A. I don't particularly, but ...

Q. Did you have a discussion in February 2019 about changing the wording to "active or passive"?

A. I didn't have those conversations.

Q. Do you remember yesterday I said there was no clause 5 and you said "Well, obviously not"?

A. I remember that, yes.

Q. Did you have a discussion in February 2019 about inserting a new clause 5 to say the parties would operate their separate businesses totally at arm's length?

A. No, Mr Robins. February 2019 was not one of my best months.

Q. But you were involved, in February 2019, with amending this document and producing the signed version?

A. No. I wasn't. This document, looking at it, is very much a scanned document. It looks like an old one, but there is fading on it. If you look at clause 4, I think it says "all other matters", it's got fading of ink going on there. It doesn't look like a new document that has just been drafted. It looks like a scan of an older document.

Q. So, do you think it was photocopied a few times to make it look old before it was scanned in?

A. That is -- that, I believe, is the MOU that I have at home and it looks like it has been copied several times.

Q. You say it has always been in this form since 15 July 2015?

A. That looks like -- I would have to check it against the hard copy that I've got, I don't have it here. It looks like the one that I have at home.

Q. My question was, you say that it has taken this form since 15 July 2015?

A. It looks like the one I've got at home.

Q. Do you say the one you have got at home has existed in this form since 15 July 2015?

A. I signed in 2015. As I did the buy-out agreement.

Q. So, is the answer to my question, "Yes"?

A. Your question was, again?

Q. Do you say the one you have at home has existed in this form since 15 July 2015?

A. I believe so. I do not have it in front of me, but I believe so.

Q. Mr Thomson, that is all completely untrue, isn't it?

A. No, Mr Robins.

Q. You didn't enter into the MOU and the SPA on 15 July 2015, did you?

A. I did enter into them in July '15.

Q. They were not signed on that date, were they?

A. They were, Mr Robins.

Q. They were created after the FCA raid to explain why you had been receiving money from LCF?

A. No, they weren't.

Q. You have put forward a dishonest case in these proceedings?

A. No, I haven't.

Q. You are lying to the court, Mr Thomson?

A. No, I am not.

Q. Can you just explain how this document that says in clause 4 that you retain an interest of 5 per cent, can possibly have been signed on the same day as the SPA which says that you are selling your interest of 5 per cent? It doesn't make any sense, does it?

A. That would be a Mr Sedgwick wording, "retain beneficially", again, what the parties were trying to achieve in that agreement, and this MOU, I have highlighted before, it is 5 per cent in all of the companies and connected companies thereafter for a period of time up to a maximum. That is what the parties were trying to achieve. Granted, some of the wording is not the best, looking back on it, but that is what we were trying to achieve.

Q. You say, don't you, that by these agreements -- and I am looking for example at clause 3 of this one -- you became entitled to LCF?

A. I walked away with LCF, yes, so I no longer held anything on trust, which I did before.

Q. So if in, say, April 2016, you had been having a discussion with Mr Barker about the agreements to confirm that you were going to be entitled to LCF and if you had gone and dug out some agreements, you would have dug out the MOU and the SPA, wouldn't you?

A. It entirely depends on the conversations I was having at the time.

Q. If the conversation was that you were going to show him a copy of the agreement by which all the shares in LCF would be passed to you, let's say?

A. Again, it is -- I don't remember a conversation like that but ...

Q. Let's go back to <EB0018295>. We looked at it earlier.

A. Yes.

Q. You had spoken to Mr Barker on that date, hadn't you?

A. It looks like it:

"Good to talk to you earlier and as you say we should do it more often."

May have gone out and had a beer.

Q. You had dug out a copy of the doc that you had talked to him about, hadn't you?

A. Was this the one that I wasn't on the document but it recognised that I had -- I took away LCF?
Was that the one --

Q. That is right.

A. -- that you were referring to?

Q. That's right, you didn't show him the MOU or the SPA because those didn't exist yet?

A. No, he may have asked me for this document. I don't remember the conversation.

MR ROBINS: My Lord, I am moving on to a new topic.

MR JUSTICE MILES: Just one question.

Would you be able to bring up on the screen the signed MOU and the December version.

MR ROBINS: Yes. The December version is <D8-0044884> and the signed version is <D2D10-00057591>.

MR JUSTICE MILES: Mr Thomson, do you remember yesterday you were shown the December version?

A. Yes, yes.

MR JUSTICE MILES: I have called it that because that is what the metadata showed and this was a Word document.

A. Yes.

MR JUSTICE MILES: Just assume that that was created in December 2018.

A. Okay.

MR JUSTICE MILES: Are you able to explain why that document was created in December 2018, if the signed version had been signed in July 2015?

A. I didn't create it, my Lord, but I provided them copies of it because they didn't have theirs. Mr --

MR JUSTICE MILES: When you say "they", sorry?

A. Sorry, Mr Golding, Mr Hume-Kendall, Mr Barker, Mr Sedgwick, I believe these documents were originally created when Mr Sedgwick was in Buss Murton. He has then left Buss Murton and doesn't have access to any of his files and I believe they were recreating them because they didn't have a copy.

MR JUSTICE MILES: I think you said in your answer you provided them with copies.

A. Yes, I only ever had, my Lord, a hard copy of both.

MR JUSTICE MILES: So what did you provide them with?

A. A copy of.

MR JUSTICE MILES: The 15 July 2015 signed version?

A. Yes.

MR JUSTICE MILES: When did you do that?

A. I don't remember the exact date, my Lord, sorry, I believe it was sometime in December. It could very well have been after the raid, it could have been before. I can't remember. Sorry.

MR JUSTICE MILES: If you had provided them with the signed version, are you able to explain why the December version is different from that?

A. I didn't create it, my Lord. I don't know. That would be a question for Mr Sedgwick.

MR JUSTICE MILES: All right.

Thank you.

MR ROBINS: Mr Thomson, you say, don't you, that after the buy-out, you negotiated an arrangement with Simon and Spencer, by which they would continue to provide you with support?

A. Yes, so I am embarking on a venture on my own. I have never run a business solely on my own. I created One Monday, I think, back in 2010, but I was still at the bank, so I have never actually run a company properly on my own. I left the bank and joined these individuals who had all run their own companies for years. 2015, I left, I was on my own. I didn't have anyone to lean on. I took Katie Maddock with me. They provided me with office space, I was -- they continued to pay me, which was counted against my drawdown, until LCF gets up on its own feet and I relied on them for some assistance in starting to build what later became LCF.

So it was six to eight months they assisted, they paid for some things, I leant on them for advice, discussed things with them, and they helped me.

Q. And you say that it was mainly high-level-type support for a new business?

A. It was various different -- it's -- high-level, but then there's day-to-day stuff as well. I imagine I would have discussed -- they assisted me with. I didn't have anyone else to turn to, so I was a brand spanking new director going out on my own for the first time and they offered support and I accepted it.

Q. I think your evidence is clear, isn't it, that Simon and Spencer did not play any part in the decision-making at LCF at all after July 2015?

A. I got their input, certainly. I took advice. They had an element of influence. You know, it is taking advice. It is acting on that. If someone -- if you ask someone a question and they give you a good response, I can see I would have put that in place. Why ask them the question otherwise?

Q. The reality, Mr Thomson, is that Mr Golding, in particular, continued to be very closely involved in LCF's business after July 2015, didn't he?

A. He assisted for a number of months, yes.

Q. Well, for a number of years, I think.

A. That is not correct.

Q. You and he ran LCF together?

A. No, we didn't.

Q. And you gave regular updates to him?

A. I -- for a period of time, I kept him informed of what was going on because I was discussing how the business was progressing.

Q. In practical terms, he continued to be the person who called the shots, didn't he?

A. No, he didn't.

Q. He was the person who would make decisions that you then had to implement?

A. No.

Q. Let's look at <MDR00017238>.

Do you see, in the middle, Mr Lee has provided you with a spreadsheet showing the receipts to Buss Murton's client account?

A. Yes.

Q. And, at the top of the page, you are forwarding that to Mr Russell-Murphy and copying it to *****.

That was Mr Golding's email address, wasn't it?

A. Yes, it was.

Q. You were sending it to him because you were still required to report to him on a regular basis about receipts from new bond holders?

A. No, that is not correct. Again, support for a company going forward, they need to know what is going on. I am discussing how LCF is progressing. I can see I would have provided them information as part of our ongoing discussions and assistance.

Q. Mr Golding continued to be the person who was in charge of the relationship with Surge, didn't he?

A. He did have an ongoing relationship with Surge, yes. But that was with Surge.

Q. Surge was selling LCF bonds, wasn't it?

A. Yes, it did.

Q. And dealings with Surge continued to be conducted by Mr Golding?

A. He dealt with them in his own right. He didn't deal with them for LCF. He did some things that I discussed with him and asked him to do, marketing and other bits and pieces, logos, branding. Again, it is support for me.

Q. The reality is you were providing support for him, surely?

A. That is incorrect.

Q. Let's look at <MDR00017379>. In the bottom half of the page, Kerry Graham sent you an email saying she's ready to do a minimum order print to provide hard copy brochures?

A. Yes.

Q. At the top, you forward that to Mr Golding to ask, "Did they mention this to you today?". He was the person who was liaising with Surge and making decisions about such things as hard copy brochures, wasn't he?

A. As I just said to you, part of what he assisted me with was marketing. I am, again, a new director, forging a path on my own. I hadn't done that before and I was getting support and dealing with brochures and printing and things. That is not -- I don't see anything wrong with that. That is part of the support that they provided.

Q. In practice, Mr Thomson, nothing really changed, did it?

A. I mean, I have -- I received their support for maybe six to eight months. And I see this as part of that.

Q. You mentioned yesterday you were keen to emphasise that drafting an information memorandum was a group effort in which Mr Golding and Mr Russell-Murphy were involved. That is something that continued to be the case after July 2015, didn't it?

A. Well, you have got here, this is brochure creation and clearly, yes, he is giving me some help.

Q. That continued to be the case in the same way that it had been before July 2015?

A. As I have said, he is giving me assistance.

Q. I think the answer is "Yes", isn't it?

A. Yes, he is assisting me. I haven't denied that.

Q. So when, for example, you drafted some new information memorandum in September 2015, you had send that to Mr Russell-Murphy and Mr Golding asking them to review it and provide their comments?

A. Quite possibly, yes.

Q. Mr Golding was involved in major decisions about LCF's business, wasn't he?

A. Define "major decisions" for me.

Q. Well, if, for example, there had been concern about SAFE clients wanting to be repaid and a letter had been prepared to try to persuade them to reinvest, that is something that Mr Golding would have to approve before it could be sent out?

A. I can see, at the time, I would have discussed that with him, if I am, again, getting advice and support.

Q. But it would not be sent out without his approval?

A. I don't remember it happening, but it is, again, advice and support during that period of time.

Q. If, for example, a decision had been made to offer compound interest, that is a decision that Spencer would have made that you would have then had to implement?

A. No.

Q. Well, let's have a look at that in some more detail. <MDR00022125>. Do you see, 18 November 2015, Katie Maddock emails you about an application by Norris and says:

"They have decided to compound the interest on the 2-year term."

A. I believe this was part of a larger discussion issue that arose, a much wider discussion. You are only showing part of it here.

Q. Do you remember being told that Norris had decided to compound the interest on the 2-year term?

A. I remember Katie coming to me with this because she had got an application from them that had been changed and had "compound interest" written on it and I remember there was quite a lot of heated discussion about it.

Q. Well, let's look at that, <MDR00022129>. Katie Maddock's emailing Jo Baldock, Steve Jones, Kerry Graham, John Russell-Murphy and you are copied as well. She says that the application form has been changed without your permission. She says that it shouldn't be changed without your permission in any circumstances. And then she says:

"We have received an application form for Norris which has been amended without our permission." She refers to a fundamental change in "the way the interest is to be paid to compound interest which we have never offered".

This is what you remember, is it?

A. I remember this, I remember the application form, I remember there was a large issue with it. I remember it stems from a conversation between -- I wasn't part of it -- Mr Russell-Murphy and Mr Golding. Apparently, they'd had a conversation that, "Wouldn't compound interest be great?".

They went out to a client. The client -- I wasn't part of it, but Katie received an application form that had "compound interest" on it, instead of "simple interest". This email is referring to that, and then there was a very large disagreement. I think you will find that Norris is -- when you look at the whole of the 16,500 bonds that were issued, Norris is the only one that has "compound interest" noted on it. No others.

Q. The reason for the disagreement was because you said to Spencer, "Look, you cannot just make this sort of decision without telling me. If we are going to offer compound interest, we need to make amendments to the bond instruments and information memoranda"?

A. That could very well have been a conversation that I had had. It would have been incorrect for them to have that conversation, have that -- that shouldn't have happened. As I say, Norris is the only one that ever got compound interest.

Q. I think you said specifically noted on the --

A. I think it is on the bond schedule.

Q. Because no other compound interest was being offered at that time?

A. I think he is the only one that got compound interest.

Q. Subsequently, you revised the series 6 and 7 bond instruments and the information memoranda to offer compound interest, didn't you?

A. Are those what are referred to as the growth bonds?

Q. Well, let's have a look at the document <MDR00027313> You refer to the series 6 and 7 bonds and you say: "The change is on how we calculate the interest, we were initially offering simple interest but are now going to be offering compound interest." Do you see that?

A. Yes, I see that, but I think we offered -- actually, the growth bonds ultimately ended up simple but just rolled up.

Q. But at the time you were sending this email to Kobus, Spencer had made the decision and you were implementing it?

A. No, that would have been a conversation between myself and Mr Huisaman. I think the date that Norris came up, I believe the client you brought up before, that was several months before this.

Q. It was 18 November 2015?

A. That was the email from Katie, but when was the application that Norris came in? The handwritten application? You haven't shown it yet.

Q. Would you like to have a look at that? <MDR00022130>. Do you see where it says "Bank" and "Surname", at the bottom? Is that your writing or Katie Maddock's writing?

A. That is not my writing. I couldn't tell you if it was Katie's.

Q. Does it look like her writing?

A. I couldn't tell you.

Q. I don't think -- there is a loan agreement at the top, 6 November 2015. Do you see that, Mr Thomson?

A. I do, but there is -- where is the application that was from Norris that had changed to compound interest?

Q. I don't think we have that. We have --

A. I saw it in your written opening.

Q. I think you saw the reference to the document we have just looked at. I do not have the reference for that. But the handwriting is, I think, on the next page, if we could look at that.

So where it is highlighted, it says:

"LCF shall pay to lender as interest ... an amount equal to 8.5 per cent ... compounded ..." But that is not your writing, the "Who authorised this?", "What is this?", "We do not compound interest"?

A. Yes, that is not my writing.

Q. But you remember having that discussion with Katie and telling her, "This is not right, we don't offer compound interest"?

A. I remember this coming up, yes. Well, I remember it because we have gone over it and looked at it when we looked at your written opening. If you asked me before I had read your written opening, do I remember this? No.

Q. When you say "we have gone over it and looked at it when we looked at your written opening", you and who else?

A. I was sat with my lawyers at the time.

Q. You were going over the written opening with your lawyers for what purpose, Mr Thomson?

A. Just to read through it.

MR JUSTICE MILES: I am not sure one should go there, Mr Robins.

MR ROBINS: No.

Can we look at <MDR00022136>, please.

This is the response that was sent by Kerry, copied to you, and in the second paragraph she says: "Re the compounded interest: John Russell-Murphy agreed this about with Spencer two weeks ago. It was conditional on us paying the difference between the interest and the compounded interest. This payment needs to be deducted from our commission." Was this the first time you had been told about that agreement?

A. This is -- yes, I hadn't -- that is, as I say, this was a large issue at the time, if I remember.

Q. And you were upset because you had been left out of the discussion and the decision-making?

A. It is not right, so, yes.

Q. But the decision had been made and then it fell to you to revise the bond instruments and supplemental information memoranda to refer to it?

A. We offered compound interest to Mr Norris to keep -- to -- so he is not disadvantaged. If you look at the -- we then later offered growth bonds, but I think they were essentially rolled-up simple interest.

Q. What do you mean by "rolled-up simple interest"?

A. For example, £100 at 10 per cent gives you £110 and then, the second year, £100 at 10 per cent gives you, ultimately, 120. It is not -- you don't get the interest on the 110 for the second year. I think that is what we did for the growth bonds.

Q. Mr Golding was always keen to come up with new offers that he thought would increase the amount of investment from new bondholders?

A. He was -- he had a flair for marketing and sales. "Sales" is possibly the wrong word, let's just go with marketing.

Q. He knew that the more money came in, the more would go out to him personally, so he was keen to try and maximise the amount of money in?

A. The more money that came into LCF, was the more money that LCF could loan -- could loan it up, and the more successful it would be.

Q. The more money to be split in the ratios 45:45:5:5?

A. No. Again, it is money that LCF could lend out. Have you got a natural break coming up, Mr Robins?

Q. Yes, absolutely, just a few more questions. Mr Golding came up with the 110 per cent offer during the period when it was called SAFE, and compound interest when it was called LCF, because his big drive was to maximise the amount of money available for the four of you to take?

A. The 10 per cent was SAFE and that was several years ago. I think we went over that yesterday and, again, that was a group effort but, yes, I recognised that it was -- it is actually Mr Russell-Murphy's idea, I believe. And the -- I don't accept your point about compound interest at all.

MR ROBINS: My Lord, if that is a convenient moment for the shorthand writer's break.

MR JUSTICE MILES: Right, we will take a break until 11.50 by that court clock on the wall.

(11.42 am)

(A short adjournment)

(11.55 am)

MR ROBINS: Mr Thomson, I am going to ask you some questions now about GST and GCEN. I think we can start with GCEN. I think you say you were advised by Lewis Silkin that you would need a firm to hold bondholder monies for the period between their receipt and the issuance of the bond?

A. Yes, because we didn't have client money permissions.

Q. So for LCF to receive those client monies, it would have needed some separate permission?

A. It would have -- yes. That is why GCEN were there. So instead of -- for bondholders to pay directly to LCF, before a bond was issued to them, they would be effectively deemed as holding client money. I think that is what it is.

Q. And so LCF would have needed a separate permission from the FCA, I think?

A. Client money permission, and that is why I think we originally used Buss Murton to receive and then I believe we moved to GCEN.

Q. Did you consider anybody else, did you move straight to GCEN?

A. I think they were recommended by Lewis Silkin. I think we went straight to them.

Q. You don't remember interviewing any other companies?

A. For the client money side of things, and receipt of bondholder funds, I can't be absolutely sure but I don't think so. We -- I am not sure. But we ended up with GCEN.

Q. Did you read your witness statement before you signed it?

A. Yes.

Q. Can we look at <C2/1>, page 12, please. In subparagraph 5, which is on the next page [page 13], you say in the final three lines: "... I interviewed several companies and eventually chose ... (GCEN) ..."

Are you saying that is not correct?

A. I am saying I don't remember, so I may very well have done. We interviewed -- I know we spoke to M&G, but that could have been for that or it could have been a trustee role that we didn't ultimately go with. As I say, when I wrote this, I did say at the beginning, it was all from memory.

Q. So you signed this, I think, on 24 November last year, didn't you?

A. If that is what the date is, but I also said at the beginning of it I did it from memory.

Q. So are you saying in November you remembered interviewing them but now you have forgotten?

A. No, I -- I spoke to numerous companies for various different things at the time. I don't specifically remember other companies. I know, as I say, M&G springs to mind but I can't recall if it was for them for client monies and trustee. I don't remember the other companies. So ...

Q. If I were to suggest that your purpose in setting up LCF was to perpetuate rapacious depredations, what would you say?

A. I would ask for a dictionary.

Q. Did you read your witness statement before you signed it?

A. Sorry, could you explain what you meant by that?

Q. My question is, did you read your witness statement before you signed it?

A. Yes, but what you said before, I didn't -- can you explain what you said before?

Q. Do you want me to repeat it?

A. I didn't understand the wording, sorry, that is why I said I would look for a dictionary.

MR JUSTICE MILES: Why don't you repeat it?

MR ROBINS: My question to you was you set up LCF with the purpose of perpetuating rapacious depredations.

A. Yes, that was -- could you explain the last -- sorry, I don't know -- those words are not familiar to me. Could you explain them, please?

Q. My question was, then, did you read your witness statement before you signed it?

A. Yes, I did read my witness statement but, as I said at the beginning of my witness statement, it was all done from memory, and I said, I think, at the beginning of giving my witness evidence, there are some things that I have seen that are not necessarily entirely correct and I did it from memory. We did it quite quickly.

Q. If we look at page 11, please.

A. Sorry, could you explain what "rapacious" -- I forget the other word, it is something bothering me.

Q. Sure. At the bottom of this page, you said you: "... wanted to set up a structure, in which, if LCF was in trouble, there would be an entity which could act for the bondholders so that they could speak [over the page] with one voice and not be subject to the depredations of rapacious insolvency [practitioners]." Did you know what those words were in November and you have forgotten since?

A. They look like legal-speak to me, but you are jumping between GCEN and security trustee.

Q. No, Mr Thomson, I am asking if you read your witness statement and understood it before you signed it?

A. Yes, I did sign it. Do I know what those words exactly mean? No. They seem like legal language to me. This document was prepared by my lawyers. I did read it. Perhaps I should have expanded on what that is into normal English. So I don't.

Q. What do you understand it to mean in normal English, if you were to expand on it?

A. I asked you that question. I don't -- I wouldn't use that language. As I say, this was -- I was assisted by my lawyers in drafting this. I missed that bit.

Q. You read it without checking it or understanding what they had said?

A. No, I read it and generally understand what it says, but that is -- those two words, no, if I knew what those two words meant -- my lawyers would have got a flavour of what I was meaning and then drafted it. I missed those two words. If I had understood what those two words exactly meant, then I wouldn't have asked you the question.

Q. This is your explanation of why you set up GST?

A. I will go through why I think GST was a very good idea, is because I had experienced, both through Lakeview and Sanctuary, the impact of disenfranchised people in a failed -- two failed property developments. Those people weren't looked after, they didn't have anyone that could speak as one voice for them and galvanise them, they were disenfranchised, they didn't know what to do, so the idea of GST was it could speak for them and act for them if LCF failed, and then would pull in the requisite professionals as needed, so the bondholders wouldn't be left on their own and I believe wouldn't then be impacted by professionals in the insolvency world spending exorbitant amounts of fees on insolvency. I think that may very well be what this is referring to. They needed someone that would act for them and look after their interests and protect them against professionals that would charge very, very, very high fees that were not necessarily necessary. Because that would then impact their returns and I think, looking where we are now, I still hold to that.

Q. You refer in your witness statement to the issuance of a mini bond to the public in connection with Lakeview overseen by Hypa Asset Management, don't you?

A. I believe Hypa was the company that promoted -- I think that was -- I can't remember the -- there is a front page of it that set out people's roles. Hypa were very much involved, yes.

Q. That was your first experience of a bond being used in that way, wasn't it?

A. I believe so. It was the same time -- we worked with Hypa and I think another company, Project Kudos, I think, they were the ones who introduced us to Lewis Silkin -- no, I tell a lie, I met Graham Reid from Lewis Silkin when he worked for a previous law firm when I worked for the bank and I met him again at Lewis Silkin, but Project Kudos I think, and Hypa, they were their clients, so that was the Lakeview bond. I think LUKI or LVKI, I can't remember.

Q. Lakeview UK Investments Limited, do you think?

A. That sounds like it. There are too many acronyms in this.

Q. SAFE, at that time, was the adviser and manager in that bond structure, wasn't it?

A. That was, yes, 2013/14.

Q. You were involved in your capacity as a director of SAFE?

A. Yes. We were.

Q. You had learnt from the LUKI bond that there were various roles to be fulfilled in respect of a bond issue?

A. Yes, there is various different people that you meet, yes, or entities that you meet.

Q. For example, there has to be an authorised entity to received bondholder monies unless the issuer has its own separate client money permissions.

A. Yes, I mean, it is -- before you issue an instrument, or an indebtedness, you are holding client monies that you have not provided a debt instrument for.

Q. You understood from the LUKI bond that there is normally a security trustee in a bond issue?

A. My understanding before that was -- I didn't have an understanding before that, I was led by Lewis Silkin and, as I say, I was learning with that.

Q. So that is something you learnt from your involvement in the LUKI bond?

A. Yes.

Q. You mentioned, I think, earlier, the page that set out the roles. I think what you are referring to is <MDR00013601>.

You recognise this as the draft offering memorandum for the LUKI bond?

A. I recognise it. I can't --

Q. And --

A. Can you go over the page, because I think there was a list of --

Q. Let's have a look at page 5. I think that is what you were referring to.

A. There we go.

Q. So you learnt from your involvement in this that the company called Global Custodian Services could be a security trustee. That is bottom right, I think. And bottom left, is this the first time you had come across GCEN?

A. I believe so. I can't remember them before this.

Q. Let's look at page 36, in case that assists. It is headed "Description of GCEN and GCS". I must have got the wrong page number.

No, keep going.

MR JUSTICE MILES: If you go backwards. (Pause).

MR ROBINS: I must have got the wrong reference. Let's have a look at another document, <MDR00014250>. I think this is the final version. That is the model I think you mentioned before the Easter vacation?

A. Yes, the actual model, yes.

Q. And on page -- I think 45 in this document, there is a description of GCEN and GCS?

A. Yes.

Q. It was your understanding that GCEN was an authorised payment institution, it had the necessary authorisation to collect the client monies?

A. So GCS or GCEN, they are sister companies and, yes, this was -- I assisted in writing this, but the GCEN bit would have been done by -- the drafting of this bit would have been done by either Lewis Silkin or GCEN's lawyers, and inserted.

Q. I assume you would have reviewed it at some point?

A. I would have read it.

Q. In connection with the LUKI bond, SAFE's role was to sign off on security valuations, wasn't it?

A. Basically, yes. Before a drawdown, there was -- they required a signature on a drawdown just to confirm the value of security.

Q. Is that is something you administered as a director of SAFE?

A. I believe so.

Q. When SAFE started issuing its own loan notes in September 2013, I think you confirmed yesterday the monies from investors were collected at that time by Buss Murton?

A. Yes.

Q. And they held those in their client account pending issuance of the bonds?

A. Yes.

Q. In respect of the SAFE loan notes, in 2013, 2014, there wasn't any separate security trustee, was there?

A. No. I -- yes, we had -- I had one for the Lakeview bond, but there was no -- there wasn't one for the SAFE bond.

Q. In respect of SAFE's client account at Buss Murton, they were not -- Buss Murton were not just collecting bondholder monies before paying them over to SAFE, SAFE's entire business was being run through Buss Murton's client account at that time, wasn't it?

A. If you look at SAFE's entire business at the time, it raised money, it had one client, so it wasn't a lot of payments that were required from it, so the chunk of the activity would have gone through the Buss Murton client account.

Q. Payments commissioned to Mr Russell-Murphy, for example?

A. Yes, I think we touched on that the other day.

Q. And Buss Murton never paid any monies at that time to any separate SAFE bank account, did they?

A. I don't remember.

Q. Do you think SAFE had its own separate bank account at that time?

A. I can't recall. I know SAFE banked, or LCF banked, with Lloyds. I can't remember when the account was opened.

Q. Do you think that would have been much later in 2015 or 2016?

A. I don't remember, sorry.

Q. Can we look at <D2D10-00006245>. There are some emails. You were copied in. At the bottom of the page, Nicola Wiseman is asking Mr Sedgwick to pay commission to Mr Russell-Murphy from the client account. And he says, at the top of the page, he will do that. Do you remember being copied into emails like that?

A. Clearly, I have been copied in because it is there.

Q. That was your understanding at the time of how SAFE's finances were operating?

A. Yes, we were allowed to use their client account. As I say, there wasn't a large chunk of business and, as I touched on before, instructions were given by Nicola Wiseman or Lucy Sparks to pay these things. Yes, I was copied in.

Q. It wasn't just SAFE, was it, LCCL had a lot of transactions going through the Buss Murton client account?

A. I don't remember. Sorry.

Q. Do you remember a company called Liberty?

A. Liberty? Liberty? Can you tell me who was associated with it? Do you have that?

Q. Let's look at a document and see if it helps jog your memory. <MDR00016562>.

So, at the bottom of the page, Alex Smith emails Robert Sedgwick in August 2015, and there is a subject "Liberty Invoice - Lakeview" and it says: "Corinne has passed me the attached invoice to be paid to little bit on behalf of the Lakeview. As we have explained before, we cannot be receiving, holding or sending any monies that are not related to an underlying legal transaction, and I do not see why this payment should be made out of our client account. The invoice was sent directly to Andy (the client) for payment, who has then simply forwarded on the email to us for payment. The invoice was not sent to Buss Murton, and therefore should not be paid by monies in the Buss Murton client account or treated as any sort of disbursement. Therefore this invoice needs to be paid by the client."

Does that help you remember who Liberty were?

A. The name Liberty doesn't ring a bell. As I say, perhaps you can tell me -- was there a name, a person associated with it? Sorry, I don't ...

Q. At the top of the page, Mr Sedgwick sends that to you and says:

"Accounts are being a pain over this."

Do you remember Mr Sedgwick telling you that, "I am encountering problems paying company liabilities out of the Buss Murton client account"?

A. Sorry, it doesn't ring a bell, but, obviously, it has happened, so I would have dealt with it.

Q. Do you remember this being a rather problematic issue for you in August 2015?

A. Reading the email from Alex to Robert, I can see that they had an issue with it, so I can't remember what happened. I don't recall Liberty or what "Liberty Invoice - Lakeview" was for. Can we see the attachment?

Q. I am afraid we don't have the attachment, but do you remember Alex Smith at Buss Murton?

A. Practice manager, not a lawyer. So, I think, yes.

Q. Do you remember him saying that Buss Murton wouldn't transfer any more funds for you or your associates?

A. Reading his email here from Alex to Robert, I can see how that -- that would have arisen out of that email. So I don't have a recollection of it now, but just following on from his email, I can see that that would follow. I just don't remember it specifically.

Q. Can we look at <MDR00016639>, please. At the bottom of the page, Mr Smith emails Mr Sedgwick, copied to others saying:

"Bearing in mind what has come to light recently, I have asked the accounts department not to process any monies in or out, and to pass to me.

"We will not be transferring any funds between any of these clients on our system, or making any payments out (other than to the original payee or if there a clear legal transaction ...) ..."

At the top of the page, Mr Sedgwick forwards that to you and says:

"As you can see I am in some difficulty." It would have been a major problem for you if Buss Murton had refused to collect any more monies from bondholders or pay out any sums on your instructions, wouldn't it?

A. You are jumping between companies here, because I am just looking at the subject line. This is Lakeview Capital Limited, which is a completely separate company. I think the email you said before that was Liberty for Lakeview and, if I remember, that is a completely separate company.

But what you are trying, I think, to suggest is that that would be a problem for SAFE, which is, again, a separate company or, back in 2015, this would be LCF. So, again, it is a completely separate company.

Q. But Alex Smith was going to make the same point about LCF, wasn't he?

A. I don't know. I am just pointing out you have got three emails here with two different companies, but you are inferring that that is also impacting LCF, but you have not shown me an email that is from LCF. I am just pointing out that these are different companies you are using emails for.

Q. Yes, I mean, you saw Mr Thomson, it does say in Mr Smith's email "any of these clients", that would have included LCF, wouldn't it?

A. Looking at the date, not necessarily.

Q. But the objection about monies going through the client account would have applied to any company. It doesn't depend on the specific identity of the company, does it?

A. Well, it says "If you believe a transfer or payment is clearly related to a legal transaction, please provide the supporting documentation", but this is, again, Lakeview Capital and the one you showed

me before that was Liberty/Lakeview, but you are inferring the same is for LCF and, at the bottom of Mr Smith's email, he said yes, it is fine, as long as there is a -- "clearly related to a legal transaction, please provide the supporting documentation".

I am just pointing out these are different emails to different companies.

Q. That is an inference, but it is a logical inference, isn't it, Mr Thomson?

A. I don't follow your logic, sorry.

Q. If we look at an email seven days later, <MDR00016721>, Mr Sedgwick, in the middle of the page, emails you and says in the second paragraph that he has been speaking to Alex and Alex, and he needs to show them copies of the documents for the various trades that have gone through the client account. He says:

"I think that they will want the same for the SAFE and London Capital & Finance transactions. It would be really helpful if the money did not have to involve Buss Murton as it will be quite a bureaucratic process." Do you remember Mr Sedgwick raising that concern?

A. He has clearly emailed it to me, but, again, you are crossing companies. Lakeview Capital Limited is a completely separate vehicle that raised money to buy a couple of lodges, or to fund the purchase of a couple of lodges, that was then -- Lakeview Lodges was then, at a later date, bought by Lakeview, Lakeview Capital was taken over by LCF. I did run both, and didn't see the point of running both, but they are not linked to that -- at that time, they are not linked to the other companies. I can see that it is an issue and, at some point, I don't remember when, we did move to GCEN. I don't remember the date we moved to GCEN.

Q. The problem that had arisen was that Alex and Alex were likely to refuse to allow further LCF transactions to go through Buss Murton's client account. That is what you understood at the time?

A. Yes, I mean the transactions going through Buss Murton was a stopgap for LCF. It wasn't the ultimate solution. It was just to get going.

Q. Do you remember responding to Mr Sedgwick's email by asking if Buss Murton could transfer all the money in the LCF client account to your personal account?

A. I don't remember that, no.

Q. I think it is <MDR00016725>.

So the next day. Is that the sort code and account number for your account?

A. Yes, and I don't know if it happened and I was trying to find a solution, so, to have the -- is the balance that is in the LCF account held with Buss Murton, has the -- had those clients already had their bond instruments issued to them? I don't know. If they have had their bond instruments issued to them, it is no longer client money. Okay, it is, you know, a director holding client -- holding the funds of a company, isn't ideal, but I can see it would be a solution. Looking at the time, again, I was a very new director, trying to set up a company to move forward.

So that, I think, is an off-the-cuff solution to try and keep going.

Q. The --

A. I don't remember it.

Q. The threat, I think, was that Buss Murton were going to return all the monies to the variation investigators from whom they had come. That was the concern at the time, wasn't it?

A. Reading those emails, I can see that could very well be the concern at the time and I can see me writing this email -- clearly, I have done -- to try and come up with a solution to keep things going.

Q. Do you remember, at this time, you were fairly desperately trying to push Lloyds across the line to open a company account for LCF?

A. As I said, I don't remember when the Lloyds account was opened, but it would follow that we needed an account. I can see, as I say, that email doesn't tell me the funds that are held with Buss Murton, are they client funds, or are they company funds -- and there is a distinct difference -- and that would be, has LCF issued the bond instruments to the bondholders? If they have, those are company funds. If they haven't, they're client funds. I couldn't tell you, sitting here, or standing here, if that was the case or not; I can see it is not ideal, that suggestion, but that would keep the company going for a short period of time. As I say, not ideal and would have to be accounted for, if, indeed, it happened -- I don't remember it happening. It may very well have happened, I just don't remember.

Q. In fairness to you, let's look at <MDR00016728>. You were emailing Mr Lee to say nothing had hit the account and saying:

"If this is ... the case and the payment hasn't gone please can you stop it as we managed to push Lloyds across the line and have a company account open." Do you remember the flurry of activity to try to push Lloyds across the line so it didn't have to be sent to your personal account?

A. Clearly, it says that that is what has happened. So, yes, I was trying to find a solution the day before, and that is why I offered my account. Clearly, we got Lloyds across the line to open the company account.

Q. Do you see that the company account has been open in the name Sales Aid Finance (England) Limited?

A. I see that says it there, yes. There is an issue there, and all throughout LCF's history, some of the payments of its annuitants of Lloyds, some of the payments come through as Sales Aid Finance, still in 2017 and 2018, and then some come through as LCF. It is exactly the same account. It is annuitants of Lloyds, but -- I don't know why I put Sales Aid Finance there, perhaps the application was originally done several months before when the company was still Sales Aid Finance and we hadn't changed the company name at Lloyds, by that time.

Q. Do you remember that this Lloyds account resolved the immediate concern about Buss Murton returning the monies to senders?

A. I can see that it would do, but, again, there is still the client money question, which I don't know, standing here, if it was client money or it was company money. Again, it would depend on if LCF had issued a bond instrument to a bondholder, if it had, that is company money. If it hadn't, that is client money.

Q. Do you remember that you came up with the idea going forward that the issue about client money could be resolved by opening an account which would be operated by trustees, including Buss Murton?

A. I was -- I mean, I don't specifically remember that, sorry. I can see that I would have been trying to come up with a solution and getting advice from whoever would give it to me to try and solve the problem.

Q. Do you remember talking to Mr Sedgwick about the possibility of an agreement that would set out the role of the trustee, which would be to hold money until LCF could certify it had adequate security over the assets?

A. I could very well have had that conversation, but I don't remember it.

Q. Let's see if we can jog your memory. <MDR00016734>. Right at the bottom of page 1, there is an email from Mr Sedgwick to Mr Lee, and the chain is later forwarded to you, but let's look at the second page to see what Mr Sedgwick said to Mr Lee.

He said:

"Andy is in the process of opening an account with Lloyds for this company and I believe it may well be open now. As discussed yesterday he would like also to open what he calls an LCF 'Client Account' which he wants to be operated by trustees including Buss Murton ... There would be a detailed agreement setting out the role of the trustee which is to hold money until LCF can certify that it has adequate security ..." Seeing that now, is that a discussion you remember having with Mr Sedgwick?

A. I can see it is an email there. I don't remember the discussion, sorry. As I say, looking at the time and everything else that was going on, I can see -- I can acknowledge that I would have been trying to find a solution and trying to get advice from anyone that would give it.

My understanding of client money and the nuances of it is far better now than it was then.

Q. Did you -- do you think you would have hoped that Buss Murton would have agreed to your proposal?

A. As I say, I was trying to find a solution. I don't specifically remember these conversations. It would have been a problem for the company, and trying to find a solution -- as I say, I was a new director, my knowledge of the financial world is far better now than it was then. I was trying to find a solution and I can see from this email that I clearly would have had a conversation with Mr Sedgwick. I don't remember the conversation, but it would have been trying to find a solution to a problem.

Q. And the problem was, at this point, that no new bondholder monies could be banked?

A. That is what we were facing. Again, trying to find a solution for that.

Q. That would have been a major problem, wouldn't it, because you would have had John Russell-Murphy going out selling bonds to people who would be giving their cheques over and then you couldn't bank those cheques anywhere?

A. Clearly. That is the problem that I believe I was trying to solve.

Q. But you don't actually have any recollection of this?

A. Standing here now, no, I don't. But I can clearly see that I had had the conversation with Mr Sedgwick. So -- but I don't remember it, standing here before you.

Q. You don't remember, for example, learning that Mr Lee was okay with Mr Sedgwick being on the mandate but had some concerns about your proposal?

A. I -- no, I don't remember that. Clearly, I would have discussed it with them at the time. Because the email confirms that I do, even though I wasn't on copy initially, but it is -- sorry, I don't remember those conversations.

Q. Given that this would have been a major problem, do you remember trying to reassure Mr Russell-Murphy that it was all going to be resolved and the cheques could be banked soon?

A. Again, I am a young director, I am trying to run this company. It is a problem. Of course you are going to reassure the people who are on the ground trying to work for you, while you are trying to find a solution behind the scenes. It's supply chain.

Q. Do you remember at all feeling a sense of relief at being told that Alex Lee -- or one of the Alexes, let's put it that way -- was likely to agree to transfer the funds to LCF's new bank account rather than return them to the sender?

A. I don't remember this at all. Clearly, I was involved with it. Because I can see that, you know, the emails -- I am not denying it hasn't happened, I just don't remember it. I can see, from these emails, I am trying to find a solution.

Q. Let's see if we can jog your memory. <MDR00016747>. Mr Sedgwick emails you on 20 August to say he's spoken to Alex:

"... he will not do anything immediately on receipt of funds for the new venture ... likely to agree to transfer the funds to LCF's bank account rather than return them to sender."

Given this would have been a serious problem for LCF if it had not been resolved, do you not remember any sense of relief on hearing that the monies were not going to be sent back to where they'd come from, but would instead go across to LCF's bank account?

A. I probably was. I just don't remember the emails or the conversations. It is a problem that we are trying to solve. The solution looks like it has been found, so yes, I would have had a sense of relief.

Q. Do you remember feeling any sort of sense of disappointment when you were told that Buss Murton were not going to implement your suggested solution?

A. Again, I don't remember it. Clearly, I am involved in it because I can see in the emails, but I don't remember it.

Q. Let's look at --

MR JUSTICE MILES: Sorry, Mr Robins, just before leaving that document, are you able to throw any light on why Mr Sedgwick copied that email to Mr Hume-Kendall?

A. Yes, looking at the timing of this, it is very early days from me taking the company on, on my own, and as I mentioned before, there was a, say, six-to-eight-month period that I had some assistance on and this is clearly a problem. I would have been talking to Simon because he has run his own companies for years and years and years, and I am on my own for the first time, and I can see him being emailed by Mr Sedgwick as he is assisting me in trying to solve the problem.

MR JUSTICE MILES: You have said a number of times in the evidence today that you were a new director at this time.

A. Yes.

MR JUSTICE MILES: You had been a director of SAFE for some years before that, hadn't you?

A. Yes, what I mean by that, my Lord, is I was -- so I -- leaving aside that One Monday was formed, I believe, in 2010, because it was formed and didn't do anything -- I was working in the bank. I left the bank and joined a group of individuals who had all run their companies for years. I had never had sole responsibility. I worked with them. Yes, I was director of several companies, but that was always with the support and input of -- can I call it the collective? So the group which was, you know, a fair few people. I then, in 2015, took on LCF on my own, so my sole responsibility for LCF. Yes, I did get support for a period of time whilst I found my feet. I think that is what I am trying to refer to there.

MR ROBINS: Could we look at <MDR00016739>, please.

A. Could we just quickly go back to that previous email? Really sorry.

I am just reading -- Mr Sedgwick's emailing me and he is referring to LCF as "the new venture". I think that supports what I was saying, taking it on, on my own. I think that is what he is referring to there.

Q. It was being rebranded as LCF at this time, wasn't it?

A. It is a new venture, it is me, on my own, moving forward, and I think that is what he is referring to there. Sorry, I just wanted to make that point.

Q. <MDR00016739>.

This is 20 August. Mr Lee tells you, copying various colleagues, he refers to a conversation regarding a proposed idea for Buss Murton acting as a kind of trustee in relation to the account opened by London Capital & Finance in relation to inward investment funds from third party investors. He says he has discussed the issue, taken advice from the regulator. Then, he says, in the next paragraph, that it is not a question of using the client account, and then:

"... having considered the matter carefully and the advice that we have received, the members feel that we are therefore unable to help you in this instance." Do you remember feeling a sense of disappointment that your proposed solution had been rejected --

A. Can I just finish reading, sorry? (Pause). Yes, obviously, I tried to put forward a solution and they are saying they can't do it, so obviously there would be disappointment that a potential solution couldn't be achieved. So we have to find another one.

Q. You said earlier that you had learnt, I think, everything you knew about bonds from your involvement in the LUKI bond.

Do you remember going back to look at that to see how the issue had been addressed in the LUKI bond?

A. I could well have done, I would have been trying to find answers to the problem from various different places. I can see me going and having a look at that, and I can also see me having a conversation with Lewis Silkin about it, as well, at this time, trying to get input from, as I say, various different sources to try and figure out a solution to the problem. Looking at what happened in the LUKI bond, I could very well have reviewed that.

Q. Do you remember emailing GCEN, in October 2015, to say that, "We would like you to act as agent for collection of new bondholder monies and as security trustee"?

A. I don't remember it, but -- I don't remember when GCEN came on. I remember having conversations with them. I could very well have said those things. I don't remember it, but, certainly, in terms of client money, AML, that is eventually what they did. I don't remember the date of it.

Q. Let's have a look at <MDR00018946>. We need to go to the bottom of page 2. I think, probably, the top of page 3 as well. So, bottom of page 2, is your email -- where it starts -- of 14 October, and you say to Luke -- do you remember when you would have first had dealings with Luke Tofts?

A. I don't know when I first had dealings with him.

Q. You say:

"Apologies this is coming over a day later than promised I had one of those days yesterday." Then, in the third paragraph, you say:

"In a nutshell we would be interested in GCEN administering all the collections, both online via a card payment ... and via bank transfer for all our bonds. Additionally we would also like GCEN to be the security trustee for all bonds ..."

A. Clearly, I have said that.

Q. But it is not something you remember asking Luke Tofts about?

A. I don't remember, no. Clearly, I did do.

Q. Then you say:

"... I have attached the deed of charge ... The security we are offering is a charge over the loan book and all associated security that accompanies a loan, the trustees only responsibility would be to represent the interests on bondholders if the company fails and ensure via a liquidator that the security is enforced for the benefit of the bondholders."

I just want to ask you about enforcement via a liquidator. What you said earlier today about the purpose of a security trustee being to deal with enforcement and protect bondholders from insolvency professionals who would charge very high fees, is something you have made up recently, isn't it? It is not, clearly, anything you had in your mind at the time?

A. Well, that is 2015. We are 2024. You are comparing my statement last November with an email that I wrote in 2015. I have had my company collapse, I have had the last five years happen. I remember sitting in a meeting before we appointed the administrators and I remember the current administrators telling us that they would be charging -- I had the conversation about our concerns. They would be charging no more than half a million pounds to wind the loan book down over four years. They even said, "Don't go to KPMG, they will charge you exorbitant fees, and I can see it getting to 14 million. You don't want to do that". But we are at about 77.8 million so far. So ...

Q. So, in the witness statement you mentioned you signed last November, you were describing your reasons, in 2015, for setting up GST, and you said that it was to protect bondholders from the depredations of rapacious insolvency office holders. What you explained you meant was you wanted to avoid any involvement from insolvency professionals who, you said, would charge lots of money. What I am saying to you is, seeing this now, do you accept what you say in your witness statement is not an accurate account of your thinking back in 2015?

A. No, because you have got insurer liquidator enforces. Again, you have got two completely different timescales there and, to protect the interests of the bondholders, ensure that, if the company fails via a liquidator, the security is enforced for the benefit of the bondholders. Well, the benefit of the bondholders would be as much return as possible and to ensure that costs don't skyrocket.

Just because I haven't spelt it out there ...

Q. Your explanation this morning was that GST was to ensure that it would be unnecessary to involve insolvency practitioners?

A. No, I didn't say that.

I said that GST was to represent the interests of the bondholders and I believe I said, "Pull in the professionals that are necessary to wind the loan book down, achieve the maximum possible for bondholders". I didn't exclude liquidators or administrators. Obviously, if the company fails, there would be a liquidator involved, they would be one of the professionals that I would have referred to.

Q. Looking on the left-hand side, you will see, at the bottom, Luke says he is going on annual leave and, at the top the page, you say.

"... I really need to have a solution in place sooner rather than later as the bond cannot be signed off until a trustee/collections solution is in place ..."

Again, you don't remember feeling any sense of urgency in trying to pursue this proposal with GCEN?

A. Sorry, I am just reading the bottom email. (Pause). Sorry, can you repeat your question?

Q. Do you remember feeling any sense of urgency in trying to pursue your proposal with GCEN?

A. Well, it clearly says there I really need to have a solution in place sooner rather than later, so I believe that conveys that there is a sense of urgency.

Q. Is that something else you don't have a specific memory of?

A. I don't -- I remember engaging with GCEN. I don't specifically remember these emails. There was lots going on at the time.

Q. If we look at page 1, there is an email in the middle of the page from Catherine Fry, a compliance officer. Do you remember her name?

A. I recall someone called Catherine, yes.

Q. Do you remember her asking you further questions?

A. I remember engaging with compliance, yes. It was -- there was Luke, Catherine, there was another chap called -- I want to say Fundell.

Anyway, I think there was three or four of them. I remember engaging with them, yes.

Q. Do you remember feeling a sense of frustration that they were not implementing this as soon as you would have liked?

A. Well, the email says I really need to have a solution in place sooner rather than later, so there is a sense of urgency, so if you feel it is not going as quickly as you need it to, there would be frustration. That is just natural.

Q. Do you remember concluding, well, look, let's have GCEN dealing with the payment collection, because that is more straightforward and we can set up, with Mr Sedgwick, a new company to be the security trustee?

A. I don't remember it, but I can see that that follows.

Q. Let's look at <MDR00019748>.

At the top, it is not an email you saw, but it mentions you. Ian McDonald, do you remember him at Lewis Silkin?

A. Yes.

Q. He is emailing Graham Reid, whom you mentioned earlier. He says he's spoken to you:

"GCEN will just be doing payment collection and won't be security trustee."

Then he says:

"Andy is going to send over the details of the security trustee later."

I am assuming that is not a conversation you remember having with Mr McDonald?

A. I remember lots of conversations with Lewis Silkin, I am just reading the email at the bottom. (Pause). Yes, I mean -- as I say, I got advice and input from lots of different people. I see it mentions input. Tim Ford's comments, he is a retired lawyer that I knew. I was receiving assistance -- I don't want to say advice, because he was a retired lawyer, so he's not officially advising, but ...

I was speaking to lots of people trying to get things going.

Q. You were having to update Lewis Silkin because they were drafting the security trust deed, I think?

A. Yeah, I mean, Lewis Silkin were drafting everything. I would have engaged with them quite a lot on lots of things.

Q. Let's look at the draft trust deed. <MDR00019368>. Does this document look familiar to you?

A. It looks familiar, yes.

Q. If we look at page 2.

A. It is in draft, isn't it?

Q. Absolutely. It is a draft.

A. Square brackets and things.

Q. Top of this page -- exactly -- GCS is in square brackets?

A. Yes.

Q. We saw a subsequent email where you told Lewis Silkin that they would not be the security trustee, but I just wanted to look on the next page at the definition of "Receiver". Do you see it means:

"... an administrator, a receiver, receiver and manager, or administrative receiver appointed by the security trustee pursuant the debenture ..."

A. I see that, yes.

Q. "... for the purpose of realising getting in or disposing of any of the assets or revenues the subject of any of the security ..."

It was always envisaged, wasn't it, that the security trustee would have to enforce through insolvency practitioners?

A. That is what I said when I tried to describe what -- my view of what the security trustee would do, would be to galvanise the bondholders, speak for them in one voice and appoint professionals to, you know, wind down the assets, and obviously one of those is a liquidator, an administrator or -- however, also, it is to try and have a controlling hand so things don't run off.

Q. Can we look at <MDR00019612>.

Mr Sedgwick tells you he has applied to form Global Business Security Limited. He says "trustee" is a sensitive word.

Do you remember having discussions with Mr Sedgwick about this?

A. I remember having discussions. I don't remember them specifically. I also remember, at this time, speaking with M&G to provide trustee services, but what they wanted to do was extremely expensive and far beyond the remit of what I had discussed with Lewis Silkin about what a security trustee should do.

MR ROBINS: My Lord, I am conscious that we need to deal with the points on which Mr Ledgister was going to take instructions. I am in your Lordship's hands as to whether I carry on until 1.00 with Mr Thomson or we pause with Mr Thomson to deal with Mr Ledgister's point now.

MR JUSTICE MILES: How long is it going to take?

MR LEDGISTER: My Lord, a couple of minutes.

MR JUSTICE MILES: Why don't we just carry on until 12.55 and then we will deal with that?

MR ROBINS: Were you --

MR JUSTICE MILES: Are you able to go on, Mr --

A. The chair is helpful, yes.

MR JUSTICE MILES: All right.

MR ROBINS: Were you keen for Global Business Security Limited to change its name to something involving the word "trustee"?

A. I don't remember the conversation, but it clearly did so, and I clearly am having the conversation with Mr Sedgwick.

Q. Having gone through all that, do you accept it wasn't a case of Lewis Silkin advising you that you would need a firm to hold bondholder monies, the reality is Buss Murton had been doing it, that became impossible, and gave you a major problem. You tried to persuade Alex Lee to adopt your solution, but he didn't like it, so you got GCEN to fulfil the role of -- just as had been the case in the LUKI bond?

A. No, I think I said to you earlier that Buss Murton were only ever a stopgap. They wouldn't be able to do what we needed them to. So we were always going to be looking for another solution for client monies, AML compliance. Yes, I can see that I initially suggested to them the trustee side of things. Again, I spoke with M&G on the same thing. It's -- I don't accept what you are saying at all.

Q. They were not really a stopgap, were they? They had been doing it for a number of years while you were director of SAFE?

A. Yes, on a small-scale, but my aspirations were far larger.

Q. They would have carried on doing it if Alex and Alex had not kicked up a fuss?

A. No, I was looking for a better solution.

Q. Mr Thomson, there is nothing to suggest that you were looking for a better solution before Alex and Alex kicked up a fuss, is there?

A. With respect, Mr Robins, you were not with me at the time, you were not privy to the conversations that I was having with lots of different people -- one of which, we saw, was Tim Ford earlier on -- about where the company is going, what it is going to need. So Buss Murton were a stopgap.

Q. So although you cannot remember anything about any of the emails I have shown you, you say you can remember very clearly lots of different discussions that you had that are not recorded in any emails anywhere; is that right?

A. No, I just said I remember having discussions and that was an extremely busy time. What I have said to you, I don't specifically remember the content of these emails. I remember things that were, as a generality, being discussed. I remember where I wanted the company to go. Buss Murton were not the solution, at all. I was getting advice from Lewis Silkin, I was getting advice from our accountant, Steven Davidson, who I had known for years and years and years, and he provided a lot of input into the early-days formation of LCF and how we approached things and, you know, Buss Murton were not the solution: they were a stopgap. They were there already, so they continued. But we were looking for another solution.

Q. Mr Thomson, what you do is to make up a story to try to make yourself sound as professional as possible, isn't it?

A. No, Mr Robins. I would say you are trying to make up a story to match into your narrative. I was there and that is what we did.

Q. That is why you said in your witness statement in November that you interviewed several companies and eventually chose GCEN. You were trying to paint a picture of you having acted professionally and responsibly, weren't you?

A. No, I was forming what I thought was -- what was needed for the company to get bigger. I had aspirations for it. I was taking advice from lots of different people. And things were -- lots of things were happening at the same time. I was extremely busy. I was trying to get this company going in the direction I wanted it to be going, I was taking advice from lots of different people. So it was a very -- let's call it a fluid situation.

Q. But you accept, I think, that you have no memory of interviewing several companies and eventually choosing GCEN?

A. Mr Robins, this was nine years ago. I have been through quite a lot since then. I don't remember the specifics of it. I remember that I was doing this, I remember that Buss Murton were definitely not the solution. I remember looking for a solution. As I say, M&G springs to mind. I was getting advice

from lots of different people, those people that I used to work with and others that -- professionals that I knew in the world. So ...

Q. November last year was only five months ago. You didn't have any memory then of interviewing several companies and eventually choosing GCEN, you were just making up something that you thought would reflect well on you, weren't you?

A. No, I spoke with lots of different companies to do various different things for us. Again, Lewis Silkin is one. Tim Ford was trying to get us to go to a different lawyer, instead of Lewis Silkin. We actually interacted with your instructing solicitors as well, Mishcon de Reya, they wanted to do Lewis Silkin's role.

Q. I was not talking about solicitors. We are talking about GCEN's role. You didn't have any memory in November of interviewing several companies and eventually choosing GCEN, it is something you made up to reflect well on you and to give the impression that you had acted professionally?

A. No, what I am telling you, Mr Robins, is it was a very busy time. I was interacting with lots of different professionals at that time for various different roles to assist the company going forward. I can't -- the specifics escape me.

Q. If they escape you now, they would have escaped you in November of last year as well, I am sure?

A. As I said, I did it from memory. It is --

Q. You had no memory, so you made it up; is that right?

A. No.

Q. You had no memory in November of interviewing various companies for the security trustee role either, did you?

A. As I mentioned several times, we spoke with M&G. I can't remember if M&G was just the security trustee or to collect and do AML like GCEN did.

Q. Well, you asked GCEN to do it, they were taking too long and making it difficult, so you asked Mr Sedgwick to set up a company to fulfil that role; that is what really happened, isn't it?

A. That is what ultimately happened because we can see it did, but it doesn't mean I didn't have conversations with other companies. I do remember speaking to lots of professionals about various different things.

Q. The idea that you interviewed other potential security trustees which were either exorbitantly expensive or did not offer the service you wanted is, again, something you made up in November, isn't it?

A. No.

MR ROBINS: My Lord, I see the time.

MR JUSTICE MILES: Right. We will pause there, Mr Thomson. So 2.00 for you.

Housekeeping

MR JUSTICE MILES: Mr Ledgister, where have we got to?

MR LEDGISTER: My Lord, I took instructions overnight as requested by the court.

MR JUSTICE MILES: Yes.

MR LEDGISTER: Those who instruct me have asked whether the supplemental witness statements can be provided to the court by 19 -- where are we, April, so next week, Friday, 4.00 pm.

My Lord, that, I think, is a date which can easily be accommodated and one would certainly hope that the statements can be provided in advance of that. I have seen a flurry of activity this morning, or certainly the product of it, between those who instruct me and the Surge witnesses, which encourages me that the documents will most likely be presented to the court in advance of that date.

Could I ask for the 19th to be the date that is ordered and I certainly will remind those who instruct me that that is a maximum and certainly not to be considered a target. As I say, I have seen the product of their work this morning and I am encouraged that something should be with the claimants certainly in advance of that date and I will certainly encourage them to do so, and provide the documentation as soon as possible.

MR ROBINS: My Lord, that means it comes in the middle of Mr Sedgwick's cross-examination. If it could be before midnight on the 18th, or sometime very early in the morning on the 19th, then I could at least have the Friday, Saturday, Sunday to try to adapt Mr Careless' cross-examination to try to take account of it. That would also have to be on the basis that the witness statement will address also the Isle of Wight transaction, if your Lordship were to rule in the claimants' favour --

MR JUSTICE MILES: I am not sure I can do that, Mr Robins, because no permission has yet been --

MR ROBINS: I said "if your Lordship were to rule in the claimants' favour". I'm not prejudging that at all, but simply saying that, if your Lordship were to rule in our favour, then it would be included in the same witness statement: they can, in other words, be getting on with preparing what they would say about that if your Lordship were to rule in our favour.

If your Lordship were to rule against us, they could leave it out, they wouldn't need to address it further, although, of course, as your Lordship has already held, we can rely on it in respect of Mr Careless' credibility and also to challenge the Surge defendants' positive case but that would be their choice. They wouldn't be required to cover it. They could, if they wanted to, for those permissible purposes, but it would be up to them if they wanted to leave it out. But if your Lordship were to rule in our favour, it would then be covered by the same statement. Otherwise, the timetable starts to become unworkable.

MR JUSTICE MILES: Right, Mr Ledgister?

MR LEDGISTER: My Lord, can I ask that if we -- I don't want to bind the hands of those that instruct me with the Isle of Wight matter, and certainly, as I say, I understand Mr Robins' position and I appreciate that this statement, when served, will come at some point during the currency of this trial and it is unfortunate it will be during Mr Sedgwick's evidence. I certainly don't want to cause any inconvenience to Mr Robins and, again, I will encourage those to get the statements over as soon as possible.

MR JUSTICE MILES: I think I will say 9.00 am on the 19th.

MR LEDGISTER: Very well, my Lord.

MR JUSTICE MILES: And those that are to cover the matters which -- I think it is three paragraphs which are not objected to.

MR LEDGISTER: Isle of Wight ...

MR JUSTICE MILES: I will not make an order that it should also cover the Isle of Wight matter as a matter of an order, but the point has been made by the claimants, you have said that you have heard that. It may well be that, when it comes to determine the question whether that amendment should also be allowed, one of the things I will take into account is that this has been raised in this way.

So any timing points will then have to take into account the fact that it has been raised. Is that sufficiently clear?

MR LEDGISTER: My Lord, I appreciate that. As I mentioned earlier on, I have been observing communications this morning and those communications have been very much restricted to the matters upon which the witness statements must, as things currently stand, reply to, and certainly not covering the Isle of Wight. That is why I say I don't want to bind the hands. I do hear what my Lord says and, of course, we are on notice this is a live, or potentially a live, matter that we will need to respond to in due course.

MR JUSTICE MILES: And that any points that are made about timing and prejudice and so on, will have to take into account the fact that this has been raised and ventilated already to some extent, and going back to the -- right back to the opening submissions and so on. But -- and that any arguments about the passage of time will obviously have to take all of that history into account.

But I am not, by saying that, reaching any view on it.

MR LEDGISTER: Understood, my Lord.

MR JUSTICE MILES: I am simply saying -- perhaps stating the common sense point that it has been raised.

MR LEDGISTER: It goes without saying, my Lord.

MR JUSTICE MILES: Is there any other point about the amendments which are not objected to, Mr Robins or should the court be making an order in respect of those?

MR ROBINS: Yes, we can now draw up --

MR JUSTICE MILES: There was a point about costs, I think, wasn't there?

MR LEDGISTER: My Lord, yes. We would ask for costs. I think those who instruct me have made reference to this in communication with the claimants' solicitors, so costs in the usual way.

MR JUSTICE MILES: If that is going -- can I just say this, at the moment, that if there is going to be an argument about costs, it could take a bit of time --

MR LEDGISTER: It could.

MR JUSTICE MILES: -- because of the history and the question of whether this arose out of disclosure which was given late in the day and so on.

My -- I will just give you a provisional view at the moment, which would be to reserve the question of these costs --

MR LEDGISTER: Very well, my Lord.

MR JUSTICE MILES: -- until the conclusion of the trial. If you don't like that, and want to have an argument about it, we will have to have an argument about it and I will determine it, but that is my provisional view at the moment. Perhaps you can all go away and think about my provisional view.

MR ROBINS: My Lord, I can certainly say, for our part, that is precisely what we were going to suggest, and we've added the authorities, to which I think your Lordship is alluding, to the trial bundle already.

MR JUSTICE MILES: I was not actually thinking of any particular authorities, but no doubt there are authorities on this question.

MR LEDGISTER: Mr Robins is certainly ahead of me in looking at authorities.

MR JUSTICE MILES: So why don't you, again, consider that over lunch. If you want to have a ruling on it, and a debate about it, then that will have to be had. But, in principle, I can make an order relating to the unopposed paragraphs and in relation to the timing of any defence and supplemental witness statement. It seems to me that the order should also say that -- what about reservice of the re-amended particulars of claim or whatever they are?

MR ROBINS: We can do that today and your Lordship can dispense with it. I think we should probably do it today.

MR JUSTICE MILES: Because that will then be the complete version.

MR ROBINS: Yes.

MR JUSTICE MILES: The only question that I have on that is, if there is this outstanding point on the other paragraph --

MR ROBINS: Yes, we would have to do it twice.

MR JUSTICE MILES: You'd have to do it twice, which might be unnecessary.

MR ROBINS: Given it is not a crucial step for anything in the timetable, and nothing depends on it, we could do it later but proceed in the meantime on the understanding that we will do it one way or the other when your Lordship has decided the outstanding points.

MR JUSTICE MILES: Yes. What I suggest, then, is that the order records that you put in a draft amended defence to their new -- the three paragraphs that we are talking about by -- it was Monday, was it? 4.00 pm on Monday. That need not be, then, in the form of a full draft defence, it can just be the answers to these particular paragraphs in draft form. And then, once the whole question of permission to amend has been decided, including the contentious one, whichever way that goes, a proper version of the particulars of claim, and then of the defence, can be served.

MR LEDGISTER: Very well, my Lord.

MR JUSTICE MILES: Right.

MR ROBINS: Yes, I recall, at an earlier CMC, your Lordship dealt with this by requiring a step further than this: we had a draft defence that dealt with matters on a contingent basis, so that, if the amendment was allowed, it could be sworn and served immediately. I don't know whether that would help, given the time pressure. The draft defence could set out what they would say in response on the Isle of Wight transaction.

MR JUSTICE MILES: I am not going to do that because I have to decide whether you should be allowed to have your amendment before they are required to respond to it.

MR ROBINS: Yes.

MR JUSTICE MILES: Right. 2.00.

MS DWARKA: My Lord, sorry, I had one short point of housekeeping. We have sent you two emails, the latest one is about consent order with all items agreed and I will just ask to you look at that over lunch in order to approve and seal it, please. It is to do with living expenses and moving the first defendant expenses, it has been agreed and signed by both parties.

MR JUSTICE MILES: Okay, I will see if I can drag that out.

MS DWARKA: Thank you.

(1.10 pm)

(The Luncheon Adjournment)

(2.00 pm)

MR JUSTICE MILES: Mr Ledgister?

MR LEDGISTER: Just to raise the issue of costs, would my Lord be good enough to push this off until Monday, just so I can come back to your Lordship on this particular point?

MR JUSTICE MILES: Yes, all right, well, any order -- what I suggest is we have an order which then just says questions of costs will be adjourned. It just seems to me it is good to have a series of orders which record what is going on.

MR LEDGISTER: Yes.

MR JUSTICE MILES: Yes.

MR MICHAEL ANDREW THOMSON (continued)

A. My Lord, before we start, I just need to make you aware I am experiencing an increased level of pain in my lower back. I have taken some extra medication. I have tried this morning to sit for longer, for less disruption, but this afternoon I may need more frequent breaks.

MR JUSTICE MILES: You let me know if you think that is required.

A. Thank you.

Cross-examination by MR ROBINS (continued)

MR ROBINS: Mr Thomson, do you remember, in August 2015, Kerry Graham advising you on how to improve LCF's presence on the internet?

A. I remember something like that, yes, those were some of the discussions that we were having with Surge, yes.

Q. Do you remember her saying that investors would Google "LCF" and needed to be able to find something positive on internet?

A. I remember that her -- something along the lines of we didn't have a very good footprint or something like that, if people searched for us. If that is what you are referring to? I don't remember the specifics, but I think that is where we were at.

Q. You remember the term "footprint"?

A. Maybe that is just a term that I -- I remember that if someone Googled us, it would be difficult to find, so our presence online needed to work. Whether "footprint" is the right word for not, I don't know, but that is the flavour, I think, of where it was.

Q. Do you remember her saying that Surge could create validation material for people to find?

A. I think that is wrapped up in the same -- in the same thing.

Q. Do you remember a website called bestinvestmentfunds.co.uk?

A. It rings a bell.

Q. Let's have a look at the email. <MDR00016546> At the top of the page -- I am not going to read it out, but is that as you recall?

A. Yes, that looks like something they were doing at the time.

Q. Do you remember agreeing to pay £1,000 plus VAT to be listed on Best Investment Funds?

A. It says that that is what the cost is, so I imagine I agreed it.

Q. Could we look at <MDR00016544>. Do you recall Kerry showing you how being featured on Best Investment Funds would affect the profile on Google?

A. Again, it's wrapped up in what I said earlier, they were improving the presence of -- this looks like that is what they are doing.

Q. And <MDR00016566> is the attached invoice. Do you remember the company InfoConnection Limited?

A. Yes.

Q. And you arranged for this invoice to be paid?

A. I would have done. Yes.

Q. Do you remember Mr Reid asking you about Best Investment Funds?

A. I can't -- I don't remember specifically, but it may have come up in discussions.

Q. Let's look at <MDR00019168>.

On page 2, it says, at the end of the first paragraph, Catherine has raised the issue of Best Investment Funds. He says:

"Are you aware of this and if so what is your understanding of this site and have you had any input? Clearly it should not be promoting your bonds whether this is the proposed bonds or those in existence ..." Do you remember him asking that question?

A. Yes, I remember there was an issue around it and we -- I can't remember exactly what we did, but there was an issue around it.

Q. Let's look at your response on the left-hand page.

A. Yes.

Q. You say in the third paragraph:

"Re best investment funds I will look into it. With the old Lakeview Bond we had instances of various sites profiling it to pad out their sites without permission and I just highlighted this to SW ..."

Is that Simon Whittley?

A. "I just highlighted this to SW"? It could be Simon Whittley -- I don't ...

Q. You didn't say to Mr Reid, "Oh, yes, I know all about this. I have just paid InfoConnection Limited £1,200 to get us listed", did you?

A. No, probably because I didn't want to do that, so it would have been, looking at this at the time, I would have probably hid it a bit, so -- if they had an issue with it.

Q. So you accept you didn't want to tell him the truth?

A. On this, clearly, GCEN have got a problem with it and I -- yes ...

Q. I think Graham Reid was at Lewis Silkin, wasn't he, or is Catherine at GCEN?

A. Catherine was at GCEN. I think she was the compliance -- there are several Catherines, Katherine Sun(?) is a solicitor at Buss Murton and I think Catherine, with a C, was the compliance officer at GCEN, or head of compliance. Graham is at Lewis Silkin.

Q. So, to hide it a bit, you said something that was not true, didn't you?

A. A little white lie, and then -- to cover it up, and then, did we deal with it?

Q. You had input in August into the new information memoranda that were being drafted for LCF, didn't you?

A. In -- yes, in August, yes, absolutely.

Q. And you were liaising, I think, with Kobus at that time, is that right?

A. He was at City One, first, and then Sentient. I can't remember, at that time, which he was.

Q. He helped you by showing you what the documents should cover, didn't he?

A. Sorry, say again.

Q. He helped you by telling you what the information memoranda should cover, what the contents should be?

A. Yes, I mean, the document that -- the early-days LCF document was -- he had a large amount of input in.

Q. But you were responsible for preparing the substance of the document, weren't you?

A. Some of the substance of the document. Kobus did have a large input into it as well, and so did Graham and Ian and Owen at Lewis Silkin, but, yes, I was involved in it and --

Q. For example, the sections about SMEs, about what LCF would do with bondholder money, you would have drafted all of those?

A. It was drafted -- Kobus, myself and the lawyers at Lewis Silkin, yes.

Q. But you would have prepared the first drafts of those particular sections?

A. It would have been taken from the old -- the existing SAFE one, and then that would have been used as a basis to create the next document of which, say, Kobus had a decent-sized involvement in, and so did I, and so did the lawyers at Lewis Silkin.

Q. Insofar as there was any new material about LCF, that is something you would have drafted?

A. Not necessarily. It could have been the lawyers, and it could have been Kobus after discussions that we had.

Q. Let me show you specifically what I am referring to, it we go to <MDR00016961>.

There is an email from Kobus to you with the subject, "LCF first draft of IM". He is attaching the first draft, and he says:

"Andy your input in Part II is needed in this first draft, as well as the section on 'security' please." So you would have understood he was expecting you to provide your input on those sections?

A. Yes. I mean, as I said, he is clearly drafting the first draft, sending it over to me for my input on these various different sections. It is as I said, we all had input into it and this looks like he was doing it while he was at City One -- so not Sentient. City One didn't sign or provide approval under section 21 of FSMA. But, yeah, he is clearly drafting this and then asking for my input.

Q. let's look at the attachment. It's <MDR00016962>. So, yes, that says "City One" at the bottom?

A. This didn't go out to anyone because City One did not provide any approvals for us, we didn't progress with them.

Q. It is just a draft then, isn't it?

A. It is just a draft, so a working document.

Q. So if we look at page 12, there is part II. It has various words in square brackets. You would have understood, when you received this, that Kobus was asking you to fill in the blanks to explain about the industry and market overview, what the company actually does, how it makes its money, et cetera?

A. I would have probably cut and paste, out of the SAFE's document, parts of it into this. But yes, this is very much a first draft that then goes to everyone to input on.

Q. Well, it went simply to you, I think, to input on, didn't it?

A. Well, yes, because he is asking me to fill out these bits -- it is not the whole document -- I would have taken those bits, I believe, from the old SAFE document and inputted them in there for us to start working on.

Q. Let's look at your response to Kobus. <MDR00017208>. Do you remember sending an updated version of the document back to him?

A. Well, clearly, I have done.

Q. But is it something you have any memory of or not?

A. We worked on it at the time. That is -- you know, that is -- I have said that we do.

Q. Let's look at <MDR00017209>, that is the attachment. Page 11, is all new. That is not something that comes from the SAFE brochure. This is something that you drafted for Kobus to look at, isn't it?

A. It could very well be, but that could have had input from other people as well. It may not just be all my work, but I recognise the -- I recognise some of the narrative.

Q. And, as you say, you were the 100 per cent beneficial owner of LCF, presumably you would have been happy for this to go out in the company's name?

A. It didn't go out in the company's name, so -- it is a draft.

Q. The text, I am talking to you about, rather than the specific --

A. I don't know if this was the final text that was used. This is clearly in draft and it is a document for a company that didn't approve it for promotion. So we went to someone else. So I can't tell if you this is the one that actually went out; if it was the approved one; did I get input on this from other people; what was the time difference between Kobus sending that to me and the reply? I could have got input on this from Lewis Silkin. Is there further pages of this? Because there was a whole section --

Q. We can see the input from Lewis Silkin in a moment, but do you think -- we saw Kobus sent it to you on 31 August. You sent it back to him on 9 September. Do you think you would have got input from other people before then?

A. It could very well have done, yeah. I don't remember specifically. Clearly, it has gone back to him. How much input I got from other people, I can't remember, but I did use Lewis Silkin a lot for the whole of LCF's life.

Q. Let's look at where you did seek input from other people.

<MDR00017414>. This is eight days later. You send it to Mr Russell-Murphy Jo Baldock and Mr Golding?

A. Yes.

Q. You say:

"... its not the finished article yet and some areas need adding to ... and some need thinning out." So, looking at this, do you think you probably hadn't sought input from these people before the 9th, when you sent it to Kobus?

A. I don't know. I sought input from -- you know, looking at that period of time, as I've said before, I saw input from lots of people on everything that I was doing. So as you can see here, I am seeking input.

Q. So do you think it is probably right to say you were solely responsible for preparing the draft that you sent back to Kobus and then you got input from other people on it?

A. What I am saying is I don't know if I was -- if I got input at that point, or before that point, but what I am saying is I generally got input from people, and advice. So I couldn't tell you, standing here right now, how much and at what time. But I -- generally, I did get input and advice from others.

Q. But do you think it is likely that you were solely responsible for preparing the draft that you sent back to Kobus and then got input from other people on it?

A. No, I think it is likely that I got input all the time, so I couldn't tell you categorically that, during that period of time, from -- I can't remember the dates that you brought out, I think the second one was the 9th when I sent it back to Kobus.

Did I get input before that? I could very well have done. I received advice and assistance during that whole period of time. I can't identify, in this week, I got no advice and input and, this week, I got more advice.

Q. You mentioned Lewis Silkin. I think, the document is at <MDR00017598>.

Kobus has sent a further draft back to you and, at the top of the page, you are forwarding that to Graham Reid. It is 22 September.

Do you think that is probably the first time you sent it to Graham Reid for his input?

A. No, not necessarily, because, looking at the attachment, it was generally the lawyers -- the lawyers came back to us with two documents -- well, two versions of the same document, one marked up and then one marked clean. It was generally the lawyers coming back to us and sending the -- a clean document. So that would -- that is very much Graham's language on the end of a document there. So ...

Q. So you think they probably had commented on it before this point?

A. Quite possibly, yes, I don't specifically remember, it is a long time ago. I can't ...

Q. Let's look at an email from the next day, <MDR00017676>. At the bottom of the page is your email to them. At the top is Graham Reid's response and he tells you: "We've done some due diligence on City One Securities and they are closed to new business according to the FCA. We do not see how they can approve an IM for distribution nor would we want our name to be associated with any attempted marketing (we are currently named on the draft IM which we haven't approved). I might be confusing these people with another party but these people may have been involved in potential boiler house selling ... I'm not sure these people are for you so probably no point in a meeting." Looking at that, it is probably right to say Lewis Silkin hadn't actually reviewed the draft IM before this date?

A. No, I disagree with you. It says there, "We've done some due diligence on City One", so it says they have already done some work on this, so I think I would probably have been discussing this and working with them before this.

Q. That is obviously between you sending it to them on the previous day and them responding in this email, isn't it?

A. No. What I am saying to you is I don't remember, specifically, week in, week out, who and what advice and input that I got. You are asking me to remember a specific week and who inputted to me in that week some nine years ago, and I am telling you that I can't remember who specifically I spoke to in that week nine years ago, but what I am saying is it is likely that I did get input because I was having input from lots of people during that whole period of time.

Q. But it is probably right to say, looking at this email, Lewis Silkin hadn't actually referred the draft IM before this date, before you sent it to them, at least, on the 22nd?

A. It says they have done some work. The work they would have done is predating this and the IM would have gone to them before this. Looking at the attachments, from those previous emails, I see the attachment comes up "Clean". That is the type of language that Graham and Owen used when they sent documents back to us.

Q. But you had sent it to them on the 22nd and Mr Reid responds, in the final sentence "probably no point in a meeting". Is that a meeting between you and Lewis Silkin, do you think, or a meeting --

A. A meeting between Lewis Silkin and City One, so I think they were involved prior to this.

Q. Do you think this is why you didn't go any further with City One Securities?

A. Absolutely. Yes, I mean, receiving an email like that, it is -- and we didn't, we -- I can't remember the exact date, but we stopped, and I got on well with Kobus, and Kobus was working with Sentient, and he suggested that I meet them. So I met them.

Q. Do you recall an issue that arose between you and Kerry about whether Surge could prepare some separate brochures to use for sales purposes?

A. I remember there was -- there had been, over the years, numerous discussions on things like that. Can you be specific?

Q. Specifically, October 2015, you were saying, "We are preparing the IM", she wasn't very happy with that and wanted to have the ability for Surge to prepare separate brochures.

A. Quite possibly. I remember that it was often that Surge wanted to prepare their own more, let's call it, salesy version. And we -- I/we were not letting them do that because the brochure should come from the IM. So -- and that has -- that disagreement has come up on numerous occasions.

Q. But, eventually, at the end of October 2015, you gave in and agreed that they could do that?

A. Can you be more specific, please, because I am --

Q. Let's look at <SUR00002886-0001> it is not an email that you would have seen at the time, but it mentions you. Kerry tells her colleagues:

"The meeting with LCF was a success ..." We can see this is on 27 October:

"... our biggest obstacle has been removed; Andy has agreed that we can write the brochure 'freestyle'. This means that we will not have to take exactly worded extracts from the IM and construct a brochure from it. Because the IM is written from a compliance perspective and the brochure needs to be written from a sales perspective we were at a disconnect, this has been resolved. It's a big step forward."

Do you remember reaching that agreement with her?

A. Not particularly, no. I remember us having disagreements over this. I remember Kerry saying one thing to me and then saying -- I have seen other things to other people, not necessarily representing the discussions that I had with her. And we were at loggerheads quite often. So ...

Q. Do you remember that Surge then did prepare separate brochures?

A. Not particularly, but it is ...

Q. Do you remember approving them?

A. Lots going on at that time. I'm ...

Q. Let's go to <D7D9-0006152>.

It is a message that says:

"Hi Guys.

"Please see enclosed the new LCF brochures. They have been approved by Andy ..."

Do you remember approving the brochures that Surge had produced?

A. I remember Surge, and they have done, on numerous occasions, producing documents/websites that weren't, so did I approve this? I don't know. It is between sales at London Capital & Finance, that was Surge as well, so I don't remember this.

Q. Okay. My Lord, I am moving on to a new topic. Mr Thomson, before Easter, I asked you some questions about The Hill and The Beach. You were aware, weren't you, back in 2013, December 2013, that Jonathan Marshall initially valued The Hill in the sum of US\$7.3 million?

A. Jonathan Marshall, did he do a -- did he do an appraisal of -- I don't think he ever went out there. Did he do an appraisal of the valuation that was done already?

Q. Well, let's look at the document, that I think you would have seen <D2D10-00006624>.

It says "Draft". It is a draft report. You can see, in the third paragraph, he says it is prepared for internal purposes only and, in the final sentence, he says it should not be relied upon for loan security.

A. It says at the top there:

"You have instructed to us review the work [that was already] undertaken ... by Mr Julio Perdomo ..."

Q. So, this is the one that you remember?

A. That is what I said. Is this, that he has done -- is that a valuation for/of the valuation that had already been done?

Q. Do you see, at the bottom of the page, it says: "The El Cupey site was inspected by Jonathan Marshall ... 28 August 2013. Access was available to all parts of the property." You understood at the time, I am sure, that he had been out there to visit it?

A. The El Cupey side of things, at the time, so we are 2013, so that would have been dealt with by Mr Hume-Kendall, Mr Barker, Mr Golding, they went out there. I was dealing with Lakeview at the time.

Q. But you were very much part of any communications and discussions relating to it?

A. A lot of the discussions, I wasn't, because I was dealing with trying to refurb Lakeview. I remember paying for some of their trips out there, because I had to -- on my credit card that I got expenses back on. So they were very much dealing with the physical El Cupey side of things. So Simon did the roadshows with all of the disenfranchised investors. I was dealing with Lakeview. So that is where my focus was.

Q. Do you remember having anything to do with paying for a trip out there for Mr Marshall?

A. My credit card could have very well been used. I gave it to the girls in the office to pay expenses. And those expenses got paid back. I remember them going out there on several occasions. I can't remember if it was Mr Marshall went with them or not. As I say, I didn't deal with that.

Q. But do you remember seeing this draft valuation?

A. I could have possibly seen this draft valuation. I am not saying I didn't, I am just ... you know, as I said previously when you asked me about it, I said, "Is that the one that he has done an evaluation of?". I have seen it, but am I just saying that because I have seen it in the course of these proceedings and at a later date under LCF, or did I see it at the time? I can't remember.

Q. Let's look at page 5 to see if any of this looks familiar.

He has got two methods he calls (a) and (b). You can see, in the bottom half of the page, both get you to somewhere in the region of \$7.3 million?

A. I see that.

Q. The approach (b) has 30 per cent selling costs and 10 per cent infrastructure costs. Is that an element of expenditure that you recall considering at the time?

A. Again, I didn't deal with this.

Q. Okay.

A. This was more Mr Hume-Kendall, Mr Barker, Mr Golding. And Mr Ingham was involved with it quite a lot.

Q. Do you accept that \$7.3 million was about £4.4 million sterling at the time?

A. If that was the conversion rate. I would have to look it up.

Q. Let's look at an email, <D2D10-00006233> If we go to the bottom of the chain, you can see there is an email from Mr Marshall to Mr Hume-Kendall attaching that draft report, and then, at the bottom, on the left, Mr Hume-Kendall sends that to you and Select Business Solutions. Who is Select Business Solutions?

A. Off hand, I don't remember.

Q. At the top of the page, it looks like it is someone called Richard. "Richard, seasons greetings", it says. Mr Hume-Kendall -- would that have been Richard Marsh?

A. It could be Richard Marsh or it could be Richard Yeo, the accountant in Lakeview.

Q. Yes, probably Richard Yeo.

But looking at this and reflecting on it, do you accept it was you and Mr Hume-Kendall who were involved in getting the draft valuation from Mr Marshall?

A. No, I -- Mr Hume-Kendall very much drove that. I was, as I say, in 2013, dealing a lot with the site down in Cornwall and I was spending a considerable amount of time down there. 27/12/13, you know, the Christmas/new year period is extremely busy down there and I am being copied in. Mr Hume-Kendall is sending that to Select Business Solutions. I am just copied to it.

Q. You are at Lakeview, Richard Yeo is at Lakeview. This is presumably something that you are being copied into because you were discussing it with Mr Yeo?

A. Just being kept informed that Mr Hume-Kendall was, and Mr Barker and Golding, were the driving force behind the Dominican Republic side of things, and I was dealing with Lakeview.

Q. Do you see, towards the bottom, on the left, Mr Yeo has -- he says he has reread the report which is in dollars, which, at \$7.3 million is significantly less than the £8 million we had previously presumed -- do you remember there being any concern about Mr Marshall's report coming in lower than expected?

A. I don't remember it at all, really.

Q. Can we look at <D2D10-00006621>.

This is now March 2014, and we can see on this one that Select Business Solutions is Richard Yeo, as you said, the Lakeview accountant?

A. It looks like he is probably drafting a balance sheet. I am being copied in. But my approach to emails -- I think I touched on this before -- was that, you know, if I am copied into something, I generally just read the subject line. If it is urgent, someone else comes back to me, if they need to.

Q. It looks like it was about the IRG accounts. Can you remind me, were you a director of IRG?

A. I think I was a director of IRG. Why I say "think", is because they changed the names of companies so often, it is hard to keep up.

Q. Do you remember being involved in discussions about IRG's accounts?

A. I mean, I say I am copied in there. The accounts were generally between Mr Peacock and Mr Yeo. If they had a problem, the first port of call for anything DR related would be Mr Hume-Kendall or Mr Ingham, because they know the site very well, they have been out there, I haven't.

I am being copied in, so, as I say, my approach to emails, rightly or wrongly, was, if it is urgent, they will contact me if I am busy, and it is potentially this caused me to miss things that I should have picked up on.

But, you know, hindsight is, as I say, a wonderful thing.

Q. Do you remember ever being asked to approve IRG accounts --

MR JUSTICE MILES: Can I ask about that, Mr Thomson?

A. Yes.

MR JUSTICE MILES: When an email comes into you, as I understand it, it just appears in your inbox, doesn't it?

A. Yes, my Lord.

MR JUSTICE MILES: Did you have a practice of looking to see whether you were the main recipient or it was CCed to you?

A. What -- my general approach to emails, my Lord, especially during busy times, was that the subject line you can always see. If it is something that I already know someone else is dealing with, I tended not to look at it and relied on them coming back to me if there was a problem.

I can see that that practice has now potentially caused me to miss things that I should have picked up, but if it is something that I think someone else is dealing with, then I tended not to open it up

and relied on them coming back to me if there was an issue. I can see that that has, as I say, not been the best practice for certain things. And I have missed things. So I can't do anything about that now, my Lord, but that was generally the practice, especially during busy times.

MR ROBINS: The IRG accounts would have been something within your remit, wouldn't they?

A. If I was a director at that point in IRG, then it would have been.

Q. We can see attachments include a Lakeview valuation report. That would have been within your remit as well?

A. I would have looked at and seen Lakeview valuation reports, yes. Whether I would have got involved in this, because it looks like it is preparation between the accountants, I don't know if I would have opened these, opened the emails or just left them to it.

Q. It is probably an email you would have looked at, isn't it?

A. I don't know. I am -- it comes up "IRG balance sheet, urgent, please", I would have known at the time it was between Mr Peacock and Mr Yeo. As we can see, it is from Mr Peacock to Mr Yeo. I would have known that they would have been dealing with it. Would I have necessarily opened it up? Not necessarily. And relying on them to get hold of me if there is an issue, I think that -- I generally preferred to speak directly to people as opposed to emailing. I think that approach is backed up by one of the auditors -- Emma, I think -- who confirms that I was usually on the phone and preferred not to email.

Q. But if an email had popped up in your inbox, with the subject "Urgent please", you would have probably opened that?

A. Not necessarily. It is between Mr Peacock and Mr Yeo. I know, looking at this, I would look at it and see, if they are working on the balance sheet, if there is a problem, let me know.

Generally, people knew to get hold of me if there was a problem. As I say, that practice has -- I can see has caused me to miss things that maybe I should have picked up on. But what it did do is -- you know, is allowed me to get on with other things, rightly or wrongly.

MR JUSTICE MILES: Can I just ask you about that again, Mr Thomson?

A. Sure.

MR JUSTICE MILES: See if you can help me on this. As I understand it, I may be wrong about this but in your email, the way your email worked, if you are CCed on an email, it just comes into your inbox?

A. Yes, you wouldn't see -- you wouldn't see it, if you're CCed.

MR JUSTICE MILES: You are talking about this printed version, which we can see has you CCed. But, in your inbox, it just comes up as an email, doesn't it?

A. Yes. So I would have seen it was from Michael Peacock, I would have seen that it's the -- just looking at this one, the IRG balance sheet, I would have known that it is Michael and Richard dealing with it and, as I say, rightly or wrongly, I would have let them deal with it and I could very well have opened this up and read it and thought, "Okay, that is between Richard and Michael to deal with", and not taken it any further. It is the practice that I, you know, rightly or wrongly, adopted, especially as I knew the subject was being dealt with by other people. I let them get on with it.

MR ROBINS: You were involved, at this time, with a company called El Cupey Limited, I think, weren't you?

A. I was involved -- I think I was a director of El Cupey for a couple of weeks.

Q. Well, around this time, you were attending meetings discussing things relating to El Cupey, weren't you?

A. In what capacity? Because I thought -- if I remember correctly, I was a director of El Cupey for a couple of weeks to set it up and then I resigned, but then I believe in my capacity, maybe with IRG, and Sanctuary, that I attended meetings -- hence I asked the question about capacity.

Q. Let's look for an example at <MDR00014606>. It is, "Regulated bond review meeting, 14/03/2014. Agenda & Minutes".

It says:

"Attendees: Mark Ingham, Clint Redman,

Andy Thomson."

Then paragraph 2 is "El Cupey/Magante situation and impact."

And the final bullet point is:

"SHK/AT to present to El Cupey Trust re development and revised asset ownership."

So this is just a week before the email we were looking at a moment ago. You were very closely involved in matters relating to The Hill and El Cupey at this time, weren't you?

A. To a certain extent, but I left Mr Hume-Kendall to deal with a lot of that because I was dealing with Lakeview. I was involved, because of Sanctuary and I think I was -- I can't remember when I was a director of IRG, it may very well have been at this time. IRG did get into agreements with El Cupey Trust. I remember going to meetings with the El Cupey Trust and discussing numerous different things.

As I say, the charge for that was led by Mr Hume-Kendall.

Q. With you standing next to him and being involved in his every move, I am sure; yes?

A. I was -- as I say, I was part of it. I can't tell you that I was involved in every move. I think you are trying to put words in my mouth there. I am not saying that I wasn't part of it. I think I was part of it because of Sanctuary/IRG. I remember going to meetings. But the Dominican Republic was very much led by Mr Hume-Kendall, Mr Barker, Mr Golding, Mr Ingham.

Q. And you; yes?

A. No, I have just given you my answer to that.

Q. Let's look at <MDR00014619>.

This is another regulated bond review meeting, 20 March 2014, so the day before the document that we were just looking at. We can see the attendees were Mark Ingham, Clint Redman, you, Mr Sedgwick, Mr Hume-Kendall, Mr Golding and Mr Barker. After discussion of the valuation of Lakeview in paragraph 1, paragraph 2 then says:

"El Cupey (Hill), Julio Cesar Perdomo Pena ... Valuation needs to be re-issued & validating letter from JM."

That is, presumably, Mr Marshall?

A. I presume so, yes.

Q. "AT has issued summary sales plan for the Hill to JM." Do you remember issuing the summary sales plan for The Hill to Mr Marshall?

A. The sales plan, that was developed, I believe, or already in place for historic Sanctuary, and that would have come from Mr Ingham. I imagine I would have forwarded it on, it says there. But that is what I did.

Q. And then:

"Action;

"SHK to request Perdomo and JM to re-issue valuations clarifying anticipated m2 value and GDV (JM) for FCA/Lewis Silkin [due] diligence."

Do you remember discussing Mr Marshall's valuation on 20 March, on the day before it was sent to you?

A. It is clearly in the agenda, so it would have come up, yes.

Q. It says:

"AT noted that CCW for the purposes of their review should be happy with JM as a verifying valuer and that JM valuation should suffice for CCW purposes." What does "CCW" stand for?

A. I think CCW, would be Crowe Clark Whitehill. They were an accountant in Tunbridge Wells.

Q. Were they preparing IRG's accounts?

A. I don't remember. They may have just been doing some work, but I am guessing that is what CCW is.

MR JUSTICE MILES: It says it underneath.

A. Okay, it does. Thank you, my Lord. Yes, so they would have been doing some work. I can't remember the -- I'll read further down, if you give me a second.

Q. It says in 3 that you have had a setup meeting -- well, you have a setup meeting scheduled Wednesday, 26 March 2014, with CCW, to review IRG financials, and it says "AT" in bold.

A. Yes.

Q. So it is not something that was outside your remit, was it, it was something you were dealing with?

A. No, I didn't say it was outside my remit. I am saying I was involved and so were others. I remember Crowe Clark Whitehill, I remember going to meetings with them.

Q. You said, when you looked at the email of 21 March, you would probably have thought, "Well, that is someone else's remit, I don't need to open it". Would you like to revise that answer?

A. No, because it is between Mr Yeo and Mr Peacock, and I know they were working on it, so I just let them work on it and come back to us if there was an issue. I may very well have opened it and had a look. I don't remember, but it was between the two accountants and they were working on the balance sheet.

Q. But given that you were going to go to a meeting in a few days with CCW to review IRG financials, you probably opened it up and had a close look at the attachments, didn't you?

A. I could quite possibly have opened it up and had a look at the attachments. I am not being contentious; I just don't specifically remember that. I could very well have done it.

Q. You would have also known, I assume, that Mr Marshall revised his valuation of The Hill?

A. Revised the draft that he sent before?

Q. Yes.

A. Well, if that is what happened at the time, I don't -- as I say, I don't specifically remember at the time, but if that is what he did, that is what he did.

Q. Do you remember being involved in any discussions with him about making changes to it?

A. Again, a lot of the discussions around DR were Mr Hume-Kendall. I think it says here that he dealt with the valuation. Point 1:

"SHK to resolve [various different things]." Jonathan Marshall was his introduction. They had a history together. Did I see the revised valuation? Probably.

Q. Let's --

A. There was also a valuation, thinking about it, of these done, Moore Stephens, I believe, ordered it and they got someone in the Dominican Republic, if I remember correctly, to evaluate the valuations as well. But I don't remember the timing of that.

Q. It is <D2D10-00006670> that we need. Mr Marshall sends a revised draft report on El Cupey to Mr Hume-Kendall. He sends it to Michael Peacock and Mark Ingham and copies you, and he would have been copying you because this was very much within your remit at the time?

A. Again, the Dominican Republic was very much led by Mr Hume-Kendall, Mr Ingham, Mr Golding and Mr Barker. Yes, I was copied in, but would I have had a look at that revised report? Quite possibly. I was, March 2014, at that time probably dealing with lowering -- agreeing to lower the power lines in Lakeview. We had, I think, secured the planning permission in Lakeview, and I think I was working closely with Calfordseaden to get a tender document ready to go out to tender for the development down there. So I was doing lots of things at that time. So ...

Q. Let's look at the attachment. It is <D2D10-00006671>. You are actually fairly familiar with this document, aren't you?

A. I am not saying I didn't see it, I am just -- I don't remember the specifics of it.

Q. If we look at page 7, the top paragraph, do you remember it being your understanding that Mr Marshall hadn't undertaken any detailed development appraisal with cash flow forecasts?

A. I know, looking at the emails that you have -- and the draft board minutes that you have pulled up, it looks like we provided him with some documentation. I don't remember today what that

documentation was and how much. There were forecasts and cash flows for those two sites in the Dominican Republic. They were existing ones from when Sanctuary was pre-2013, that Mark Ingham had.

Q. He says:

"We have disregarded interest cost, mainly on the basis there would be staged payments for the sale of units."

It's always been your understanding that is how he prepared this valuation, hasn't it?

A. I don't have any specific recollection of this. Again, Mr Hume-Kendall dealt with the Dominican Republic, mainly, so did the other people I have mentioned, and he liaised closely with Mr Marshall. At that time, I was dealing with Lakeview. Mr Marshall also dealt with Lakeview. I don't remember the detail here. I would probably have seen this, yes.

Q. In the final sentence of that paragraph, he says: "We have only considered the phase 1 development of 266 units, all of which are effectively sold." That is effectively sold to the Sanctuary investors, isn't it?

A. Phase 1, they would have -- I think, if I remember correctly, that is the -- I think it was the other one, I forget the name. Anyway, just call them Sanctuary investors. So they would have put the deposits down on these units, yes.

Q. And you, reading this, would have known that it was wrong, wouldn't you, because the Sanctuary investors were not liable to pay anything else until completion and there was actually a liability of Sanctuary to pay £88,000 a month to the investors.

So when he says, "We have disregarded interest costs, mainly on the basis that there would be staged payments", well, there were no stage payments and there was a significant interest cost of £88,000 a month, wasn't there?

A. That -- we went through the spreadsheet before.

Q. Yes, so you'd have known this was nonsensical?

A. I don't know why he has disregarded them but, on a valuation, are they -- I don't think they are secured creditors. I don't know why he has disregarded it. I don't remember having that conversation with him.

Q. On the valuation approach (b) which we can see, he takes a gross development value of just over \$79.1 million. Do you see that, in the middle of the page?

A. Yes.

Q. Then he deducts various costs. What he is saying is he is not deducting any interest cost, isn't he?

A. That looks to be what he is saying, yes.

Q. Did you tell him to disregard interest costs on the basis there would be staged payments for the sale of units?

A. No, as I said, I don't remember having those conversations with him. I don't actually remember -- I don't think it was me that instructed him.

Q. But with your knowledge at the time, when you saw this, you would have known the basis on which he was preparing this valuation was fundamentally flawed?

A. I don't remember reading this. I would have looked at the figures. Paid attention to those.

Q. You understand from his approach (b) that the GDV is essentially a prediction of the total receipts you could get if you proceed to build the development and complete the sales of it?

A. Yes, that is the gross development value but also we have -- the site already had other valuations by valuers that were in country. This is an evaluation of, so he is doing this from a distance. As I say, I don't know why he has disregarded interest costs.

Q. You understood at the time he was saying, if you build it and sell it, then you get the GDV, but you have to deduct construction costs, infrastructure costs and developer profit and you are left with about \$19.6 million?

A. Yes, I can see that, but I don't know why he has put the sentence in there that, "We have disregarded interest cost, mainly on the basis there would be staged payments for the sale of units".

Q. He does it in dollars, but it is actually, I think, a bit more helpful to convert it to pounds. A dollar was worth about 60 pence at the time, so the GDV is equivalent to £47.5 million, and then the various deductions, construction, central facility developer profit, come to £35.7 million.

So he is saying that if all the Sanctuary investors, who have put down deposits for the phase 1 units were to complete, then the GDV would be about £47.5 million --

A. If the Sanctuary investors were to complete, they had to -- my understanding is they had to pay further funds. It wasn't simply they get the units, they have to buy them.

He also says that we shouldn't -- we should place limited reliance on these figures and recommend that no decision is made by them. We would have had the valuations that were done by the valuers in the Dominican Republic, alongside this as well, and I am trying to figure out why he has disregarded interest costs, I am not quite sure where we are with stage payments. That -- as I say, a lot of this Dominican Republic was dealt with by the others. I dealt with Lakeview. I'm not saying I didn't see this document.

Q. Let's look at an email we looked at before Easter, it is <D2D10-00006944>. Do you remember we looked at this email from Mr Peacock, copied to you before Easter?

A. Yes, I seem to remember this.

Q. And we looked at the attachment, which was <D2D10-00006946>. Do you remember we looked at that column --

A. We expanded it out, didn't we?

Q. -- "To Complete", which was the final payment, and you said you thought that was probably the amount each Sanctuary investor would have to pay to complete the purchase of their unit?

A. I think, when we looked at this, we were looking at the monthly totals. I think there is 10 pages of this, isn't there?

Q. Yes, that's right, but one of the columns we looked at is the "Final Payment with BB Bonus. To Complete". I think you said that was --

A. Quite possibly, the figure they needed to -- if they wanted to buy the unit.

Q. If we look at the final page -- you are right, I think it is ten pages long or something like that -- the figure to complete is just under £25.5 million, isn't it?

A. Sorry? Can we go back to the top of it? So "Final Payment with BB Bonus. To Complete". So, is that what the Sanctuary investors need to do to complete the purchase or is that what Sanctuary will owe them to complete the transaction that they had offered them on the roadshow?

Q. What do you think the final column is, "Owed; Buy Back"?

A. That is what I am looking at. It is not my spreadsheet and I don't have the answer, but that is "Final Payment with BB Bonus". I don't know. That doesn't sound like it is to complete a property purchase. It is just throwing me with that title over the top. I am not quite sure what that is. This is not my spreadsheet, this looks like it is a Michael Peacock spreadsheet.

Q. Okay, well, let's work on the assumption that "To Complete" means to complete the property transaction. If we look at page 10, if the investors have to pay £25.5 million to complete the property transaction, and the various costs that Mr Marshall identified come to 37 -- £35.7 million, then the transaction doesn't even break even, does it? It makes a loss of more than £10 million?

A. I'm still struggling with this "Final Payment with BB Bonus". I am not sure what that is. Could you go through those figures again for me, please?

Q. If the investors are liable to pay £25.5 million to complete, and the various costs identified by Mr Marshall come to £35.7 million, then this project is inevitably loss making, isn't it?

A. But you are taking that -- if this is what they have to pay to complete, this is a plus onto the figures, isn't it? Sanctuary investors only put down the deposit.

Q. Yes?

A. They haven't bought the whole unit, so this would be what they will owe to buy.

Q. This is the extra money you get in if they complete; yes?

A. It could very well be -- sorry, I am slightly struggling with what "BB bonus" is.

Q. But let's assume that I am right and what they have to pay to complete is to complete the transaction, then, on Mr Marshall's costs figures, this is a project which is inevitably insolvent, isn't it? It is worth nothing.

A. It is phase 1, and there are four phases and, also, I would like to see what the in-country valuer had to say on value, because Mr Marshall says that you shouldn't rely on these figures. As I say, this isn't my spreadsheet.

Q. But before we do anything else, we are going to just stick with this. If all the investors exercise their buyback option, so Sanctuary has to pay them, then it is the sum of just under £23.6 million; isn't it? That is your understanding?

A. That is the column on the far right -- yes, 23.59.

Q. According to Mr Marshall, Sanctuary can sell phase 1 for a GDV of £47.5 million to other purchasers, then you deduct the 35.7 million and you are left with 11.8 million. That is sterling. That

would not be enough to pay the 28.6 to the Sanctuary investors if they want to exercise their buyback options, would it?

A. Go back to Mr Marshall's figures. You are slightly losing me in figures. I can see you are writing them down and I do not have anything to do that. Also, you are forgetting the value of the other phases.

Q. He is only valuing phase 1, isn't he?

A. Yes, but there are four phases on the site. There could be five --

Q. Mr Thomson, you were involved in planning this project. This is all very familiar to you.

A. The point I just made to you, Mr Robins, was you are looking at phase 1. And if you look at it from an overall project point of view, often, developers, all the profit is in the latter stages, so when you look at this as a development, you have to take into account the other phases. Mr Marshall does say no reliance should be put on this. What you are trying to do is to suggest this project is under water, only looking at one phase, and then you are completely ignoring what is happening, or what potentially happened, with the other phases, which would have an impact on this, if you are looking at financials.

Q. You were involved in the financials of this project, weren't you?

A. I would have been, but they would have been historic financials that we would have got from the previous project, which Mr Ingham would have provided, so -- which would have had development costs and everything else.

Mr Woodcock, who was previously involved in this, was a property developer, so I didn't produce these figures. But if you are trying to say the project is under water, you are not taking into account, and Mr Marshall is not taking into account -- I think he says in the document that he is only looking at phase 1. If you are trying to suggest the whole project is under water, well, I would suggest that if you look at any development that is in phases, the profit is in the back end. So ...

Q. You were involved in the financials and you knew the project was under water?

A. No. You are not taking into account the whole project. The Dominican Republic was a project as a whole and you are looking at phase 1 of part of the project, with -- from a valuation that is in draft, from Mr Marshall, that he says you shouldn't place -- you should place limited reliance on it. You are not looking at the financial -- the valuation from the in-country valuer, that values it on a brownfield development prospect with significant tourist taxation upsides. You are just trying to look at this in isolation, in one phase, and you are suggesting the whole project is under water, and what I am saying to you is you need to look at it as a whole and you are not doing that.

But just saying that, would it be possible to have five minutes?

MR JUSTICE MILES: Yes.

A. Thank you very much.

MR JUSTICE MILES: We will take a five-minute break. (3.05 pm)

(A short adjournment)

(3.12 pm)

MR ROBINS: Can we look at <C2/1>, page 39, please. Mr Thomson, this is in your trial witness statement and we looked at it before Easter. In the second line of paragraph 113, at the bottom of the page, you say: "The L&TD loan profile shows the last valuation update was on 13 December 2016 with total valued assets of £108 million."

Do you remember me asking you some questions about that?

A. Sorry, I am just looking for that.

Q. At the bottom, on the left. The second line, paragraph 113 in your witness statement.

A. Yes, sorry, I am with you now, yes.

Q. Do you remember me asking you some questions about that, before Easter?

A. I remember we went over some figures, yes.

Q. Do you remember that you said that you and the other directors of LCF kept a ledger of it?

A. There was various different spreadsheets on looking at valuations and putting them together and, yes.

Q. Do you remember saying you had got the information from your borrowers, you would have looked through it and got comfortable with it, accepted what -- the security and didn't believe it to be wrong?

A. We would have looked at the valuations we received, looked at the figures. Everyone got comfortable with it. And if that is what the figure says at the end, that is what the figure says at the end.

Q. We found the document to which you were referring and <MDR00111233> I think you called it a loan ledger, I would call it a loan profile, and you called it a loan ledger.

If we could have that up, please. <MDR00111233>. We need to open it in native form. We looked at the calculation in column L. In particular, I think we mentioned L10, which has land at El Cupey. That is the Hill, isn't it?

A. El Cupey Is the Hill, yes.

Q. And it says, "Total security: £19.35 million", and if we could look at what it says on the right, it says, "J Marshall, 21 March 2014".

A. Yes.

Q. Mr Thomson, before the break a moment ago you were keen to emphasise that Mr Marshall's report was expressly not for security purposes. That is precisely how you relied on it, isn't it?

A. But looking at this figure here, if this is indeed Mr Marshall's, there are other valuations that -- I don't know why Mr Marshall's has been put in there -- as I say, several people had access to this but, looking at El Cupey as a whole, it doesn't take into account, as I said before, phases 2, 3 and 4. Yes, I take the point that he said "Don't use it for loan purposes", but if we have a valuation that supports that, or a bigger figure -- I can't remember what the figure is from the in-country valuer -- we would have got comfortable using that figure and we referenced where it was from. It could be that the figure that we had from the other valuers was considerably more than that, so we used a lower value just to desensitise it. I don't remember why we put that there. I don't remember the land at El Cupey

-- I can't remember the valuation that the in-country valuer provided, I don't remember the figure on that.

We may very well have used Mr Marshall's because it was a lower figure. As I say, I don't remember why it was there but this is, as I say ...

Q. It says £19.35 million. Could we just go back to <D2D10-00006671>, please, and if we look at page 7, please.

Do you see in bold after the table, Mr Marshall says:

"Having regard to the above factors, we are of the opinion that the fair value of El Cupey site is in the region of USD19.35 million."

A. Yes, I can see that and above he said they have only considered phase 1 of the development, and why was it used in that spreadsheet? Possibly because it was a lower figure compared to using the in-country valuers. I do not have that valuation in front of me. There would have been a reason why the directors put that value in there, but we looked at -- we were lending to LTD as a whole, not a single development but, as Mr Marshall says here, we have only considered phase 1. As I say, I don't know why the directors chose to use that figure in that spreadsheet. I don't know what the in-country valuer valued that site at but, looking at this, it only has phase 1.

Q. If the project goes bust in phase 1, there is no phase 2, 3, 4, 5, is there?

A. Well, with lots of developments, if you only take phase 1, the profit is in the latter phases. That is just development.

Q. You have got to get through phase 1 in order to get to phase 2, haven't you?

A. Well, if you have got asset value in phase 2, 3 and 4, that you can leverage off to develop, if you take one phase in isolation, it may very well be loss-making; lots of developments are if you only take one in isolation.

What I am saying is you have to look at it as a whole. I don't know why we only used Mr Marshall's valuation in that spreadsheet and not the in-country valuer that valued all phases. I do not have an answer for you there.

Q. You didn't use Mr Marshall's valuation, did you, because he said \$19.35 million; in your spreadsheet you have put £19.35 million, which is considerably larger, isn't it?

A. And what I am saying is I don't know. I don't remember why, why that was used. I don't remember why the in-country value wasn't used. I may not -- it may not be me that populated that. Everyone had access to it and worked on it.

Q. You were just keen to come up with the biggest figure that you could produce to maximise the borrowing by L&TD, weren't you?

A. If I go back to what I previously said to you, Mr Robins, I don't remember what the in-country valuer valued El Cupey at but I have a sense that it was over this. It valued all the phases.

So if you are talking a valuation of the El Cupey site, the in-country valuation -- so I do not have it but my sense is that it was more than this -- I don't know why 19.35 million was used. I don't know why it was pounds not dollars, I do not have that answer for you. I don't know who inputted it into that. It

could have been one of the back office admin people updating it and they went to the loan documents filing cabinet, pulled out the valuation and inputted it -- some of the roles that they do.

I am afraid I do not have an answer for you, Mr Robins, but, if we wanted to use a bigger figure, then surely it would follow that you would use the figure that valued all the phases on the sites. But, as I say, I don't have an answer for you as to why.

Q. Is the reason Mr Marshall valued phase 1 because that was the only phase for which planning permission had been obtained perhaps?

A. I don't know. Sorry, I don't have an answer for you.

Q. Could we look at <MDR00077856>, please, in native form. It is another document that we looked at before Easter. Do you agree this also refers solely to the J Marshall valuation in row 18?

A. Again, that could have just been used because it was on the other spreadsheet and not updated.

Q. And you agree that the currency is wrong: it says pounds but Mr Marshall said dollars?

A. Yes, it doesn't tally with the valuation that we have seen but, you know, I stand by what I said previously: the other -- if we wanted to put a higher figure on it, I think my sense is that the in-country valuer was bigger. As I say, I can't remember but that is where I am.

Q. But you are relying here on the J Marshall valuation getting the currency wrong even though you have emphasised to us today that you knew that it was not appropriate for security purposes?

A. Hmm, but I have also said to you, Mr Robins, that perhaps we chose to desensitise and the in-country valuation could very well have been higher than that because it valued all the phases, but we wanted to use a lower figure. I can't remember why that is there. As I say, I am not the only person that had access to this -- Kobus signed this off as a promotion -- and I don't know why pounds was used instead of dollars but, if we wanted to ramp up the value, then my sense is that the in-country valuation which valued all the phases was higher. So, if we were doing what you are suggesting, we would have used the biggest figure possible.

MR JUSTICE MILES: I don't think that question was to do with the question of ramping up, Mr Thomson. The question that was asked was to do with the fact that you said earlier in your evidence that the Marshall appraisal, or valuation, was not for security purposes.

A. Yes, I do take that, my Lord. I am just trying to think why the -- why we, as a group of directors, put that in there. I do not have a recollection of why that was used and not the other one. I wish I did. I don't have an answer for you, my Lord. Sorry.

MR ROBINS: Can we look at <MDR00224094>. We looked at this before Easter as well. You emailed Mr Partridge to say:

"We have just gone through the security values in preparation for year end."

And you said the verified security value was £215 million. That is a figure that was based on, at least in part, the J Marshall valuation but applying the wrong currency, wasn't it?

A. Yes, I can see that but this is -- anything that went out with verifying all of this, Kobus would have had to have signed off on, which he did do, so we would have gone through it as directors. I can see we -- maybe we made an error with Mr Marshall's valuation and it just continued through because we took it off a previous spreadsheet and because of the loan to value we didn't see a reason to

update it and it was an error. I don't have an answer for you but this figure would have had to have been approved by us as directors and specifically Kobus in his role as head of compliance and risk.

Q. Kobus' error was to believe what you told him, wasn't it?

A. No. He had access to all the documents, the same documents I did, the same documents everyone in LCF had access to.

Q. Do you know about Kobus being sanctioned recently by the FCA for believing what you told him?

A. I am aware that Kobus got sanctioned by the FCA. I don't believe it is said in there that he got sanctioned by the FCA for believing what I told him. Again, he had access to all of the same information I did. He was party to all of this, as were the other directors back in 2017, and everyone was comfortable with it. The loan book, the security book, was open for all to see and he would have had to have signed off on it, and he would have only done that if he had have had the documentation in front of him.

Q. Do you remember before Easter we looked at the fact that the £215 million figure was put on the website, it was put in emails to prospective bondholders, it was advertised in The Times?

A. After Kobus had signed it off and said it could be used, yes.

Q. Do you remember we saw it was advertised in the Financial Times as well, and the Telegraph, I think?

A. I saw -- I am actually glad you brought that up because what you showed at the time was, yes, a copy -- and I think that came from Mr Russell-Murphy's disclosure -- but in your own disclosure, there is the same copy but it is attached to a sign-off by Kobus that he sticks his name to it and his signature and puts his signature on that copy that you showed, and that is in your own disclosure.

So it shows that he has approved it, he has signed off on it as head of risk and compliance and he has signed off on it that it can be used in financial promotion and then, further, there is emails in disclosure that he then forwards that on to Surge and states in his email, "I have approved this for use in promotion".

Q. You were very happy that you had persuaded him to approve it because it enabled your company to advertise a security value which you knew to be false?

A. I didn't persuade him to do anything. He had access to all of the same documents that I did and he looked through all of the same document that is I did, as did the other directors, and he was comfortable with that.

Q. Let's break it down: you knew that security value was false, didn't you?

A. I appreciate, looking at Mr Marshall's valuation, that there is an error there. However, the actual -- if you look at the in-country valuations, the figure could very well have been higher. I don't remember at the time the conversations but we would have all had access to exactly the same information. Kobus had access to all the information. The electronic files were open to them, the paper based files were open to them and he signed off on that, after reviewing everything.

Q. Mr Thomson, you didn't want to make the figure higher because you didn't want to have a believability problem with your security, did you?

A. Again, it is -- you can sanitise figures down and, if the figure is very much higher, then you would have had to have answered more questions. So there is -- there was a reason that we used that figure at the time. I don't have a sense what it is now but there would have been a reason, Kobus would have got comfortable with it. We had access to all the valuations.

Q. Your reason for choosing that figure was that you wanted to have something nice and believable?

A. Kobus' signed off figure is that figure --

Q. Never mind Kobus, my question was about your reason for choosing that figure is that you wanted to have something nice and believable.

A. Well, what you are saying there is my reason for choosing that figure, and what I am saying to you is I didn't choose that figure: that figure was taken from the valuations that we had and Kobus signed that figure off to be used in promotions.

I can't remember now why we used Mr Marshall's valuation. The dollars versus sterling is an error. I don't know why no one picked up on that error and it is perhaps -- and I don't know and it is a perhaps -- that that was used because the other valuation was higher and we wanted to show a lower figure, and Kobus signed off on that.

Q. You knew that during the period 2013/2014/2015/2016/2017, or at least most of 2017, Tenedora did not proceed to acquire any of the plots of land on the site known as The Beach, Magante?

A. No, I thought they were buying them. My knowledge at the time is different to my knowledge now but, at the time, we were told they were purchasing -- they were exercising those options and they were buying the plots of land.

Q. No, no, no, you were told at the time they didn't own any land at Magante.

A. I was told -- you have taken a rather large chunk of time over different people. If you are perhaps more specific, then I can assist but you have taken a large chunk of time there and through different ownership.

Q. Well, let's look at <MDR00035933>.

This is Mr Ingham emailing you in April 2016, subject "Land owned". He says:

"Hope all is well. We don't own land at Magante. Tenedora just has a contested purchase agreement." So that was your understanding in April 2016, wasn't it?

A. That is what he is telling me. My understanding was that they had some land already and they had purchase contracts. So ...

Q. Well, you understood that the contracts had not proceeded to completion, they were stuck immediately after exchange, in English terms?

A. They were -- my understanding is they had land at Magante. I don't know why he is saying hey doesn't have any. And there were options to purchase. The purchase omissions were on scrubland, greenfield values but the site is a brownfield site that has -- is specifically a zone for tourism, development and carries significant tax breaks. The options to purchase were there and my understanding is over the years that they would have been exercising those options.

Q. You didn't reply to Mark Ingham to say "What are you talking about, my understanding is that you have been exercising these options", did you?

A. I don't remember the reply to this. I am just telling you, looking at this, my thoughts what they could be at the time.

Q. Your thoughts in March 2017 were that the contract for sale of the property at Magante had not yet completed, weren't they?

A. I am just reading the last paragraph of that. (Pause). Okay, sorry, can you repeat the question.

Q. Your thoughts in March 2017 were that the contract for the sale of property at Magante had not yet completed, weren't they?

A. Well, the completion of the purchases were on a staged basis.

Q. You knew that nothing had completed yet.

A. I don't have recollection of that but I know there is options to purchase. I know they did buy some. My sense is that they had -- they had some land and they had, I think, 36 options -- I may have mentioned that before Easter -- to purchase. My sense is it is \$2 million to \$3 million in total but the brownfield valuation was considerably more than that.

Q. It was very much like the Cape Verde position, there was a contract but nothing was actually purchased?

A. Sorry, which one do you want me to answer, Magante or Cape Verde?

Q. Cape Verde and Magante were the same, there was a contract but nothing was actually purchased.

A. Magante, my understanding is that, again, they did have and they had options to purchase 36 titles, that my understanding is that they were going to be purchasing them and they were over the years.

Cape Verde is -- my understanding -- I am trying not to tailor it for what I know now, I am trying to think of what I knew at the time: at the time, I believe they were buying it. Yes, they had issues with the buyer but my recollection is they were buying it.

Q. Let's take it in stages. 2013, when I think you were still involved in Sanctuary, you knew that they hadn't actually bought any yet?

A. They had -- no, I thought they had. Magante, I thought they had purchased. They did own some of the land at Magante and they had 36 -- I think it is was 36 -- agreements to purchase and those purchase prices were greenfield scrub value agreement against a valuations of quite valuable zoned tourist land on a brownfield basis.

Q. Well, let's focus on the 36 parcels. You knew that they had not purchased those?

A. Again, could you give me a timeframe, please?

Q. 2013.

A. They had them and my understanding was they were going to be purchasing them.

Q. You mean they had a contract to buy them?

A. Yes.

Q. But they hadn't actually bought them?

A. No, because they were going to be buying them.

Q. That was the same in 2014, wasn't it?

A. Well, again, my understanding was it was a staged purchase, it wasn't an all in one go.

Q. Yes, and none of these parcels had been bought by the end of 2014?

A. I don't know, I wasn't dealing with Magante, but my understanding was that they were purchasing -- that is what I was being told by Mr Hume-Kendall, Mr Golding, Mr Barker, but I didn't deal with Magante; at that point I was dealing, again, with Lakeview.

Q. Well, let's say 2015, when what you say is your company LCF starts lending money to L&TD against the security of its assets. You knew then that it hadn't actually acquired any of the parcels in Magante?

A. Hadn't finished acquiring. My understanding was they were acquiring. That is what I was being told.

Q. So is your evidence that, when you got this email from Mr Ingham, it would have come as quite a shock to you. Because it was flatly contrary to your understanding at the time?

A. I would have had a discussion on this and it was -- I can't remember the discussion I would have had after this. We don't own any land at Magante. I could very well have clarified that with them -- "Okay, have you not finished -- have the purchases of the parcels of land not finished yet? What stage are you at with them?"

Because you don't own them until you have finished payment.

Q. And they hadn't paid for any of them yet, had they?

A. My understanding was that they were paying for them.

Q. Let's look at <MDR00080319>.

It is an email from Alex Lee to you in March 2017 and he says he has spoken to Robert. He says: "They are going through a major reorganisation." He says, in the third line, he is "going to try and speak to Mark Ingham about the Magante position (as Robert didn't really know)."

He says:

"What I do gather is that the position appears to be the contract for the sale of property there has not completed yet and, in fact, there is going to be a new contract with respect to it."

So that was your understanding in March 2017, wasn't it?

A. Yes, so it is saying that it has not completed. It is not saying -- it doesn't say that they hadn't started. Also there was conversations around that time of taking charge over a parcel of land in or at Magante, as opposed to all of it, because the laws over in the Dominican Republic are that, if you take a charge over the land, there is a 5 per cent cost. That 5 per cent cost is against an in-country valuation which was quite considerable, so Alex was looking at -- and I think he got Mr Friedlander to help him with that -- taking charge over the parcel of land at Magante that they did own, so nothing could happen on the site without that. We had to create a company in the Dominican Republic to

take that charge but I think that is saying that -- it doesn't say they haven't started, it is just not completed yet. Again, it is a phased purchase. And then he says "I will get more details", so ...

Q. Let's have a look at Mr Marshall's valuation, <D1-0000457>.

This is from your disclosure and I am assuming it is a document that you are familiar with?

A. What is the date on this one?

Q. May 2014.

A. Okay, so we are back to the -- jumping back a couple of years?

Q. Yes.

A. Sorry, I didn't get your question.

Q. Are you familiar with this document?

A. I would have seen it, yes.

Q. At page 3, it shows that it was actually addressed to you as a director of International Resorts Group Plc, and I am assuming from that that you were the person who dealt principally with Mr Marshall in respect of this valuation.

A. No. Just because it was addressed to me -- Mr Hume-Kendall dealt with Mr Marshall, more often than not. They had a history together.

Q. On page 6, under the heading "Title", the last sentence there is:

"We have not ourselves seen evidence of title." As a director of IRG, you would have known that --

A. Hang on, can I just read that before ...

Q. Sure.

A. Could you make that bigger for me, please? Sorry. Thank you. (Pause).

Okay, so, yes, that is the deslinde process.

Q. He says:

"We have not ourselves seen evidence of title." As the director of IRG, you knew at the time that Tenedora had not actually completed the purchase of any of the parcels of land at The Beach yet?

A. This doesn't reference the agreements to purchase. It is -- where are we? Yes:

"Since 2009, real estate transactions with non deslinde properties are prohibited ..." So I don't know what stage the deslinde process was at that time. So he has been advised that the Magante land has a deslinde but he is saying he doesn't see evidence of that. Again, it is in draft form. I would have gone and had a conversation with Mr Hume-Kendall about this, who dealt with -- and Mr Barker -- they dealt with the Dominican Republic. Again, this is in draft, it is not a finished document, so there is work to be done.

That is possibly why they are option contracts to purchase, as opposed to concluded, and the deslinde process takes a while.

Q. Could we look at page 6, please. This is page 6? Can you go back to page 6, please.

Under "Planning", it says:

"You advised us that Playa Magante land has planning permission approved for development of the proposed scheme of 320 units."

Given this was addressed to you, do you think it is reasonable that the "you" referred to in this sentence is you, as opposed to anyone else?

A. No, I think it is just generically written as a "you". Again, Mr Hume-Kendall and Mr Barker dealt with the Dominican Republic. They were the ones -- so did Mr Ingham -- they were the ones that went out there, they were the ones that met with the lawyers out there, they were the ones that dealt with everything out there. It is addressed to me because I am a director of IRG at the time.

Q. If we look at the final paragraph, in the middle of the paragraph, it says, three lines down:

"We have also been provided with a schedule of unit sales prices showing a total gross development value of \$119 million and billed costs totaling \$55 million." Presumably that is a document that you would have been familiar with as a director of IRG?

A. That, I believe, would have been a historic document that would have come from Sanctuary previously, which would have been Mr Ingham providing him that.

Q. But it is a document that you would have been familiar with?

A. I may have seen it, I may not have seen it. I don't remember it specifically, sorry.

Q. You probably saw it?

A. Possibly, yes.

Q. Then on page 9, he refers to his meeting with Julio Perdomo but in the final paragraph, that basically says that it would not be reasonable to apply Mr Perdomo's rate of £329 per square metre. Do you remember him concluding that he wouldn't adopt that approach?

A. I would have read it but, also, I would have read the other appraisal of the valuations that we had done, which I think Moore Stephens commissioned. They got another valuer in the Dominican Republic to evaluate this and they agreed with Mr Perdomo, if I remember correctly. I think in one instance they said he used too low a value. So we have conflicting valuations but this one is in draft, it is not finished. The other two were finished.

Q. On the second page, if we could go to that, he adopts the approach that we saw before of taking the GDV figure that we saw had been provided to him and he deducts the construction figure that has been provided to him and he deducts also the central facility roads and the developer profit and he is left with \$37.95 million; do you see that?

A. I do, yes.

Q. This is obviously a development that couldn't commence until Tenedora had acquired 100 per cent of the land at The Beach, isn't it?

A. Yes, you would need to acquire it first and there are option contracts to acquire it. At this point I don't know where the deslind process is, if it is finished or not. I would have read this in conjunction with the other valuations that were done on the site at the time -- either at the time or before.

Q. Even if, as you say, you had thought that Tenedora had acquired some of the parcels, you would have known that it was very far from being in a position to actually start any construction work?

A. Well, you look at -- Mr Robins, you look at a development, it doesn't happen overnight. These things take years to get done.

MR JUSTICE MILES: I am not sure that is an answer to the question.

A. Sorry.

MR JUSTICE MILES: So the question was that you would have known that Tenedora was very far from being in a position to actually start any construction work.

A. Yes, it would have been and that -- sorry, my Lord, that was my point about these things take many years to get to fruition but, yes, I would have known in 2014 it wasn't ready to start construction. I would have also read this in conjunction with the other valuations that are not in draft form, that are in final form. (Pause).

MR ROBINS: Sorry, bear with me.

A. While Mr Robins is looking, can I have a quick walk, my Lord?

MR JUSTICE MILES: Yes. How far do you need to go?

A. Literally, only three or four circuits of the hallway up here.

MR JUSTICE MILES: Right, what I will do is, actually, take a five-minute break to give you slightly longer period.

A. Thank you, my Lord.

MR JUSTICE MILES: Five minutes.

(3.50 pm)

(A short adjournment)

(3.56 pm)

MR ROBINS: Mr Thomson, we were looking at <D1-0000457>, and we were looking at page 15 -- page 10, I mean, sorry. After the table, we saw that he gives a fair value of USD37.95 million, and then he says:

"This appraisal has been very limited in scope and undertaken without the benefit of a full investigation concerning detailed costings and comparables." That was your understanding at the time when you read this report, wasn't it?

A. Yes, that is clearly what it says.

Q. He says:

"It is indicative only with a considerably wider range deviation than would applied to figures reported in a formal red book valuation."

Again, that is something you would have understood at the time?

A. Yes, I understand what that is. It is also in draft form, so ...

Q. Yes, absolutely. In the next paragraph he says you should place limited reliance on it; that is something you understood?

A. Yes. Actually, I don't know if this was ever completed in non-draft.

Q. Yes, but if you go to page 3, I think we see the letter to you dated 26 May and, in the third paragraph, it says:

"The advice is required for internal purposes only." Then in the final sentence there, he says: "Our advice should not be relied on for loan security."

So that was always your understanding?

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

Q. But when we go back to the document we looked at earlier, <MDR000111233>, we have in row -- is it 8 or 9? Land at Playa Magante -- that is The Beach, isn't it?

A. Yes.

Q. And that has £37.95 million?

A. Pounds not dollars.

Q. So what exchange rate was being applied there?

A. I think, looking at that, I think that is an error, like the one below it.

Q. Then to the right, J Marshall, 26 May 2014. So seeing this, you would have known that this was a draft valuation, not to be relied for loan purposes and applying the wrong currency?

A. I cannot remember why those were -- why those were used and not the completed valuations of the in-country valuers. Perhaps it is because the valuers that were in-country that provided completed valuations, their values were higher and we wanted to use a lower -- or it was decided between us to use a lower value, and that is the reference where we got that.

Q. Do you think it is because you wanted to end up at a number that was nice and believable?

A. It was at the lower figure. So if indeed that is what we did, I can see us as a group of directors taking that decision, yes.

Again, Kobus would have had to have signed off on all of that if it was included in the financial promotions. So he would have ultimately had to have got comfortable with it.

Q. And you would have been happy when he believed what you told him?

A. As a group, yes, it's --

Q. I think that is -- sorry, I may not have spoken clearly.

A. Sorry, repeat that question.

Q. It says on the [draft] transcript, "He would have been happy..."

You would have been happy when he believed what you told him?

A. No, he would have had access to the same valuations that we all had access to and he would have had to have signed off on it. It would have been a discussion between us. I can't say why pounds

were used instead of dollars; that is an error. I can't, you know, sit here now and see why we used a draft from Mr Marshall. I can see that the in-country completed valuations -- my sense is that they had a higher figure attached to them and we wanted to use a lower figure. So that is why they are referenced.

Again, he would have -- as head of risk and compliance, he would had to have been comfortable with that.

Q. But I think even on your own case, you knew that Tenedora had not acquired 100 per cent of the land that it would have needed to commence the development?

A. No, it has options to purchase those parcels of land and what my understanding was is those options were being exercised over a period of time. There were staged payments and my belief is that they were being made over a period of time and if -- because we are now in LCF days, not SAFE days -- if we had to exercise the security, we would have taken the security, we would have paid up all of those options, because then we would have had an asset of far higher value.

Q. So is that your evidence as to how it worked: if the borrower had defaulted, what, Mr Sedgwick as GST would have sprung into action and avoiding --

A. No, LCF, sorry. If LCF, our --

Q. I see, LCF.

A. Our opinion as directors, how we got comfortable with options for Magante, was, if we ever had to enforce security and take the asset, we would have paid up all of the options, whatever is remaining on them, because then we would have been left with a much more valuable asset.

So the option prices were a scrub greenfield but the valuation is valuable touristic land with planning.

Q. From your experience at the bank, you would have known that is never how lenders value security, is it?

A. We have valued security in that way before.

Q. That is not a thought process you went through at the time, that is something you have come up with just now to try to justify something that is wholly unjustifiable?

A. No, I disagree with you: it is not wholly unjustifiable. We are an asset-based lender, we are not a bank. We take a different perspective. We have a valuation from an expert in the Dominican Republic who is an expert on Dominican Republic property, who values assets out there for the Reserve Bank of the Dominican Republic. We have had an appraisal of that by another valuer in the Dominican Republic. They both confirm the same figures. So if we as a company are faced with -- if we have to enforce on Magante, we have got, relative to the size of the asset, a small amount to pay up so we don't have to deal with options, and then the entire site would have been LCF's. We would have then sold to pay down any debt.

Q. So is your evidence standing here today that the figure of £37.95 million is justifiable?

A. The figure at the time should be the figure for the in-country valuer. I don't know why we used Mr Marshall's -- perhaps the reason that we did at the time is because it is a lower value and we felt that showing a lower value of security was more prudent at the time.

Q. You always wanted to have something nice and believable, didn't you?

A. As I said, more prudent at the time. We could have turned around and said a different loan to value, we could have -- I can't remember why the decision was taken. Clearly it was. Clearly the pounds and dollars is an error. We used a lower value of that lower valuation figure but everyone would have been happy -- would have to have been in agreement with that and then Kobus has the final sign-off, would have signed it off.

So we could have done it a different way and we could have taken -- put Perdomo's value in there and then attached a sensitivity percentage, which is often done in the bank, and then done it a different way. So I don't know why that is a different method of valuing, which indeed we did do in the bank.

Q. Coming back to the land at El Cupey, you knew as a former director of El Cupey Limited that the land was -- The Hill was effectively held on trust for the benefit of the Sanctuary investors?

A. Well, not all of it was held on trust. If you look at the development agreement, it actually spells out what they were entitled to and what they were entitled to was a small portion of what the actual value is. So you had to look at the development agreement, which would have been in the loan files for all to see.

So you cannot simply say that all of the land at El Cupey was held on trust for the El Cupey trustees; that's not correct. You have to have a look at the agreements that went with that and a large part of that was indeed not for the El Cupey trustees.

Q. You accept you hadn't made any adjustment here for the interest of the Sanctuary investors?

A. They are not secured creditors; we were. And I believe your client indeed takes that point as well, when they put in their own administrator's reports that they are the only secure creditors. So the same point as here.

Q. But you knew that there was no equity in the shares of Tenedora available on a basis that could be charged to LCF because of the trust arrangements in favour of the El Cupey investors?

A. Again, you need to look at all of the documentation that surrounds that. You are not looking at all of the documentation that surrounds it.

I don't -- I know that they are there. I know that there was more value in it. I don't have the document in front of me, or the calculations, but you have to have a look at that as well and LTD is as a whole, so you are looking at things in isolation; where it stands at the moment is it is a group.

Q. I think we saw before Easter you knew that the shares in Inversiones were held on trust for the benefit of the Sanctuary investors?

A. The same answer: you have to look at everything that was going on at the time and you have to have a look at all the documentation and it is not as clear-cut as you are suggesting.

Q. What is clear-cut, Mr Thomson, is that you were happy to put false values on these assets which you knew were false, so that you could come up with a nice and believable security figure.

A. I can see that we used Mr Marshall's valuation there. As I say, it is an error, dollars versus pounds. No one picked that up and we should have used the in-country valuers. Why we didn't is, I think, as you are saying, so we could represent the lower figure. We wanted to reference where that figure came from. A better method of valuation would have been to use the in-country values, but then attach a sensitising percentage to them and record that there but, as a group of directors, we didn't

do that and I am sure I will be criticised for that, as the others should be criticised for it, as they were sitting alongside me.

Ultimately Kobus, as director of risk and compliance, signed off on this.

Q. We looked before Easter at -- my Lord, I should say I am moving on to a new topic.

We looked before Easter at a GVA valuation of Lakeview. I just wanted to show you some more of those. There is <MDR00013548>.

Do you remember there being a valuation for Ultimate Capital?

A. Yes.

Q. On page 33, at the bottom, after the first paragraph, it says the lodge used as an office and lodges 3, 7, 15, 26 and --

A. From the original purchase.

Q. -- 67 "are held in hand".

So that is the eight lodges that I think you referred to before Easter, isn't it?

A. Yes, those were the ones that I think we discussed on the Lakeview purchase agreement that came with the original purchase.

Q. Yes, and then there is the 36 on the long leases.

A. And then there is the time share, I think.

Q. Then 24 time share lodges.

Then if we go to page 55, it is very similar to the version we looked at before Easter.

A. Yes, I think we addressed it to various different borrowers we were seeking funding from.

Q. There is an allowance for a loss of immunity land; do you know why that is being deducted?

A. I don't know. I would have known at the time but I don't know sitting here.

Q. And then there is another one for Ultimate Capital, <MDR00015672>.

It is page -- is there a date on is this? January 2015. I think may be on page 2 there is -- no, January 2015.

Do you remember this one?

A. I would have seen it, yes.

Q. Then, bottom of page 36, right at the bottom, I think that is the same as we saw a moment ago, isn't it?

A. Which bit, sorry?

Q. The lodges previously used as an office, et cetera?

A. I think -- since it is 2015 -- I think they had been buying some further lodges in by this point. I seem to remember seeing that in some of the disclosure that I've been going through, that they had been purchasing lodges in 14 and into 15.

Q. I think there might be some exchange of contract or some options in 2014 -- we can look at that in a moment -- but there hadn't been any completion of any lodge acquisitions, had there?

A. There is -- there is, I think somewhere, a spreadsheet of all of the lodges and the dates that they completed. I think I saw that over the Easter break.

Q. Okay. Well, we will see if we can find an opportunity to have a look at that in a moment.

If we look at page 72, I think it is the same as the previous but then there is a discount to give a 90-day figure; is that what you understood at the time?

A. A fire sale figure. That would have been -- if this is for Ultimate Capital, that would have been what they asked for, what would have been a fire sale value.

Q. I think you mentioned before Easter that you were also aware of some valuations of Lakeview set by Savills?

A. I think Savills did look at valuing it. I can't remember the detail of it. I think they valued it several years before that as well, for Mr Vernon. I can't remember what those valuations said.

Q. Let's look at what I think is the first one after the acquisition of Lakeview from Savills, which is <MDR00014615>. It says "Private and confidential, for the attention of A Thomson", and then mentions LUKI and then "Sustiniere House". It is a draft. Presumably this was something you would have seen at the time?

A. Yes, I do remember that, Savills having a look at it. I don't remember that they actually completed the valuation.

Q. They mention, first bullet point, a market value and then, second, a market value "with the special assumption that the tie restricting the occupation of the house to an owner or manager of the holiday park is lifted." Do you remember there being discussion about lifting the tie?

A. Yes, there was a tie that went with -- if it wasn't a -- if the holiday site -- it had to be occupied, sorry, in conjunction with the holiday site. It is not simply a residential property.

Q. And then the third bullet point is "investment value", based upon something called "The Lakeview Business Plan 2013 LBPV1." Is that a document you are familiar with?

A. It could be the document that was created by Oliver Clive & Co. I am not entirely sure.

Q. The business plan was to build a hotel with over 100 bedrooms and a further 36 lodges, wasn't it?

A. Yes, I think you are referring to the figures. I am just saying that could be the document that was created by Oliver Clive & Co -- I don't remember, I am just saying it could be that. But clearly there is a document.

Q. On page 18 I think there is a reference to the development proposals. Yes, there is a heading in the middle of the page. They say a 105-bedroom hotel -- is that the right number of bedrooms?

A. Yes, that would have been the planning permission.

Q. Then, on page 21, they mention construction costs in that table at the top of over £23.5 million. That was, I assume, your understanding as to what it would cost to actually implement the development proposals in accordance with the planning permission?

A. Well, we had at the time -- so this is 2014?

Q. January, yes, 2014.

A. Yes. So we actually had a far more detailed appraisal than this that was provided -- that was worked on between myself and Calfordseaden, that, after we sorted the planning permission, we actually put it together and went out to tender. I don't know if you have found that but that was --

Q. I don't think I have seen that. Do you say that was more or less than 23.5 million?

A. I don't remember. I am saying that there was a more detailed one than this that was done. I don't remember the exact figure that -- they would have got it from somewhere, so ...

Q. On page 54, we see there the beginning of their valuation. It is, I think, quite similar to the GVA valuation. They have a small element of the value relatively speaking for the 34 long lease units?

A. Yes, they make an assumption there that profit of around 15 grand per unit -- is that what we are referring to, point 19.1.4?

Q. 19.1.2, the long lease unit.

Then, in 19.1.3, they say there are five three-bedrooms and six A-frame lodges owned by Lakeview Country Club Limited.

Do you think those are the correct figures?

A. I would have to check the other valuations. I don't remember. I know we were buying in -- the lodge numbers will tell you.

Q. They say in the final line there, that is a total of just over £1 million for those. Page 55, at --

A. Just go back a second.

Q. Sure.

A. So that is 11 lodges owned by Lakeview at the top, there five three-bedrooms and six A-frames.

Q. Yes, do you think that was right?

A. Well, we could have very much been -- a programme of purchasing lodges could very well have started, because I think the figure was seven lodges that -- seven and an office that could be turned into a lodge, with the original purchase, I seem to remember.

So that seems to indicate that the lodge buyback programme, if I can call it that, had commenced.

Q. But it was 69 units in total, I think, wasn't it?

A. 69 or 70, I think. If you include the office.

Q. If we just go back to look at the whole page. We saw in 9.1.2, there are 34 long lease units. We know there was always 24 time share units until the time share transaction. If there is then 11 units -

-

A. That takes to you 69, and then there is the office that could be turned into a unit.

Q. Yes, I see. So you think 11 is probably correct at this point?

A. Yes, it looks to me there that the purchasing of lodges had commenced, which is part of the business plan to buy them all back in. It looks like it has started.

Q. Then paragraph 19.1.6, they give a value of £560,000 for the house.

That is on the basis of the restriction. That was your understanding at the time of the value of the house?

A. Yes, reading this, and then -- again, that is what it says, but this is not a final -- it is a draft, so there may have been revisions.

Q. And then 19.1.8, there is the planning consent for the 36 villas at £15,000, a pitch derived from their comparables database. Your understanding at the time is that sort of value would have been broadly right for the --

A. I don't know how that tallies with the GVA valuation.

Q. They had got -- well, they had got £25,000 for each site but --

A. That is quite a considerable discrepancy between the two.

Q. But your understanding at the time was that it would have been somewhere in the region of 15,000 to 25,000 per --

A. We would have gone with the completed valuation as opposed to the draft valuation. The draft is draft. If they haven't completed it and aren't(?) just sticking their name to it, we would have taken the GVA valuation because that is the one that is completed.

Q. Okay, let's -- there is another one. I wonder if this is a completed one. <MDR00014871>.

This is April 2014. If we look at page -- I don't know if it is page 1, 2 or 3. I think it -- no, next page. That is addressed to you at Lakeview Country Club Limited?

A. Yes.

Q. Do you think this is possibly a final version -- it doesn't say "Draft"?

A. I don't know, this is the letter. If you could flick forward to the valuation, it should --

Q. I think page 60 probably has the summary of it, let's look at that.

£4 million, current market value. At the bottom, £4.125 million on the assumption the tie is lifted. Do you remember this one?

A. We would have received it at the time, yes, and it is -- I can't remember how it tallies with the GVA valuation at the same time.

Q. The GVA valuation we looked at was 4.6 million, so same sort of ballpark. Do you agree?

A. I am just reading the top, sorry. (Pause). Sorry, I saw the 29.6 million value at the top there and I am just trying to --

Q. No, I was just asking you about the market value figures. If that was your --

A. That is what the market value says down the bottom.

Q. If it was placed on the market and sold, no doubt you are familiar with the concepts of market value?

A. With a normal marketing time, that is what their estimate of the value is, and that is a bit lower than the GVA figure.

Q. You mentioned earlier the buyback of the lodges. And I think while you were a director, there were a few buybacks that did actually complete. I am talking about the period before August 2015?

A. Yes, I -- there is a -- I have seen the spreadsheet with all of the buybacks on it, and it gives the dates that they were completed -- started and completed, and the figures. I don't know how many, offhand.

Q. I have a reference. I think what you might be referring to is <A1/14/1>.

Is this --

A. No.

Q. -- the document you looked at over Easter?

A. No, that looks like it is taken from some accounting software. No, that is not the document I saw. It was a proper spreadsheet.

Q. So in this document, this was prepared for the purpose of the proceedings using the information from Companies House.

Page 1 is the --

A. Sorry, I thought -- just to jump in, sorry, I thought we were looking for a spreadsheet --

Q. I just wondered if this was the one you were --

A. -- that showed the purchases, that is the Companies House one.

Q. -- talking about -- did I say Companies House? Sorry, I mean the Land Registry. This is taking information from the --

A. No, that definitely wasn't. It was -- the document I saw had all the lodge numbers; it had the purchase price; it had the date the purchase was started; the date the purchase was completed; the price paid for it. And so, it listed all the lodges.

MR ROBINS: Well, my Lord, I see the time. I wonder if we can look for that document overnight?

MR JUSTICE MILES: Okay.

Yes, all right. We will rise now and come back at 10.30 tomorrow -- 10.30 on Monday.

(4.28 pm)

(The trial adjourned until 10.30 am on Monday, 15 April 2024)

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