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 24 - Monday, 15 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

Monday, 15 April 2024 (10.30 am)

Housekeeping

MR ROBINS: My Lord, in terms of housekeeping, we need to begin with some questions of timetabling. I think there are four points.

The first, if we could bring up the latest draft of the timetable, please -- <Q6/7>, page 4. On the next page, my Lord may recall the experts were originally due to give evidence in the last two days of week 15, before the vacation, and the first two days of week 16, after the vacation. Obviously, things have developed since then and, as a result of matters, including the settlement with Mr and Mrs Hume-Kendall, the factual witnesses will finish rather sooner than originally provided. That means we have to bring forward the dates for the experts to attend court.

There is no real difficulty insofar as the two experts who deal with the Surge fee are concerned. They have availability on 13 and 14 May and have been put in at the beginning of week 14.

For Mr Watson, who gives evidence on the values of The Hill and The Beach, he has some commitments in his diary that he is unable to move. The date he can give his evidence by videolink is the Monday of week 15, 20 May.

What that means is, there is potentially a gap in the middle of the expert evidence. We have proposed that that be filled by putting some of the time for preparation of closing submissions into that slot. That results in the delivery of written submissions to your Lordship on the first day of the new term. That's been provided to the other parties. No-one has objected, but I thought it important to update your Lordship.

The second matter of timetabling relates to Mr Thomson's application for permission to spend money on a suite at the Rosewood Hotel. Ms Dwarka and I propose that that be dealt with first thing this morning, subject to your Lordship. All the evidence has been filed. It is really not extensive. I don't think your Lordship needs any time for pre-reading because we can take your Lordship to the relevant documents and submissions and, equally, I don't think it is something that requires the preparation of skeleton arguments. So, if your Lordship is content, we can deal with that first thing this morning.

MR JUSTICE MILES: I was wondering about dealing with that last thing this afternoon.

MR ROBINS: We are in your Lordship's hands.

MR JUSTICE MILES: So we proceed with Mr Thomson's evidence, and perhaps deal with it at 4.15.

MR ROBINS: Yes.

MR JUSTICE MILES: Are you happy with that?

MS DWARKA: Yes, my Lord.

MR ROBINS: Certainly no objections on our side.

MR JUSTICE MILES: Is Mr Thomson here?

MS DWARKA: He is. He is sitting outside.

MR ROBINS: The third matter that has to be scheduled is the claimants' application to amend the pleading as against the fifth and sixth defendants. As part of that, we also need to deal with the costs of the amendments which the fifth and sixth defendants have confirmed they seek, notwithstanding your Lordship's preliminary indication about reserving those costs.

The position there is that Kingsley Napley filed their evidence in response yesterday evening. I don't think we are going to want to file any evidence in reply. It is something that could be heard in fairly short order. I would have thought a time estimate of two hours should be more than sufficient. We are in your Lordship's hands as to whether your Lordship wants a reading list or skeleton arguments or anything else in advance of that.

MR JUSTICE MILES: It might be helpful to have short skeleton arguments, I would think.

MR ROBINS: The natural place for hearing that would probably be at the end of Mr Thomson's evidence, or at the end of his re-examination, before Mr Sedgwick is sworn in, which would put it towards the end of this week, on the current timetable.

MR JUSTICE MILES: Are you on track to finish with Mr Thomson by the end of Wednesday?

MR ROBINS: I am, yes. What I don't know is how long my learned friend would want for re-examination.

MS DWARKA: So far, I have got a short re-examination. Ten minutes, probably.

MR ROBINS: So, we can probably finish with Mr Thomson on Wednesday, all things going well. Obviously, if there are lots of breaks, it may go a bit slower, but I think that should be entirely feasible.

MR JUSTICE MILES: Has anyone been in touch with Mr Sedgwick? I noticed that he's online today.

MR ROBINS: I don't think we have been in touch with him recently.

MR JUSTICE MILES: Mr Sedgwick appears to be -- at least his icon appears on the screen. But on the current timetable, then, he would start on Thursday. But I think it would be sensible for your solicitors just to confirm that with him.

MR ROBINS: Yes. That can be done.

So, if the application to amend is heard on Thursday --

MR JUSTICE MILES: I could appear the application to amend on Friday this week, if it would assist, so we could carry on with this timetable.

MR ROBINS: We are very much in your Lordship's hands. We wouldn't, on this side, have any difficulty attending on Friday.

MR JUSTICE MILES: Are you able to do it on Friday?

MR LEDGISTER: My Lord, I have personal commitments on Friday. I can see whether or not I can move them, but as things currently stand, it would present difficulties for me.

MR JUSTICE MILES: Personal commitments generally don't --

MR LEDGISTER: Absolutely, I get that. But, given the -- clearly, there was no expectation to be sitting on Friday this week --

MR JUSTICE MILES: I understand that. But, nonetheless, there is always the chance of sitting on Friday.

MR LEDGISTER: Absolutely. I can certainly do what needs to be done. I was actually going to ask the question as to whether or not Mr Sedgwick -- is there any indication that Mr Sedgwick will be here as per the timetable. Clearly, it suggests that he should be. But I wonder whether or not an indication can be given because that may allow time for us to have the argument should anything be moved with regards to his attendance. But I hear what my Lord says with regards to Friday and I will deal with what needs to be done. It is purely childcare arrangements, when I say "personal".

MR JUSTICE MILES: All right. Why don't we park that, just for the time being, but I will either deal with that -- at the moment, I will provisionally say we should deal with that on Friday morning, I think.

MR ROBINS: The fourth and final point, which I think will follow what your Lordship has just said, is the position regarding the disclosure of the fifth and sixth defendants following the evidence from Kingsley Napley. Kingsley Napley have served the first witness statement. The second witness statement dealing with the open text points is expected tomorrow. Obviously, now is not the time to get into it, but what I can say is that the contents of the first witness statement are deeply concerning and it is already clear that this is a matter which will require further consideration by your Lordship. Obviously, it doesn't really make sense to get into the matter until we have seen the second witness statement, but it strikes me, in light of what your Lordship has just said, that Friday might be a suitable occasion for that debate as well.

MR JUSTICE MILES: Okay. I will wait on that one.

MR ROBINS: In which case --

MR JUSTICE MILES: I think what we will do is now continue with Mr Thomson's evidence.

MR ROBINS: Yes.

MS DWARKA: My Lord, Mr Thomson did tell me this morning that he has been in pain since midnight and he has asked me to just let you know that, if he does need to stop. I just thought I'd let you know.

MR MICHAEL ANDREW THOMSON (continued)

A. My Lord, before we start, can I say a few words and perhaps expand on some of my answers from last week? Would that be possible, or not?

MR JUSTICE MILES: Yes. I think, as discussed on an earlier occasion about documents --

A. I won't be referring to any documents.

MR JUSTICE MILES: All right, yes, by all means.

A. Thank you, my Lord. Just to confirm, I have not discussed any of this with anyone at all. I'd like to thank the court for their understanding, allowances for my medical conditions. I find giving evidence difficult, as I was/am in pain and concerned with the long-term prognosis of my back, plus I have my mental health issues to deal with.

I realise that my answers in places were not as robust and as clear as I would have liked and I will endeavour, as best I can, to give a better account of myself going forward.

My Lord has asked me on a couple of occasions now about my approach to emails and I have confirmed that, especially when busy, I adopted an "If it is urgent, they will get back to me" approach, or, if I was cc'd and believed others were engaged in dealing with the task, I would let them get on with it, relying on them to contact me if there was an issue.

My Lord also asked if, in my inbox, you can see if you were cc'd, and I didn't know the answer at the time. I am now able to confirm that it is a feature of Mac Mail, which I have used for many years now, that you can not only see the sender, you can see the subject, but you can also see the first three lines of the email. So I'm able to see who the email is really addressed to and what it is concerning.

So, if an email comes into my inbox, I can see if I need to do anything or if I am simply being copied into something. If it is the latter, my practice was to rely on those others who I knew were dealing with the subject task in the email to do their job and engage with me specifically as needed.

An example is, if Mr Sedgwick emailed Mr Lee and copied me in, I can see from the subject of the email what they were engaged with and, from the three-line preview, the flavour of what they were discussing. I would be able to see all of this and work out, without opening the email, if I needed to take anything further. As I have previously said, my practice was not to delve further and to rely on others to engage specifically with me if they wanted or needed my input. Mr Robins took me to an email exactly like this, and I confirmed that I would not have necessarily opened the email. I have checked my diary at the time, which the claimants have a copy of, and can see that I was, indeed, in hospital seeing an ENT consultant, so I believe I would not have opened the email that Mr Robins was referring to and cannot remember LCF's lawyer bringing it up with me.

Further, my approach to emails needs to also be taken in context. I was more often than not out of office, working remotely, both before LCF proper and during the LCF years -- I can go into more detail if my Lord would like me to do so -- so I would be receiving a large portion of these emails on my iPhone, which isn't the best medium for reviewing documents such as spreadsheets, legal documents and valuations. As I said last week, I can see how this practice has caused me to miss things that I should have been aware of, but, as Ms Benjamin of Oliver Clive confirms in her interview, it was my practice to talk things through, as opposed to email, and I relied on others doing their tasks and directly engaging with me if they needed input or assistance, as all were aware of my remote working patterns and did contact me, if needed, and I believe Mr Huisamen, in one of his interviews, confirms that I was always available to be contacted, if needed. I do not know why this detail didn't come to mind when my Lord asked me. I can only say that my experience of giving evidence is, at times, overwhelming, and there are a number of occasions that I have thought of things I should have said but missed the chance.

We discussed in court the valuation of Mr Jonathan Marshall in relation to various properties. Mr Robins took us to a spreadsheet and he indicated that it was used to confirm the valuations in respect of Leisure & Tourism Developments that were to be relied on for the purpose of financial promotions. Mr Robins made the point that LCF used Mr Marshall's valuation to simply lower the total security value, so as to be more believable. I would point out that this was not the purpose of the spreadsheet he took the court to. The primary use of the spreadsheet was for internal purposes when comparing loan quantum against available security value, not financial promotion. By using a lower valuation, LCF was limiting the total the company would be able to use as security for its loan. Mr Huisamen chose to use the figures when determining what figure could be divulged regarding

loan security. All directors were able to, and empowered to, have an input, but Mr Huisamen had the final say regarding any financial promotion information, as he confirms in both of his interviews. Once he confirmed he was happy to use a figure, LCF was able to use it as necessary.

Additionally, I appreciate that Mr Robins has pointed out the line in the valuation that says the document is for internal purposes -- this is the Jonathan Marshall valuations -- and not to be used or relied upon for loan security. However, the document was passed to LCF in a large file and LCF chose to use it internally.

LCF had, in the same file, valuations for far higher amounts, but chose to use a lower figure and simply referenced it in its internal spreadsheet as a source of information. LCF was not using/relying on this document in the traditional sense that I believe Mr Marshall was referring to; ie, a valuation that is specifically linked to a loan and the valuer's PI is on the line. LCF simply used the document as an indication and reference to attribute a lower value than the other valuations it had for the assets in question. Regarding the spreadsheet, it is one of LCF's back-office working spreadsheets that was maintained by the back-office team. I do not know who inputted the pounds instead of dollars error, but I believe it was a mistake, as can be seen from the spreadsheet. A euro to sterling calculation has been made below those figures, so, again, I believe the dollar to sterling was indeed an error by whoever inputted the figures. Turning to the influence of Mr Golding, Mr Robins suggested that Mr Golding had instructed LCF to offer compound interest and that the issue of November '15 of the altered application and the apparent agreement between Mr Golding and Mr Russell-Murphy -- although we only have this suggested to by -- in the third person email -- to offer compound interest was then confirmed by me to Mr Huisamen some three months later as evidence of Mr Golding's influence.

I would make the following point: LCF did not offer compound interest, so where is the influence of Mr Golding? There is none. I believe that the conversation probably did happen between Mr Golding and Mr Russell-Murphy, but this was simply overstepping the marketing assistance he was providing and should have been brought to me before any action was taken. As we have seen through this case, rightly or wrongly, Mr Russell-Murphy does rather ski off-piste and, if caught, asks for permission later. I believe this is one of those instances.

Was offering compound interest a good idea? Plenty of financial instruments offered it, but not LCF, who preferred simple interest, and our information memorandums reflect the same. So, I say, again, this is not an example of Mr Golding's influence; it is an example of overstepping the mark and LCF going its own way.

Moving to "rapacious depredations", I have reviewed my notes around this time and the description I had was "to stop the unsatiable appetite of fee-income professionals surrounding a company in trouble and to stop them preferring themselves over the bondholders". I believe the wording that was inserted into my witness statement by my lawyers was -- (inaudible) the same thing, but simply saying in fewer words. Lastly, Mr Robins suggested that I was lying about contacting M&G in terms of trust work. I would direct the claimant to look up documents from Tony Petrou of Pru M&G, who is the head of corporate trusts. His details are in the contact sheet that you have on file. And, with regard to Black Swan, look up Fergus Tomlinson, who is the head of strategy. That's what I have to say, my Lord. Thank you very much for that.

MR JUSTICE MILES: All right. Thank you.

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

MR ROBINS: Mr Thomson, towards the end of last week, we were discussing the fact that, while you were a director of Lakeview Country Club Limited, you were involved in the buyback of a few lodges.

A. Could you be more specific on "company"? Because it was several companies that we used. Sorry, I don't mean to be contentious.

Q. Lakeview Country Club Limited.

A. There was a lodge buyback programme. That was dealt with largely by Mr Barker and Mr Peacock. Again, I ask which company, because there was a company called Lakeview Lodges that did acquire a couple of them. I was involved with Lakeview Lodges, hence the question.

Q. Let's have a look at <MDR00015248>. This is an email from Mr Sedgwick to you and others about completion of the purchase of lodge 20. That's the sort of transaction I'm talking about. While you were a director of Lakeview Country Club, you were involved in the buyback of a few lodges, weren't you?

A. Could I just read the email, sorry? Again, this might not be into Lakeview Country Club Limited. It might be into a different company called Lakeview Lodges. It doesn't say. But he's writing to me in my capacity as IRG, not Lakeview Country Club.

Q. The price payable to buy back the lodges was fairly low, wasn't it? We see £70,000 there. It was often below £100,000?

A. Again, that was -- the buying back of lodges was a Mr Peacock/Mr Barker task. At that point, which is later on into 2014, yes. I can't remember when I ceased to be a director. I was engaged in other things at that time. I had finished -- the tender document had gone out by Calfordseaden. I believe the power lines had been lowered. We had secured planning. And, at that time, I think I was engaged with other things in the city. Mr Barker was slowly taking over the duties down in Lakeview. But at that time, I was doing various different things. So --

Q. But you were aware which lodges were being bought back, weren't you? You were copied into all of these emails?

A. As I have said, copied in, but the lodge buybacks was Mr Barker and Mr Peacock. I can see I'm being copied into this, but I didn't have any direct correspondence on it --

Q. Mr Thomson, it is not that you are copied in, if you look at it. The email is actually addressed to you and Mr Hume-Kendall. It is Mr Barker who is copied in?

A. I can absolutely see that and I take your point, Mr Robins. What I'm saying is, the lodge buyback programme was largely overseen by Mr Barker and Mr Peacock. I am aware that they were bought in. I'm aware the funding was raised to acquire them. But I left that task to others that I knew were dealing with it.

Q. But you were kept informed and you knew when contracts were being exchanged and when completion occurred?

A. I was kept informed, absolutely, and I was aware that completions were occurring. As I mentioned last week, there is a spreadsheet that I saw of the lodge acquisitions and -- that would have price, date that they were done, and so on and so forth.

Q. Let me show you the one we looked at, at the end of last week. It is <A1/14/1>. This is based on information from the Land Registry. The first page is the titles that were acquired on completion of the acquisition of the Lakeview site. The next page has the various lodges that were bought back.

You see that, for the first block of them, there is a price of £31,750?

A. Sorry, I'm not seeing that.

Q. It's in the column "Price paid" [page 2]?

A. Oh, there we go, yes.

Q. Those are the timeshare lodges which were acquired in a single transaction and the total consideration was divided between the number of lodges. But if we look at the transactions below that, the first one is a price of £100,000. That was fairly typical, wasn't it, for lodge buybacks?

A. Again, I didn't deal with it, Mr Robins. This isn't my spreadsheet. Mr Barker and Mr Peacock largely dealt with the lodge buybacks.

Q. This is lodge 20 that we were just looking at the email --

A. Yes, I know.

Q. -- sent to you.

A. It also said in the email "lodge 19" in there as well. So there was -- the email referred to. The subject line was lodge 20, but the body of the email was lodge 19. But, as I say, the programme of lodge buybacks -- and I've seen emails in disclosure -- was largely dealt with by Mr Barker and Mr Peacock.

Q. But you said a moment ago you were kept informed. You knew which lodges hadn't been acquired, didn't you?

A. No, I left it to them. I believed the lodges were being acquired. But the programme of purchasing, I -- from Lakeview, I took over Lakeview in 2013. Lakeview was an extremely rundown resort. We kept the resort opened because it needed cash flow. We retained the staff. I had to put an entirely new management structure over the top of it. I sought builders, commenced a refurbishment programme which went into '13 -- into '14. We went -- I worked on securing planning with Calfordseaden. We worked on dropping the powerlines, which is a large body of work, with the electricity provider. And we worked on a significant tender document and went out to tender. That's what I was predominantly dealing with with Lakeview. Other tasks, such as purchasing lodges, I largely left to others. I can appreciate that Mr Sedgwick has pinged me an email there and he's also sent it to Mr Hume-Kendall, copying in Mr Barker. It was -- it is right that he emails the directors, but I left others to do this. So in terms of what lodges were bought back in when, I would have to say, no, I wasn't aware. I left it to others.

Q. We are going to come back to this, Mr Thomson, on another day. I am going to move on to something else for now, my Lord.

At the time of the acquisition of the Lakeview resort, you held 75 -- you owned beneficially 75 per cent of the shares in Lakeview Country Club Limited?

A. No, I didn't own them beneficially for me. The large portion of that was beneficially owned for the Golding family. I owned 5 per cent.

Q. If we go to <MDR00010565>, Mr Sedgwick emails you and Mr Hume-Kendall, "Shareholding of Lakeview Country Club Limited", and he says:

"Dear Andrew and Simon.

"I confirm that Buss Murton Nominees Limited holds the only share in Lakeview Country Club Limited. This share is held on trust for Michael Andrew Thomson as to 75 per cent and Helen Charlotte Hume-Kendall as to 25 per cent."

Why do you say Mr Sedgwick is saying that, in light of your previous answer?

A. We have gone through it in this courtroom on a number of occasions, showing that I hold the vast majority of those shares on trust for the Golding family. I am still working in the bank at this point. I have just tendered my resignation. I have put nothing into Lakeview Country Club. The point you're suggesting is that I'm just given 75 per cent of a company for nothing, having not worked on it, not even heard of it before. It doesn't make sense, Mr Robins. As we have seen through different correspondence, the shares across the board I hold largely for the Golding family and I have 5 per cent. This has been discussed in court on numerous occasions.

Q. If we go to <EB0000596>, there is an email from Mr Sedgwick to Mr Hume-Kendall, copied to Mr Barker and you. After referring to Mr Visintin's shares which have been bought out. He says:

"... as I understand it the shareholdings will be: "Andy personally 5 per cent.

"Helen 23.75 per cent.

"Andy on trust 71.25 per cent."

That's what you say is the correct position?

A. Yes, as we have said before -- I mean, this is three months on from -- I think three months on, two and a half months on from the email you took me to previously. I have said throughout that I hold a large proportion on trust for the Golding family.

MR JUSTICE MILES: This is, I think, several years later, isn't it?

A. Yes, this is '15, my Lord, correct. Mr Robins, you have gone 20 February '12 to 6 February 2015, you're several years on.

MR JUSTICE MILES: Well, three years on.

MR ROBINS: Yes, this is what you say was the position as at that date.

A. That's what Mr Sedgwick is confirming, and I believe, in this court, we have discussed and it's been brought up that I hold a significant portion of those shares on trust for the Golding family.

Q. In fact, 7,625 shares were transferred into your personal name, weren't they?

A. I can't remember when they were, but I left that to Mr Sedgwick and Mr Peacock to apportion those.

Q. Just to jog your memory, if we look at <D8-0062179>, I think we need to go a few pages on to the shareholder details, if you see the full details of shareholders, shareholder 2 is 7,625 ordinary shares for you. You say you held the bulk of those on trust for Mr Golding and his family?

A. Yes. As I have said before in this court.

Q. On 27 July 2015, 100 per cent of the shares in LCCL were sold to London Trading, weren't they?

A. Sorry, that date was again?

Q. 27 July 2015?

A. I can't remember the exact date, but there was -- the sale, I believe, went ahead. I can't remember the date, sorry.

Q. Let's look at <C2/1>, page 8. This is your trial witness statement. In paragraph 25, you say: "Shortly after that, on 27 July 2015, LCCL was sold to a newly incorporated holding company owned by Simon and Elten."

That's the correct date, isn't it?

A. Yes, I would have got the date from a document, so, yes, I will accept that.

Q. In the next sentence, you tell the court you played no part in that transaction because you'd already exited on 15 July. Is that true?

A. I may have signed the document because I still beneficially owned some shares, but I essentially sold them in my buyout agreement.

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

A. Well, I have just told you that it is, Mr Robins.

Q. Well, from April 2015 until 27 July, you were closely involved in the plans to restructure the ownership of the Lakeview resort, weren't you?

A. Well, up until I bought out -- I was bought out, I was still working with them. So up until that point, we were still working together, so I would have been.

Q. From 15 to 27 July, that continued to be the position?

A. No, there is a grey area handover period that there's documents that need dealing with -- I don't think those 12 days turn on anything.

Q. Do you remember the initial idea was for 100 per cent of the shares to be sold in return for £6.75 million of loan notes payable in the future?

A. Was it then changed -- I think you took me to another document that was two-point-something.

Q. Just answer that question first. Would you like me to repeat it?

A. Yes.

Q. Do you remember the initial idea was for 100 per cent of the shares to be sold in return for £6.75 million of loan notes payable in the future?

A. I don't remember specific quantum. I know that there was change. Again, do I remember that because you took me to it? I ...

Q. Let's see if I can assist. <D8-0000501>. It is from Mr Sedgwick to Mr Hume-Kendall and you. This is April. Paragraph 3:

"Andy and Helen sell LVCC to LTM for £6.75M to be paid by loan notes repayable in 8 years." That's the transaction that was initially contemplated, isn't it?

A. Yes, it clearly is. That's what it says there, yes.

Q. Lewis Silkin were instructed, I think, to assist in drafting some of the documents?

A. I don't remember. I believe Simon was dealing with Lewis Silkin at that time on this.

Q. If we look at <D8-0000507>, Mr Sedgwick is emailing Graham Reid at Lewis Silkin, copying you and Simon. You were involved in the instruction of Lewis Silkin, weren't you?

A. I believe that was Mr Hume-Kendall, on this occasion, dealing with this, as I just previously mentioned.

Q. Then, as you mentioned, I think, as you recall, in the middle of July, there was an agreement to reduce the price from £6.75 million to a little over 2.1 million?

A. Yes, I believe you took me to a document.

Q. You were involved in those discussions?

A. The rationale behind it escapes me. I would have had discussions at the time. I don't remember them specifically. The restructuring largely came between Mr Hume-Kendall and Mr Golding as the majority shareholders.

Q. But, as a 5 per cent shareholder, you obviously had to agree to that as well?

A. As a 5 per cent shareholder, you kind of -- you go along with the majority shareholders. They can easily vote you out anyway. Yes, I was kept informed to a certain extent. I don't remember vast specifics of it. It's -- the restructuring is usually Simon's bag and deals with Mr Golding on that.

Q. So, when we look at <D8-0001352>, for example, which I think we looked at earlier, you are copied and you're being told about an agreement that's reached between Mr Spencer and Mr Hume-Kendall. That's how it worked, is it?

A. Those two agreed, yes. They were the majority shareholders, so in terms of structure and shareholding, yes.

Q. If we look at the attachment which we looked at before, which is <MDR00016481>, is that the answer that you would give if I asked why you were not a party to this agreement?

A. Sorry, can you rephrase? I'm not sure what you're asking me.

Q. You were saying that these matters were agreed between Mr Golding and Mr Hume-Kendall. I'm asking if that's the answer you would give if I were to ask why you are not a signatory to this agreement?

A. And, also, I believe the date on this email was the 16th. So, I'm exiting at this point in time, and, yes, Mr Golding and Mr Hume-Kendall dealt with share structures between them. I mean, as this says, this is -- I think they called it the "Golding-SHK agreement", I think was the subject line of the email.

Q. Then if we look at <D8-0001354>, this is the same day. I think we might have looked at this as well. Mr Sedgwick emails you and Mr Hume-Kendall, attaching the amended sale agreement for the

total price of over £2.1 million. He's underlined the amount payable to you and asked you to confirm it is correct so far as you're concerned. So, is your evidence --

A. I think the underlining there is because that's the end of a sum.

Q. Yes, I think you might be right.

A. I don't think it is underlining specifically for me, Mr Robins.

Q. I think that's right. But the effect is he's underlined the sum payable to you. Is your evidence that you were essentially told what had been agreed, you had to go along with it?

A. Well, as I believe my buyout says, this would form part of my buyout agreement, although I still have a beneficial interest going forward until they have bought me out, and I can't remember exactly what the memorandum of understanding says, but, basically, I am to vote my shares with them, I have no control and they're buying me out. So this, I believe, is in line with that.

Q. You said, on Day 22 of this trial, talking about the Lakeview -- the sale of Lakeview Country Club Limited to London Trading, that -- when I asked you, if you'd sold your shares to Simon and Elten, how come you were selling them again to London Trading, you said: "Answer: ... I had effectively sold that 5 per cent and this is just an execution."

Is that how you would phrase it?

A. I think I'm saying the same thing in slightly different words. This is -- I had sold -- I had been bought out. I hadn't been paid. So I still had a beneficial interest. There were -- at times, Mr Sedgwick and Mr Hume-Kendall asked me to sign things because I still had a beneficial interest and hadn't been paid out. Although I couldn't vote or do anything with that beneficial interest. I think this is the same thing.

Q. If we go back --

A. I was guided very much by Mr Sedgwick and the lawyers on what should and shouldn't happen.

Q. If we go back to <C2/1>, page 8, in paragraph 25, you said:

"... LCCL was sold to a newly incorporated holding company, owned by Simon and Elten."

In fact, on Day 23, you confirmed that the newly incorporated holding company was London Trading and that you owned 5 per cent of London Trading, which is correct, isn't it?

A. No, I'd been bought out. Just because my name was there -- the overriding purpose of the buyout agreement was that I was bought out of my -- the 5 per cent. I didn't deal with the administration of making that happen. As far as I was concerned, I was bought out. I still had a beneficial interest. I couldn't vote those shares. They had to be voted in line with the other shareholdings. I essentially handed that away. So, I think this is, again, what I was referring to.

Q. This is why your story doesn't make sense, Mr Thomson, because you say that the sale on the 27th to London Trading was the execution of the buyout, but you owned 5 per cent of London Trading, so you continued to own 5 per cent of Lakeview Country Club after 27 July?

A. No, Mr Robins, you're muddling things up. I was bought out on the 15th. I hadn't been paid out. I still had a beneficial interest in 5 per cent until they paid me out. I had agreed that any voting of that 5 per cent would be in line with the majority shareholders. I didn't -- I wasn't able to have any say at all going forward. And I was -- any documentation that they had me sign or I was involved with was

because of that 5 per cent beneficial interest that hadn't yet been paid out. It's not that I still retained 5 per cent actual shares. I had a 5 per cent beneficial interest that hadn't yet been paid out. If the paperwork isn't quite right, I didn't draft the paperwork. That was Mr Sedgwick or Lewis Silkin at the time. But I had a 5 per cent beneficial interest that was being paid out.

Q. London Trading became a subsidiary of London Group Limited, didn't it?

A. I cannot remember.

Q. Let's have a look at the structure chart --

MR JUSTICE MILES: Mr Robins, can I just ask a question? On that previous document, which showed that you were going to get £100,000 or so, did you receive that at the time?

A. I can't remember, my Lord. I don't think I -- I'm not sure. I will have to check my bank statements. I can do that and come back to you. But that -- I think it was 105 -- would have formed part of my overall buyout figure. I can check my bank statements and let you know, my Lord.

MR JUSTICE MILES: Sorry, Mr Robins.

MR ROBINS: I can ask a follow-up question to see if it assists. Can we look at <D8-0001473>. No, wrong one. <D8-0001474>.

A. Sorry, can I just make a note of what I need to come back to? Just give me just a moment. Sorry. The end of July, wasn't it, Mr Robins, the 105,000?

MR JUSTICE MILES: Don't worry about that, Mr Thomson. Just listen to Mr Robins' question.

MR ROBINS: On the screen is a loan note issued by London Trading & Development Group Limited in the sum of a little over £1.6 million. Do you remember getting a signed version of this loan note on 27 July 2015?

A. It references me. I don't remember the document. I may very well have done. It's obviously -- it references me, so ...

Q. If we look at <MDR00016700>. We looked at this, the email from Mr Sedgwick to you. It says in paragraph 1: "You and Helen sold your shares in Lakeview Country Club Limited ... to London Trading and Development Group Limited ... for [£2.1 million] which was satisfied by the issue of loan notes issued by LTDG." You understood at the time that what you got in return for the shares was loan notes, didn't you?

A. It says it there. I believe the loan note you took me to before, although it was made out to me, was 1.6 million, I think. So that would have been myself and the Golding family.

Q. Yes. You saw it was an unsecured loan note?

A. I missed it, sorry. Can you take me back to it?

Q. <D8-0001474>.

A. Yes, it says it at the top.

Q. So you understood at the time you didn't retain any sort of beneficial interest. You received an unsecured debt obligation in return for the shares; yes?

A. That's what it said. Again, this happened after my buyout, so I was concentrating on now trying to figure out what I'm going to do with LCF and move on. There is no date at the top -- was this after the 27th?

Q. This is what was issued on the 27th.

A. So just after my buyout agreement. So, again, I'd see this as administration, that things were being restructured, but I had already, over the top of all of this, sold my interest, although I still retained the 5 per cent beneficial interest until it had been paid out. So I can't answer why this wasn't done before. That would be a question for Mr Sedgwick.

Q. This is an unsecured loan note. There is no retained beneficial interest, is there, Mr Thomson?

A. What we were trying to achieve with my buyout is the value of the entities we were working on, it recognised I had a 5 per cent share in that. After my buyout agreement, I was being bought out at 5 per cent of anything and everything and my understanding would have been at the time that this would have been captured by that. Part of the loan note, the funds that came from that, would be part of the consideration that was due me. So I didn't see this as a separate thing.

Q. The reality is that the thing you described as a buyout didn't happen. In reality, you simply continued to own 5 per cent of everything?

A. That is incorrect, Mr Robins.

Q. If we go to <EB0007549>. This is the structure chart prepared by Mr Peacock.

A. Do you have a date on that?

Q. Yes, at the top left.

A. Thank you.

Q. It's 26 October 2015. Above that, it says "As at 30 September 2015". So it is around that time. So IRP LLP owns London Group Limited, which owns, on the left-hand side, LTDG, which owns Lakeview Country Club Limited. You owned beneficially 5 per cent of the shares in London Group Limited, didn't you?

A. Beneficially, I had 5 per cent of the shares that I was being bought out of. I note this slightly changes from the structure chart you took me to last week that had London Capital & Finance in it and I note LCF is no longer in here. Sorry, just an observation.

Q. If we go to <EB0007134>, this is from Mr Sedgwick to Mr Peacock and you on 2 November 2015, and he says: "Thank you for this. I agree the structure chart but would make the following comments:

"1. International Resorts Partnership LLP holds the shares in London Group as trustee for the shareholders and does not have a beneficial interest in those shares."

You were one of the shareholders as to your 5 per cent, weren't you?

A. Beneficially, Mr Robins. I wasn't a shareholder. I was bought out of everything from 15 July. Yes, I continued to have a beneficial interest until that beneficial interest was paid out. As I said -- I believe it looks there -- I'm not a director of various of the companies that they finally got around to removing me from.

Q. If we go to <EB0139158>, this is a deed of trust executed by IRP LLP. If we turn to the next page, it shows, at the bottom of the table, you were the beneficial owner of 557,503 A ordinary shares of £1 each in London Group Limited. That was your understanding of the position at the time, wasn't it?

A. Again, beneficially, my buyout agreement, yes, I am beneficially 5 per cent of everything, and I was being bought out, so they hadn't paid it out at the time. I couldn't vote my shares. I had no -- that's what we were trying to achieve.

Q. Now, we saw --

A. That's why my signature, I believe, is not on there.

Q. I think that's because, at this point, you were not a member of International Resorts Partnership?

A. Because I was bought out and I wasn't having anything to do with it.

Q. By 4 August 2015, Surge had started to sell LCF bonds, hadn't it?

A. It would have been around that time. I don't remember the specific date.

Q. Do you remember that, by the middle of that month, they had already closed deals worth about £11,000 and had another £360,000 in pending applications?

A. I don't remember the specifics. As I say, they were starting to facilitate purchase of the bonds, yes.

Q. It must have seemed at the time as though LCF was going to have plenty of money to lend out to borrowers?

A. It started to -- it started to generate funds.

Q. Do you remember discussing with Mr Hume-Kendall and Mr Barker and Mr Golding a concern that the shares in LCCL could have been sold for more than £2.1 million?

A. I don't remember that conversation. It may very well have happened, I just don't have a recollection of it right now.

Q. Let's look at <EB0005518>. It is an email -- if we look at the top -- from Mr Sedgwick, dated 18 August, to you -- to Mr Hume-Kendall and Mr Barker, copied to you and Mr Golding. He says:

"Further to the meetings last week ..." Do you remember meetings in the week commencing 10 August?

A. Not specifically. Again, I'm copied into this. I may not have -- it's August '18. So I'm endeavouring to get LCF going. I may not have been in at those meetings at all. I may not even have opened this email.

Q. He says:

"I think that the major question about this is whether we amend the price being paid by LTDG for the shares in Lakeview Country Club Limited." Do you remember discussing that as a major question?

A. I don't have a recollection of this, no. I know they were restructuring for various different reasons. As I say, that was usually a Mr Golding/Mr Hume-Kendall, and then, latterly, Mr Barker came into it. But, looking at the time, August '15, I was endeavouring to get LCF off the ground. Looking at the email, the subject line, "Restructuring", well, I agreed to buy out -- be bought out. They're restructuring. Yes, I still hold a 5 per cent beneficial interest, but I could very much see this as, "Oh,

they're restructuring again, let them get on with it and, if they need to engage with me, then they will". I don't have specific recollection of this. Sorry.

Q. Do you remember reaching an agreement, "Well, we won't actually increase the price now but we will include a mechanism that will allow for a price increase in the future"?

A. Same answer, Mr Robins: I think this possibly is a better question to Mr Sedgwick, seeing as he drafted the email.

Q. Let's look at <EB0005581>. Mr Sedgwick, in August, emails Mr Hume-Kendall, you and Mr Barker and says: "Further to discussions the other day, I have amended the contract for the sale of shares in Lakeview to include provision for an uplift in price ..." Do you remember discussions in August 2015 about amending the contract to include provision for an uplift in price?

A. I don't have a recollection specifically of this. But we all still occupied the same office. So I may very well have had a conversation about it. I just don't remember it today. Again, this is after I was -- agreed to be bought out. So I was concentrating more on LCF than what they are doing with the companies that they retained. You know, part of my buyout and the memorandum of understanding that went with it was I couldn't vote my 5 per cent shares, I couldn't have any say in the companies. So how they restructure it, I'm largely a passenger.

MR JUSTICE MILES: Mr Thomson, is it right that, as you -- on your evidence, the -- if the price was increased, you would get more money?

A. Overriding all of that is my buyout agreement and I couldn't receive any more than the value of my buyout agreement.

MR JUSTICE MILES: If the --

A. If they sold --

MR JUSTICE MILES: If you were entitled to 5 per cent and the price went up, then you would get more money, wouldn't you?

A. Beneficially, it follows I would receive more money.

MR JUSTICE MILES: So were you interested in knowing about this because it would affect the amount of money that you would get?

A. I think, looking at the time, my Lord, I would have been very much more busy with other things, and I don't think I would have paid this a large amount of time because they liked to restructure things on a fairly frequent basis. Yes, as a byproduct, if the assets are sold for a larger sum, it follows that my beneficial ownership would be more valuable, yes. I just don't remember these conversations at that time.

I remember August 2015 as very busy. I spent quite a lot of time out of the office with lawyers. But it follows, my Lord, that, yes, that's correct.

MR ROBINS: If we look at the attachment <EB0005583>, this is a revised version of the SP**A.** Do you see you're still a party?

A. I see -- yes, I can see that.

Q. On page 6, at the bottom, the purchase price, clause 3.1, is still loan notes of just over 2.1 million?

A. This is the document you took me to last week, yes, I think?

Q. No, this is a draft from August 2015. I will show you the thing that's new. It is on page 7. There is a new clause 3.4. It is your evidence that you were not involved in any discussions about the insertion of any provision along these lines?

A. No. Telos claim, that was very much Mr Hume-Kendall and so was the timeshare side of things. So I don't remember this being said. I know there was claims going on, but I don't remember this going in there.

Q. Presumably, though, given it was an agreement that was going to require your signature, you would have needed to read it and understand it before you signed it?

A. Again, I was bought out, so what they did with their companies, yes, I appreciate they are -- I can't remember the documents, but they did ask me to sign a number of documents because of my beneficial ownership. I don't remember this clause being added. I remember that there was discussions on Telos claims and timeshare claims that had been discussed in the previous years.

Q. With the Telos claims, I think you said a moment ago that was really a matter for Mr Hume-Kendall. But you remember that, during 2013, when LCCL was acquiring the Lakeview site, the Telos investors were assigning their claims against Telos to LCCL?

A. Yes, that's what I said. So I'm aware, several years before, that the Telos claim had been discussed and had come up. So it's not -- the Telos claim is not new news to me.

Q. All those assignments had taken place long before the signature of the first version of this SPA on 27 July 2015, hadn't they? All those claims had been assigned in 2013?

A. So, they were assigned to the -- I can't remember the wording of the documents, but the Telos investors assigned their claims to -- again, I can't remember the company. It might have been LCCL. Yes, they had done that. But there had been no claim. I think the claim goes to -- I think the chaps' names were Hunt and Banks and there was a company involved in it. I can't remember the name.

Q. Let's look at an example. <MDR00094591>. This is an assignment dated 4 April 2013. Is there a second page? Is there a third page as well? I think there must be one more page. No, that's it. Okay.

If we look at clause 1, do you see the creditor, which is the Telos investor, assigned to Lakeview all rights and actions it may have against Telos?

A. Yep, I can see that.

Q. You knew that all these assignments were taking place in 2013?

A. Yes, when they got him to agree, when they assigned their rights to the Telos claim. But the Telos claim took, I believe, years to materialise.

Q. If we go back to <EB0005583>, and look at page 7, this new clause 3.4, if there had been any potential value in the Telos claim, then that potential value is something that would have existed on 27 July 2015, isn't it?

A. Sorry, you've lost me. This was --

Q. Well, you signed an agreement that didn't include this clause on 27 July 2015. It is being circulated less than a month later?

A. Sorry, I didn't see a signed copy of that 27 July.

Q. No, as I mentioned before, no-one has disclosed it, but I took you to an email from Mr Sedgwick to you and Mr Hume-Kendall recording that it happened and you agreed that it did. Would you like to --

A. Yes, that's -- I'm just saying you said "a signed copy" and I hadn't seen a signed copy, was what my point was.

Q. Let me ask the question again. If there was any potential value in the Telos claim, then that's value that would have existed on 27 July 2015, isn't it?

A. Potential value, yes, it's -- yes.

Q. As regards the timeshare claim, I think you confirmed before 24 of the lodges on the site had been leased to a timeshare club, hadn't they?

A. I think it was 24. You showed them in the spreadsheet and the eventual purchase price was apportioned to each of them.

Q. Do you remember the timeshare club was liable under the leases to make a rateable contribution towards common costs?

A. It was something like that. I don't remember specifics. I do remember they contributed to costs.

Q. Do you remember Lakeview Country Club Limited, while you were a director, would render invoices to the timeshare club?

A. They would have done. I didn't do it. That would have been someone in the admin team that did that. If it was owed, they would have been invoiced.

Q. Do you remember a dispute because they didn't pay those invoices in full?

A. I don't. Mr Hume-Kendall largely dealt with the timeshare club. There was a chap called Harry -- sorry, his surname escapes me -- who dealt with timeshare in the majority of the time.

Q. If we look at <D2D10-00010334>, that's a letter from Lakeview Country Club Limited to the timeshare club's solicitors. You were keen to tell us before how deeply involved you were in matters relating to Lakeview Country Club Limited. I'm assuming that this is a matter that you were involved with at the time; is that right?

A. No, Mr Robins, you're making an assumption. What I actually told you about was refurbing, putting a new management structure in place operationally, dealing with the planning permission, gaining agreement to lower the powerlines, dealing with the tender document for the development. The timeshare side of things was largely dealt with by Mr Hume-Kendall and purchases, buybacks, Mr Barker and Mr Peacock.

Q. So you're saying you weren't aware, or wouldn't have been aware, of the fact that the timeshare club owed some money to Lakeview Country Club Limited under disputed invoices?

A. Again, I didn't deal with it, really. That was -- the timeshare side of things was very much -- largely, Mr Hume-Kendall. I may very well have been told of it at the time, but it wasn't one of the work streams that I was working on.

Q. So, is it your evidence that, when you saw the clause 3.4 referring to the timeshare claim, you would have scratched your head and not really known what that was referring to?

A. I may have been told about it. What I'm saying is I don't remember it. I don't have any specific recollection of that clause going in or -- it may have been discussed at the time. It might have been a passing conversation. What I'm saying is, I don't recollect it, standing before you now.

Q. Let's look at <MDR00018231>. This is another draft. On page 7, this time, clause 3.4 has been expanded to refer to the Magante asset, as well as the Telos claim and the timeshare claim. Do you remember seeing this version?

A. I mean, these documents and these restructures were very much Mr Hume-Kendall and Mr Golding, as majority shareholders, instructing Mr Sedgwick. So --

Q. So you --

A. Through the years, that's what -- that was their modus operandi. They made the instructions for things like this and Mr Sedgwick followed them. I think Mr Sedgwick would be able to cast greater right on this than myself. I don't have --

Q. Your evidence is you weren't involved?

A. My evidence is I don't remember this.

Q. Let's look at page 5, where the term "Magante asset" is defined about two-thirds of the way down the page to mean:

"The agreement with Sanctuary PCC whereby the company [LCCL] agreed to fund the development of a site at Magante in the Dominican Republic in consideration of a share in the proceeds of sale of that site." What Mr Sedgwick seems to be saying is, well, if the Magante side were to be developed and sold and if some of the proceeds of sale were to be paid to Lakeview Country Club Limited, then there could be a price increase. Is that what you would have understood that to mean at the time?

A. Sorry, I'm reading this for the first time, really: I think that's what he's trying to get at.

Q. There wasn't actually any agreement between LCCL and Sanctuary PCC whereby LCCL agreed to fund the development of the Magante site in consideration of a share in the proceeds of sale of that site, was there? This is something that Mr Sedgwick must have got wrong?

A. I don't remember this. That's a question for Mr Sedgwick.

Q. Because Sanctuary PCC had actually told the shares in Tenedora by the end of August 2015, hadn't it?

A. It had, but then there's also other agreements with the El Cupey trustees for the development and the apportionment profit, yes, so it needs to be read in conjunction with that -- when considering that point.

Q. You were involved in the sale of the shares in Tenedora, weren't you?

A. The El Cupey, Sanctuary PCC, Tenedora, was that the -- what are we talking --

Q. <MDR00005334>. It is an agreement dated 31 August 2015 between Sanctuary PCC and IRG. If we look at the definitions, page 3, the term "Companies" is defined to mean Inversiones and Tenedora. They're being sold to IRG. This is something that you were involved in, isn't it?

A. The date of that was, sorry?

Q. 31 August 2015.

A. So, again, after my buyout agreement. I may very well have been involved by virtue of my beneficial interest.

Q. Do you think you would have been involved as a director of Sanctuary International PCC Limited?

A. If they hadn't taken me off in time, quite possibly.

Q. I think, in fact, you may have signed this on page 9. Let's just check. I think it is your signature. Is that right? That's your --

A. That is correct.

Q. -- signature for Sanctuary --

A. Again --

Q. Is that --

A. Mr Barker's.

Q. -- Mr Barker's signature for IRG?

A. Yes, it is.

Q. If Sanctuary had sold the shares in Tenedora, Mr Sedgwick's reference to the Magante asset made no sense at all, did it?

A. Standing before you now, I'd like to reflect on it, but it doesn't make -- I'm struggling, at the moment, to keep up.

Q. Would you agree that what seems to have happened is, clause 3.4 emerges from discussion about increasing the price and Mr Sedgwick has just come up with a mechanism to open up the possibility of future price increases?

A. That could very well have come from a conversation or a decision between Mr Hume-Kendall and Mr Golding. They were the ones instructing. I had -- as I say, although my signature is on this, I would have been asked to sign it. I can't remember why. But I was off trying to put LCF together.

Q. But you would have been kept informed?

A. Of the agreement --

Q. Of any changes to the agreement?

A. Not necessarily, no.

Q. Well, if it involved you as a signatory and potentially resulted in an increase in the money payable to you, it is something you would have been very much interested to know about?

A. Again, I was dealing with LCF. Perhaps I should have paid more attention to it. I am sure I will be criticised for that. I left them to make the decisions of the companies that I left behind.

Q. Let's look at --

A. I perhaps trusted them too much.

Q. Let's look at <EB0006449>. It is in October 2015 from Mr Sedgwick to Mr Hume-Kendall and Mr Barker, copied to you and Mr Golding. He says:

"Further to our discussions yesterday I understand that it has been agreed that the price payable for the sale of the Lakeview shares to LTDG be increased to £3.5 million in total with the provision that the price can be further adjusted depending on the outcome of the Magante sale, the Telos claim and the timeshare claim."

This is something you were closely involved in at the time, wasn't it?

A. No, I disagree, Mr Robins. I don't know if I would, looking at the -- looking at the date, also, I was very much aware that I left -- again, left them to it. Yes, I take your point that any increase would have an impact on what I was paid out. I will check to see if I received that. But the decisions and the instructions to make the changes and the wording of the changes would have been very much Mr Hume-Kendall and Mr Golding.

Q. No, Mr Thomson, it is something you and Mr Sedgwick were closely involved in together.

A. No, I disagree. I had been bought out. Yes, I appreciate that any increase I would have benefited from. That's just maths. But these discussions and these instructions to Mr Sedgwick would have come from Mr Hume-Kendall, Mr Golding and also I believe Mr Barker, who I think would have been, at this point, holding shares for the Golding family.

Q. Let's have a look at one more document before the shorthand writer's break, <MDR00025728>. It is an email from Mr Sedgwick, 3 January 2016, to you alone, copied to Mr Barker and Mr Golding. Mr Hume-Kendall is not even copied into it. Mr Sedgwick says:

"Further to my emails this morning, I trust that you now have the necessary documents to deal with the restructuring of the companies over the last few months. "As discussed I would like to draw your attention to the following points ..."

He says:

"1. I included the original contract for the sale of Lakeview Country Club Limited to London Trading and Development Group Limited. Since then there have been discussions to increase the purchase price from approximately £2.1M and have drafted some amendments to that contract to allow an uplift dependent on a successful renegotiation of the Time Share leases and other eventualities ... If we were to add CV Resorts as a subsidiary of this company then this would enable us to increase the purchase price further. There is an issue with SHK on this point however. He believes that he agreed with Spencer that any increase in the consideration ... should be divided in the current ratios and not the previous ratios. Subject to reaching a deal on that issue there should be no problem in including CV Resorts as a subsidiary of LVCCL. This could have happened at the end of March 2015 before the contract with Paradise Beach was entered into and when the company had no value."

This is something that you were kept informed of at every stage?

A. I believe I would have asked. This is several months after you have skipped on: what this looks like is I have asked Mr Sedgwick to update me on where things are. We are, you know, looking to lend, if not lending, at that time. I can't remember. So I would have asked for an update. As that email there confirms: "There is an issue with SHK on this point ... He believes that he agreed with Spencer that any increase in the consideration for the sale of LVCCL should be divided in the current ratios ..."

They decided between them. So this, I believe, is me asking -- is a byproduct of me asking Mr Sedgwick for an update on where things stand because we are looking to see where things lie and I have also asked for an update. I can't --

Q. When you read this in January 2016 and saw Mr Sedgwick saying that CV Resorts could have become a subsidiary of LCCL at the end of March 2015, you would have understood that he was contemplating a backdated transfer?

A. No, this could have happened at the end of March and he's informing me it could have happened at the end of March '15. It doesn't say that I'm contemplating a backdated transfer. I would read that as it says it is.

Q. The middle of the paragraph:

"If we were to add CV Resorts as a subsidiary ... then this would enable us to increase the price further."

He is not talking about something that has happened, is he? He is talking about something that could be made to happen and backdated?

A. This is very much, I think, keeping me informed of what was going on in the discussions that they were having inside the group because it affected us. I'm not -- I don't read anything into that other than that. These decisions are not mine to make. They are the people that I left behind and this is them, as they have shown they have done, restructuring things on a reasonably regular basis. But that's them doing the restructuring and documentation, not me.

MR JUSTICE MILES: Did you know that it had not happened at the end of March 2015?

A. The Paradise Beach, this could have happened. I don't have a recollection of that, my Lord, sorry. I'm just -- I'm trying to keep up with the jumping around at the moment.

MR JUSTICE MILES: Well, it is saying that -- it is talking about whether CV Resorts had become a subsidiary of LCCL, isn't it?

A. It reads, my Lord, when looking at this, that they were trying to redo documentation and add assets in. It looks like they are trying to increase the value. My point is that this is -- they were doing this and I was being kept informed. Should I have paid more attention to it and asked more questions? Yes, I accept that criticism. But they were the ones that were manufacturing this and coming up with this.

MR JUSTICE MILES: Did you know that it had not happened at the end of March 2015? You were a director of LCCL at this time.

A. Yes, so, yes, I would have been aware.

MR JUSTICE MILES: So what did you understand Mr Sedgwick was saying in that last sentence of that paragraph?

A. My understanding of that paragraph, looking at it now, is that he's saying that it could have happened. If they indeed then insert it later on, indeed, they are remaking up the past, which is not right.

MR ROBINS: Mr Thomson, you would have understood at the time that what Mr Sedgwick was engaged in was the insertion of a false and misleading justification for future price increases?

A. Yeah, I mean, looking at that, I accept that. Did he insert in the document "Paradise Beach" then? I can't remember from the document you took us to.

MR ROBINS: My Lord, I see the time. I don't know if that would be a convenient moment for the shorthand writer's break.

MR JUSTICE MILES: We will take the break, then. Five minutes.

(11.51 am)

(A short break)

(11.58 am)

MR ROBINS: My Lord, by way of update to the discussion we had at the beginning of the day, the parties have received an email from Mr Sedgwick, which says: "I note that enquiries have been made in court today as to the commencement of my evidence on Thursday. At the moment, on the basis of the evidence given in support of the claimants' case, I do not intend to give oral evidence in this case."

Which I think means that my learned friend Mr Ledgister isn't going to need to necessarily rearrange his commitments for Friday because we have a window of four days that opens up in the timetable. I think that means we can deal with those matters relating to the fifth and sixth defendants at the end of Mr Thomson's evidence, even if there is any slight overrun. I have also asked Mr Ledgister to see if his witnesses could attend a day or two early to avoid any gaps. Obviously, we appreciate that people do have commitments. I have asked the question and will wait to hear. But I mention that now before anybody starts making arrangements for Friday.

MR JUSTICE MILES: Let me just look at the timetable again. Thank you for letting me know.

A. Could I just clarify, is that Mr Sedgwick saying he is not going to give evidence in this case?

MR JUSTICE MILES: That's what his email says, yes. Yes.

A. Thank you.

MR ROBINS: Mr Thomson, do you remember that you did sign a revised contract which increased the price to £3.5 million?

A. As I said before, I was asked to sign documents post my buyout because I still retained a beneficial interest. I remember signing them. I don't remember specifically what documents, and I do -- you know, say I do remember doing that.

Q. Let's have a look at the document itself, <EB0012103>. If we look at page 5, I think you will see, in the middle of the page, "Loan notes" is now defined to mean £3.5 million. Do you see that?

A. Yes.

Q. At the top of page 6, clause 3.1, it must be the next page, the purchase price is £3.5 million in loan notes. Do you see that?

A. Yes.

Q. And then 3.4 refers to the Magante asset, the Telos claim and the timeshare claim. Do you remember signing this version?

A. I signed a document. I can't remember which one it was. I was asked to sign it because I still held a 5 per cent beneficial share in it. I can't remember which document.

Q. Let's look at page 44, maybe using the internal numbering. The previous page. That's it. That's your signature at the top [page 45], isn't it?

A. That is, yes.

Q. When do you think you would have signed this?

A. When it was given to me and asked to sign. But I have no idea what date. It could very well have been after the 27 July date. I don't -- I signed it because I was asked to.

Q. If we -- we saw that Mr Sedgwick was preparing this version of clause 3 in October 2015.

A. Yes.

Q. Then, in January 2016, he was talking about possibly including CV Resorts?

A. Yes.

Q. But he hasn't done that. Then let's see what this is attached to. It is <EB0012057>. It's an email to Mr Peacock on 14 January 2016. It looks, doesn't it, like you would have signed it at some point between 3 and 14 January 2016?

A. Can we have a look at the document again, please, specifically the front page?

Q. <EB0012103>. Do you want to look at the front page because you're concerned that you backdated it?

A. I just want to know the date. The date has been written in there. I could very well have been asked to sign this document -- that's not my writing to put the date on it, so I may very well have signed an undated document, but I do take the point that it has "2015" in there and I take the point that you made with regard to the email from Mr Sedgwick to me in 2016. I was asked to sign a document by way of my buyout agreement, because I still had a beneficial interest. I signed the document because I was asked to. Should I have signed it? Should I be criticised for that? Should I have made sure there was a date on the front of it? Yes, I should have done. I didn't. I don't know there is much else I can say.

Q. If we go back to page 6, clause 3.4, we saw the email of the 3rd which you interpreted to mean that Mr Sedgwick was proposing on remaking the past?

A. Was that the CV Resorts --

Q. Yes.

A. No, sorry, it wasn't CV -- Paradise Beach.

Q. Paradise Beach. Having seen that email, if you thought this was a genuine clause, wouldn't it have been incumbent on you to ask for explanations and make sure you fully understood what precisely was being proposed?

A. I accept the criticism. I should have done. I don't believe I did. I believe I trusted those people I used to work with to act correctly. I would have signed the document because I was asked to. I should have paid far more attention to it. Clearly, I didn't.

Q. You understood that this was just a spurious mechanism for future price increases?

A. I do think that's slightly unfair, Mr Robins. I naively, I think, just trusted people and signed this. I should have put more thought into it. Yes, I can see the machinations behind it. Very much Mr Golding and Mr Hume-Kendall. It was like trying not to -- what I know now, trying to think about what I knew then, to not colour my evidence. I went along with it. I just signed what I was asked to.

Q. What explanation do you say you were given at the time for this clause and the increase in price to £3.5 million?

A. The explanation was -- I don't remember the explanation, to be honest, but it's -- if there was a conversation, it would have been, "We have added in assets that create future value to be recognised". I don't remember having the conversation. I don't remember -- I remember signing a document because I was asked to. I should have paid far more attention to it.

Q. If we could go to <C2/1>, page 8, please. In paragraph 25, four lines from the end, you say: "I accepted Simon's explanation that the consideration should increase as the value of the assets increased ..."

Was that something you remembered in December but have forgotten now or something that you were making up in December?

A. No, as I say, I'm not denying that there would have been a conversation, maybe, I don't remember it is what I'm telling you. Looking at the documents, yes, it would have been explained to me. As I mentioned previously, if the value of assets go up, the consideration goes up.

Q. That's how sale works, is it? If you sell your house to someone for £3 million and the value goes up, they then become obliged to pay you more, do they?

A. It entirely depends on the sale contract. If you are talking the sale of house, there are ransom strips, there are conditions that you can put in for appreciation of future value. Simon's explanation, and it would have been Mr Golding's as well, was that the value goes up, unless the thing is paid for and done and dusted, which it wasn't, then it's recognised that that future value should be recognised.

Q. It was done and dusted. You had received your loan notes on 27 July 2015, hadn't you?

A. The loan notes were parts of my buyout. I don't believe -- I don't remember them being paid, paid up.

Q. But the loan notes were what you had received in return for the shares, weren't they?

A. I can -- you took me to the document. I accept that. I also accept I should have paid far more attention to the transaction at the time. I didn't.

Q. Mr Thomson, you did pay attention and you understood very well that this was a mechanism that was being put in place for unjustifiable future price increases?

A. But then the loan note that hasn't been paid, consideration that hasn't been paid for an asset, if that asset -- if there is a ratchet in there for that asset to go up and future value to be recognised, I think that's what they were trying to achieve there, rightly or wrongly, but, as I say, the drafting and the decisions behind it were not mine. I can see I went along with it. I should have paid far more attention. But I didn't.

Q. Everyone had seen the amount of money that Surge was bringing into LCF and you thought you could take a larger share. That's what happened?

A. No, I don't accept that, Mr Robins.

Q. LCF did begin to lend money to L&TD, didn't it, so that payments could be made under this transaction to the individuals, including you?

A. The LTD loan should have been used for its commercial purposes, which included buying, developing and I do accept that a portion of that was used for this, but the funds that I received at all times I believed were in relation to my buyout agreement. I accept what they have done with the agreement here, that I signed, he is inserting assets to create value, but then the value was there. So ...

Q. If we go to page 38 of this document, paragraph 110 of your statement, at the bottom, you say: "L&TD was the parent company of all

Simon Hume-Kendall's and Elten Barker's resort property businesses at that time."

First, shouldn't you be mentioning Mr Golding as well here?

A. He wasn't a director.

Q. But in terms of who owned the property resort business at this time, he --

A. I believe Mr Barker held the shares for Mr Golding's family on trust at that point.

Q. You should also have mentioned yourself, I think, in this sentence, shouldn't you?

A. Beneficially, I was bought out, so, yes, I had -- let's call it a silent beneficial ownership being paid out over time. That was the funds that I started to receive, were part of that buyout agreement.

Q. We saw it earlier, IRP continued to hold 5 per cent of London Group on trust for you?

A. Again, my buyout agreement recognised that I had 5 per cent across all companies and the buyout agreement bought -- effectively bought me out, didn't pay for it, so it was paid over a period of time, so I still had a beneficial interest, albeit one that I could not do anything about. The agreement held that the shares should be voted with the majority shareholders. I was to have no part in any of the businesses. So it was a silent beneficial ownership.

Q. IRP LLP did actually transfer 5 per cent of the shares in London Group to you personally, didn't it?

A. I can't remember. If they did, they would have been transferred out later.

Q. If we look at <EB0005840>, it is an email from Mr Sedgwick to you, Mr Barker, Mr Hume-Kendall, on 2 September 2015, and he says:

"To complete the restructure, I would suggest that we need to do two things ..."

Number 2 is:

"Transfer the shares in [the London Group] held by IRP to the actual shareholders."

You were one of the people he referred to when he talked about the actual shareholders?

A. Yes, and that would be correct because I still held, beneficially, 5 per cent, and it -- I believe it is right that that reflects that, but, again, going to my agreement, they automatically had to be voted in

line with the others. I had no part in their business. So I think it is right that it reflects that way until they are bought out, which -- and then that would disappear.

Q. If we look at the updated structure chart, <EB0005845>. At the top of the page, allowing for the fact that the first reference to Elten Barker is really beneficially Mr Golding, that's the ownership of the London Group?

A. What date is on that?

Q. I think the covering email is <EB0005844>. Let's just check that. No.

MR JUSTICE MILES: Wasn't it in that email we just looked at, which was September 2015?

MR ROBINS: Oh, yes, sorry, my Lord. That's right, 2 September 2015. <EB0005845>.

A. That looks like Mr Hume-Kendall's writing.

Q. That's correct.

A. Beneficially, I accept that, but I didn't have -- I had already exited.

Q. Well, legally, as well, because 5 per cent of the shares were transferred to your personal name?

A. But then, read in conjunction with my buyout agreement, just because they were in my name, they had to follow the terms of the buyout agreement. So until they were bought out, they're still beneficially mine.

Q. You held 5 per cent because the buyout, as you call it, never happened?

A. That is incorrect, Mr Robins.

Q. If we go to <A1/5/41>, this is a schedule to something called the neutral statement of uncontested facts, and it's headed "GRP", but we can see from the changes of name that's the company that was known as London Group Limited.

On page 44, we see the shareholdings from the annual returns on those dates. You accept that you were a registered shareholder of shares in the London Group throughout the period that we see on the screen there?

A. March '16 is the last time that I'm there.

Q. Yes, and you accept that you were a registered shareholder of shares in London Group throughout the period we see on the screen there?

A. That goes to 7 March '18. Are you suggesting --

Q. To March '16?

A. To March '16, but I -- again, beneficial ownership. Following the terms of my buyout agreement. I can see why -- I didn't do the electronic filing. I can see why they have added me. My understanding of this would be it follows my buyout agreement but I can't do anything about those shares. I've effectively sold them. I can't vote them. I can't have any part in their businesses.

Q. You owned 5 per cent of the London Group LLP. We see mentioned at the bottom of the page. Didn't you?

A. Again, following my buyout agreement, I held 5 per cent of everything beneficially, and they were buying me out. I couldn't do anything with those shares. I couldn't vote with them -- if I was being bought out, there was a ceiling on that and there was a time period. I believe this just follows that. I didn't do the electronic filings. That would have either been Mr Sedgwick or Mr Peacock.

Q. Could we have a look at --

MR JUSTICE MILES: Mr Thomson, are you able to explain why the shares were put into your name legally if you had already sold them to the others and you only had this beneficial interest?

A. I would very much like to explain that, my Lord, but I don't know. I didn't put them in my name and I didn't do the electronic filings.

MR JUSTICE MILES: You knew they were being put into your name?

A. I'm not sure I did, my Lord. We have seen the emails. My -- when I would have been looking at this in -- at the time, in 2015 into '16, it was very busy. What would have gone through my head at the time would have been, that's just recognising part of my buyout agreement. I can't explain why they were actually put in my name. If I thought about it at the time, it would have been, yes, that recognises, because I had a 5 per cent beneficial ownership, couldn't do anything about it and I would have expected those shares to be taken back and reapportioned at a later date when they'd physically bought me out. I'm afraid I didn't do the filing. I, again, trusted others to do things properly. Perhaps I shouldn't have done.

MR ROBINS: If we go back to <EB0005840>, this is an email we looked at a moment ago where Mr Sedgwick emails you and others on 2 September and says:

"To complete the restructure, I would suggest that we need to do two things ..."

Then:

"2. Transfer the shares in TLG held by IRP to the actual shareholder.

"I will do the paperwork for the transfer of shares in LTDG which are held by IRP to TLG for the sum of £29M odd to be satisfied by the issue of £29M odd shares in TLG. This will mean that there will be about 41M shares in the TLG.

"IRP will transfer those shares to Simon Elten Andy and Elten. I attach a spreadsheet showing the total number of shares and their division. I also attach a diagram showing the group structure." You were kept informed at every step of the way and understood precisely what was happening?

A. Again, coming back to this, yes, I was sent this. Restructuring was very much Simon's side of the coin. Did I go into this in more detail? I don't know. Should I have paid far more attention to it and asked more questions? Yes, I should have done. But, again, the shares I had effectively sold and I couldn't vote them, I couldn't do anything with them.

MR JUSTICE MILES: Is it your evidence that you did not know that you had these shares in your name?

A. I don't remember them going into my name. I don't remember opening up this email and, looking at my email practices, I can see myself receiving this on an iPhone or wherever with the subject "The restructure" and then the top line, "To complete the restructure, I would suggest", knowing Simon and Elten are very much dealing with all of that and I had effectively left -- I don't know. I should have paid far more attention than I did, my Lord. I don't know if I did, indeed, go into that in detail. I don't

have a recollection of me actually having those shares. I'm sorry, my Lord, I don't -- I can't say any more than that.

MR ROBINS: Could we have a look at <MDR00017023>, please. This is another email from Mr Sedgwick. I think we need to look at the attachment, which is <EB0005848>. We need to look at it in native form. Is this another email which you say you didn't read?

A. I may well not. I don't remember it.

Q. Is the true position, in fact, that you were kept fully informed at every stage and understood that these shares were being transferred to you?

A. No, I disagree. I don't have a recollection of this. Again, it's an email that's dealing with restructure. I had left. That was very much Simon, Spencer and Elten dealing with that. I should have paid it a whole lot more attention. I didn't. I'm sure I will be criticised for that. But I was trying to put together a new company and very much concentrating on that and extremely busy doing that. So I should have paid it a whole lot more attention than I did and I didn't. I just left them to it.

Q. You hadn't exited. You continued to be closely involved in matters relating to London Trading and the London Group?

A. I disagree, Mr Robins.

Q. Can we have a look at <MDR00017028>, please. At the bottom is an email from Mr Sedgwick to Mr Hume-Kendall, Mr Barker and you saying -- it is the email we just saw.

A. That's the email we just saw, isn't it?

Q. Mr Hume-Kendall responds at the top, saying: "Robert, thanks, that's great. If you could kindly email a suite of the docs to us all then Andy can decide whether to send them on to the auditors with the new valuations for tomorrow."

This was very much a matter you were still closely involved in?

A. I think that what that might be referring to is, we introduced them to Oliver Clive & Co, so I could just be passing on documents.

Q. Let's look at <EB0005859>. Mr Sedgwick sends an email to Mr Hume-Kendall, Mr Barker and you on 2 September 2015, attaching a draft SPA for the sale of the shares in LTDG to the London Group together with the stock transfer form. He says:

"We then just need to transfer the shares held by IRP to the relevant parties as set out in my email this morning."

This isn't something that passed you by without you noticing. You were closely involved and fully informed every step of the way?

A. Being asked to do something because it is the group that you've left and you're asked to assist in the restructuring, knowing that you have already left, I think this is what that is and not a "fully involved and dealing with it" scenario.

I think I'm just doing what I'm asked to restructure the group because I still had a 5 per cent shareholding, and I don't remember when I introduced them to Oliver Clive & Co. They actually didn't take up the audit, if it was, indeed, Oliver Clive & Co. Executing documents isn't being fully

informed and part of the discussions and decisions. As I say, I don't have a significant recollection of this. Looking at the time period, I was very, very busy dealing with LCF.

Q. Can we have a look at <MDR00017068>. At the bottom of the page, Mr Sedgwick sends you and Mr Hume-Kendall a note which describes transactions for the restructure. Do you remember Mr Sedgwick's note?

A. Not particularly, but the email above that is to Steven Davidson of Oliver Clive & Co. So I believe that is indeed what I was doing, is trying to introduce them to auditors/accountants and I was simply assisting and forwarding documentation.

Q. But you were familiar with the matters that were being described in the documentation?

A. I don't believe I paid a significant amount of note to it, given the time period. Again, in my mind, I had exited. Yes, I was assisting them. The decisions were theirs. I went along with it. I couldn't vote the 5 per cent shares. I was -- looking at this, I believe I am correct in what I said before, in that I'm trying to introduce them to accountants/auditors, so I'm helping in that regard.

Q. Let's look at the note to see if you are familiar with it, <MDR00017070>. Oops, that's the diagram. The note is <MDR00017071>. This is Mr Sedgwick's note. In paragraph 2, he says:

"International Resorts Partnership LLP holds the shares of the London Group Limited on trust for Simon Patrick Hume-Kendall as to 45 per cent and Elten Barker as to 45 per cent."

That "Elten Barker" is actually really a subtrust for Mr Golding?

A. Yes, it is.

Q. "The balance of 10 per cent are non-voting shares and held for Michael Andrew Thomson and Elten Barker equally."

That's what you understood at the time to be the beneficial position?

A. Yes, it confirms non-voting.

Q. Can you show me where in this he refers to the buyout or the MOU or the SPA dated 15 July 2015?

A. I don't think it should be shown there. That was a transaction that happened between the parties. I don't think it should be shown. It says that, yes, I still hold, because I hold the 5 per cent beneficial non-voting. I think it says that. I don't think it needs to go into the detail. This, I think, may very well be a document that is provided to Steven Davidson of Oliver Clive & Co to support the other bits and pieces that were sent to him, and I introduced them. Indeed, Mr Davidson, in his interview, confirms that I simply introduced Simon Hume-Kendall of the London Group, but they ultimately didn't proceed together. I have known Steven for years and years and years and I'm assisting. I don't think it needs to reflect that there was a prior buyout agreement. I, indeed -- Mr Davidson knew about it because I'd discussed it with him as my accountant.

Q. What really changed in July 2015 was the ratios. They moved to being 45:45:5:5 and that was going to continue being the position no matter how much money was actually paid to any of the four individuals?

A. Mr Robins, just because you say it is true doesn't necessarily mean it is true. That is incorrect. I sold, and was being paid out, my 5 per cent shareholding across all associated companies. I think this

reflects that. Maybe the paperwork should have been done better, but that's -- unfortunately, now, it isn't something you can ask Mr Sedgwick because he's not giving evidence. I didn't prepare the paperwork, but that was how -- my understanding, when looking at this, I believed it -- you know, I'm not a lawyer, I believe it reflects that because I still had a 5 per cent beneficial, non-voting position.

Q. Can we have a look at <C2/1>, page 38. In paragraph 110, we looked at the first sentence a moment ago, then you say:

"LCF extended a loan facility of £25 million to L&TD in August 2015 and permitted draw down of its first loan within the facility on or around the end of August 2015."

Then, over on the next page, you say:

"The initial loan documentation completed in August 2015. I am, presently, unable to locate it but I do not believe LCF would have advanced this loan without documentation."

Then you go on to say you believe it was "similar to the document used by SAFE in 2013 to lend to one of LTD's subsidiary companies, but, as I have mentioned, I do not, presently, have the document to confirm this." Is that what you ask the court to believe?

A. That's what I believed when I wrote that.

Q. Mr Thomson, do you know that almost 700,000 documents have been disclosed in this case?

A. Yes.

Q. Do you know that what is conspicuously absent from those documents is any email or draft relating to an agreement, a loan agreement, between LCF and LTD in August 2015?

A. Mr Robins, I don't take your point because you've mentioned that you can't find documents before that I know are there, so ...

Q. You haven't been able to find this one either, have you?

A. That's because I don't have access to any LCF documentation.

Q. The reality is that the drawdowns were permitted without any agreement and then you put an agreement in place later?

A. I don't believe that is correct.

Q. Can we have a look at <MDR00026147>, please. Mr Lee was a solicitor at Buss Murton, wasn't he?

A. Yes.

Q. He's emailing you on 7 January 2016 with the subject "Facility agreement". In the second paragraph, he says: "I have attached the facility agreement ... This version is the new facility not yet advanced. "I will send the 'old' facility next -- this will have the stuff about the drawdown mechanics ..." You understood that the old facility was to be put into place to cover the drawdowns that had already occurred?

A. I don't believe so, no.

Q. The drawdowns that had already taken place weren't covered by any agreement and so he needed to put one in place?

A. No, I disagree. I stick with what I said, that we wouldn't have advanced a loan without a facility agreement.

Q. Can we look at <MDR00027236>. There is an email from Mr Lee to you in January 2016. After the indented paragraphs 1 and 2, he says:

"I also attach the clean version of this agreement which you will see has the 12 per cent interest. The 'old' facility is exactly the same except that the interest is 11.5 per cent."

You understood that the old facility was to cover the funds that had already been drawn down without there being any agreement in place?

A. No, I don't accept that, and, also, looking at other security documentation at the time, back in 2015, when the LTD drawings happened, there was, I believe, debentures over subsidiaries. So, there's -- why would you put a debenture in place without a loan? So, I believe there was a facility in place then.

Q. Can we look at <MDR00028014>. This is Mr Lee, on 20 January, sending an email to Mr Sedgwick, copied to you. He says, in the middle of the first line: "The 'old' refers to the facility that has already been drawn down ..."

So you knew at the time that money had been drawn down without any facility in place and Mr Lee was charged with providing for such an agreement?

A. I don't think Mr Lee would do that. I don't know why we are referring to the "old" facility. Maybe he's comparing the two. I don't know. I stick with what I said. I don't know why he's got the "old" facility. Maybe he's comparing the two.

Q. Do you remember the two drafts, the old and the new, were then merged into a single document which was going to cover both existing drawdowns and future drawdowns?

A. When we put the new facility in place, it would have covered the historic drawdowns, but, again, I believe there was a facility in place. There is security that was taken around that date as well. So the reference is the loan.

Q. Let's look at <MDR00032341>. Mr Lee is sending a draft merged document to Mr Sedgwick, copied to you. In the second line, he says:

"I gather some drawdown has already taken place and they should be treated as being so drawndown pursuant to the terms of the documents attached."

That reflects your understanding at the time that the drawdowns had taken place without the signature of any facility agreement?

A. No, because the new facility takes into account drawdowns that have taken place, and that's what I believe he is referring to, and I stick with what I said, that there was a loan document the prior year, and I believe there is security that was taken at the same date, so I think he's referring to drawings that, yes, did happen and the new facility takes account of those drawings. But the facility was granted the previous year and there was some security that was taken for it.

Q. The drawdowns that had occurred already by this point included the money from Alan Darrah's daughter, didn't they?

A. I don't know who you're referring to.

Q. You remember Mr Russell-Murphy being excited about a potential investment of £1.25 million?

A. It rings a bell, but Mr Russell-Murphy gets excited over lots of things.

Q. Let's look at <MDR00030621>. Mr Russell-Murphy is forwarding an email, down the page, from someone called Alan Darrah. You don't remember being kept informed about this potentially very large investment?

A. Mr Robins, this was eight years ago. I don't particularly remember this email at all.

Q. Can we look at <D7D9-0005365>. You're asking Mr Russell-Murphy for an update from Alan on the funds from the solicitor. Do you not remember the fact that Pennington Manches were going to transfer £1.25 million to LCF?

A. I don't particularly remember it. I can see I had the conversation. I'm not doubting -- saying that I didn't. I'm just saying I don't remember it, standing here today.

Q. This was a very significant investment at this time in LCF's history, wasn't it?

A. I mean, I can see the date. I was also, at that time, dealing with enquiries from the FC**A.** I don't -- I can see I corresponded with him, I can see I would have had conversations with him. What I'm saying is, I don't remember it, Mr Robins.

Q. Do you remember the impact that this had on LCF's bank balance?

A. It would have had an impact of £1.25 million, Mr Robins, so it would've ...

Q. That's not something that stands out in your memory as a significant event?

A. Standing here today, no. I believe it would have done at the time. There's been a lot of water that's gone under the bridge since then.

Q. Do you remember that LCF paid most of that money to Leisure & Tourism Developments almost immediately?

A. If LTD required a borrowing and they requested it, then we loaned them money.

Q. Do you remember what they requested it for?

A. Not particularly, no, Mr Robins. The loan would have been for their -- you know, their commercial purposes.

Q. To make payments of £575,000 to Mr Golding, £90,000 to Mrs Hume-Kendall and £30,000 to you personally. Is that not something you recall?

A. Standing here today, no. I don't doubt that I received it, and I was probably told at the time that it was part of my buyout agreement. I'm not denying these things happened. I'm just saying I don't recall them, standing here.

Q. You were keen to know when the money would be received because you knew that it would be used to fund very substantial payments to you and your associates?

A. I was probably keen for the money to be received so I could lend it out and we could start -- and the company could start earning money.

Q. Now, we saw earlier the backdated version of the agreement for the sale of LCCL with the price of £3.5 million. Do you remember discussions about increasing the price even further?

A. The backdating, Mr Robins -- I signed it because I was asked to sign it. I didn't date it. I am aware that the price was increased. I cannot remember why.

Q. Do you remember discussions about increasing it above £3.5 million?

A. Standing here today, Mr Robins, no, I don't.

Q. Can we look at <D2D10-00018954>. It is an email from Mr Sedgwick to you and Mrs Hume-Kendall copied to Mr Hume-Kendall and Mr Golding, July 2016. He says: "I am instructed that it has been agreed that the initial price for your shares in Lakeview should be £4.5 million subject to further adjustment, depending on any profits on the sale of IRG, the timeshare and Telos claims.

"Assuming that you agree the revised agreement could you please both sign ..."

Do you remember being involved in discussions about increasing the price and being presented with a revised draft agreement?

A. As I said to you previously, Mr Robins, I was asked to sign on a number of occasions and I did indeed do. I should have paid it a whole lot more attention. As I have said in my witness statement, it was explained by Mr Hume-Kendall and others that there was ratchets as the facility in place as the asset value goes up, and this is what I believe that was for.

Q. So, under the first agreement with the price of £2.1 million, you were entitled to £105,000. Under this revised agreement, you would be entitled to more than double that, £225,000. Are you really saying it is not something that you paid much attention to?

A. What I'm saying, Mr Robins, is, yes, I would have paid some attention to it. The decisioning and the actions behind deciding on those figures weren't mine. I believe, as I have said to you before, I was asked to sign documentation that I should have paid more attention to. I didn't. I should have interrogated it more. I didn't. And I do appreciate that, yes, my buyout agreement would have gone up in value. But, at the time, would I have had a conversation -- quite possibly -- about, "Why are you doing this? What's the increase in value?", and there would have been an explanation given to me. Again, unfortunately, I can't ask Mr Sedgwick because he is not going to take the stand, but ...

Q. Do you remember any discussions about how £4.5 million wasn't enough and it could be increased to £6 million?

A. No, I don't remember. I do remember there was various revisions for various reasons. Again, these are prices that haven't been paid, the consideration hasn't been paid. I wasn't privy to the conversations as to why or the decisioning. Yes, I've said that, at times, I was asked to sign stuff because of my buyout. Naively, I should have iterated it more. I didn't. I can't do anything about that now.

Q. Is it your evidence you didn't really understand what you were signing?

A. I was asked to sign. I should have paid it more attention. I didn't. It would have been explained to me at the time that, because of the appreciation in the asset values, that's why the figure has gone up. It was Mr Golding, Mr Hume-Kendall and Mr Barker dealing with all of that. And I can't remember how many documents there were that I signed, I don't think there was that many, in relation to this at all. The machinations for the increases are between them. I naively went along,

should have interrogated the documents and the rationale behind, but I was assured that they were for bona fide reasons and, because the asset values had gone up, it is right the purchase consideration goes up because the asset hadn't been bought.

Q. Earlier this morning, you said you couldn't remember what you had been told to justify price increases. Now you're saying you were told the asset value had gone up. Is that the evidence that you are giving?

A. Well, Mr Robins, we have been discussing this for a while, so more information is coming out with more documents that you are taking me to. So, yes, my recollection is improving, but, also, I'm seeing things that are happening through documentation.

Q. So, under the first document, you were entitled to £105,000. Is your evidence that you were told essentially, "Look, sign this for 4.5 and you'll get £225,000"?

A. No, Mr Robins, the explanation that was given to me was the purchase consideration was going up because the contract and the conditions of the contract allow increase in consideration if asset value appreciates.

Q. Was it, "LCF is getting lots of money in, it is lending lots of money to Leisure & Tourism Developments, Leisure & Tourism Developments can fund London Trading to pay a bit more, let's put the price up and have healthy bank balances"?

A. No, Mr Robins, that isn't correct at all. Yes, I was receiving funds, yes, I believed it was from my buyout agreement. I have seen, through this trial and the documentation that has come out, the amounts of money that have gone to these people. I believed they were using funds for commercial purposes, not simply to channel lots of money their way. I'm appalled that they have done and haven't spent the money on the projects as they should have done. But the funds that I received were part of my buyout.

Q. Let's have a look at <MDR00050334>. This is an email from Mr Sedgwick to you, among others. It says: "Following on from my email earlier I understand that it has been agreed to increase the sale price to £6 million."

Was it, "Sign this and you'll now get 300,000 instead of the initial 105"?

A. It was emailed to me. I wasn't part of the conversations. That wasn't the case. I would have understood there that that's a continuation of what I had previously been explained, that the asset values had gone up, therefore, there was a mechanism for the consideration to go up, and I would have just taken it as that.

Q. You knew that LCF was lending money to L&TD?

A. Yes, and I thought L&TD was using the funds for its commercial purposes, not simply to divvy up large chunks of it.

Q. Until very recently, you had been involved in L&TD's business. You knew it had no other source of funding?

A. Sorry, say again.

Q. You knew L&TD wasn't making profit from any business?

A. L&TD is a company that owns various different assets. Those assets need to be developed and worked on to then realise profit. As any property development will follow, the profit comes out when you monetise the assets, not at the beginning. I believed they were using these funds to further those assets.

Q. You knew that when LCF lent money to L&TD, a chunk of that came back into your own bank account?

A. I was aware, yes, that it was part of my buyout agreement. I've never denied that. I've been upfront with everyone about that. I disclosed it to my accountant, my directors. It was in our conflicts policy, my prior associations. And, yes, what I wasn't aware of -- and LTD was lent to for their commercial purposes, so it was a loan. Once it is loaned, the funds are theirs to use. Yes, I was receiving funds for my buyout agreement, but I wasn't aware of all the other payments that they were making. I believed that they were improving the assets and working on the assets that they had in the company.

Q. Let's look at <MDR00049432>. This is a further draft. At the top of page 7, clause 3.1 has a purchase price of £6 million. We can see clause 3.4 is still there. You said you had understood clause 3.4 was a mechanism to increase the price, but the price is being increased without clause 3.4 being activated. You knew that this was just a bit of paper to justify payment of more money to you and your associates?

A. Again, I go back, I should have paid it more attention. I didn't. The purchase price was for the assets which also included Lakeview Country Club, which was appreciating in value. And I understood that this contract, which, again, I should have paid far more attention to, but I didn't, allowed for asset appreciation, then provided for a larger purchase consideration. That's what I was -- how it was explained to me. I should have paid it a whole lot more attention, but I didn't, unfortunately.

Q. You accept you signed this agreement?

A. Can you take me to the signature page?

Q. Well, I can take you to <MDR00050415>, where Mr Sedgwick says:

"Andy signed the contract and the transfer." So you signed it, I think. Yes?

A. Is that the same document? Can you take me to the attachment?

Q. Let's have a look at <D2D10-00029051>. Let's have a look at page 7. Do you see the £6 million price at the top?

A. Yes.

Q. I think this is the signed version. Can we have a look at the signature page? Is there a final page? It looks like a page has been cut off in this version. We will try to find --

MR JUSTICE MILES: Maybe a schedule. I don't know. It may be earlier on. It looks as though that's part of the schedule, if you go back.

MR ROBINS: Yes, it does. Let me have a look at it.

A. Why I'm asking for the signature page, Mr Robins, is because at some point I did say to them, "Look, I'm not going to be signing these anymore. It isn't correct". So Mr Hume-Kendall signed instead of me, in my place. I have seen that.

Q. We will have to have a look at this over the short adjournment. Can we go to <C2/1>, page 55. In paragraph 166 of your statement, you say: "Generally, the payments simply arrived. I did not chase them and, while I was, sometimes, told in advance that the money was coming, frequently I knew nothing about it until the money landed in my account." Is that something you say is true?

A. Sorry, can you repeat that?

Q. Do you say that, generally, the payments simply arrived and that, while you were sometimes told in advance that money was coming in, frequently you knew nothing about it until the money landed in your account?

A. Over the years, and I received money from various different companies and was told after the fact "This was for your buyout agreement", sometimes I was told in advance. At one point, I had to ask, "What's this company?", and so, yes, I received funds at various different times and I was just told "This was part of your buyout agreement".

Q. The reality is that you would often tell Mr Barker or someone else how much LCF had available to lend. You knew exactly how much was being lent out and you knew a big chunk of that would come back into your own bank account?

A. That's incorrect. Mr Robins, what LCF did -- and it wasn't just me, it was other members of staff. We kept our borrowers aware of how much we had to lend out. Money that is held in account isn't earning any funds and we thought it was the right thing to do to keep our borrowers abreast of how much we had available to avoid them getting into any commitments that we then could not fund.

Q. We have seen lots of documents reflecting that you knew that the ratios were 45:45:5:5. That's right, isn't it? You knew the ratio between Mr Hume-Kendall, Mr Golding, Mr Barker and you was 45:45:5:5?

A. We have seen those documents through this court case, yes.

Q. So you knew that --

MR JUSTICE MILES: Sorry, you saw those documents at the time, didn't you?

A. I don't believe I did. I was aware of what the shareholdings were. I wasn't aware that they were liberally -- every time that I received funds from my buyout agreement, there would be other monies paid out to them. I wasn't aware of that, my Lord.

MR JUSTICE MILES: Sorry, the question was not about --

A. Sorry.

MR JUSTICE MILES: The question which counsel asked you wasn't about -- that question wasn't about the receipt of monies. It was about whether you were aware of the ratios, 45:45:5:5.

A. In terms of the shareholding, yes, mine being a beneficial interest, I was aware that that was the split of the shareholdings that they held.

MR ROBINS: So, you would have known that, whatever you were getting was 5 per cent of the total amount being paid out to the four individuals?

A. Mmm, that's the question that I believe I just answered: no, I wasn't aware. Just because I received funds from my buyout agreement, I wasn't aware that they were then paying themselves out in those proportions. I believed, and so did the other people in LCF, that they were using the

funds for their commercial purposes, and developing these assets. Yes, I am -- and I've never shied away from admitting that I had a 5 per cent interest that was being paid out.

Q. But you'd had 5 per cent of LCCL. You knew that 100 per cent of LCCL had been sold. You knew that the price under that sale agreement was being increased. You knew that whenever money was paid out under that sale agreement, you were just getting 5 per cent of the total amount.

A. My payments were from my buyout agreement. I have continued to state that. I wasn't aware that they were then paying themselves out. I was aware, obviously, that, ultimately, they would receive funds. But I trusted that the funds that we were lending -- and, Mr Robins, you're making it sound like every loan that went to them was then divvied up, and I've seen through disclosure that's not the case. I wasn't aware that just because I received a 5 per cent payment, that 95 per cent would go out the other door. I trusted them to develop the assets that they said they were developing. If you look at Lakeview, lots of lodges were bought in. The asset price increased. That's just on Lakeview.

Q. Mr Thomson, you held most of the loan notes issued to you on trust for Mr Golding. You knew that, when a payment was made under that loan note, it wasn't being paid for your 5 per cent alone, it was being paid also for Mr Golding's share?

A. Receipt of funds and funds that are owed are two different things. I believed I was receiving 5 per cent out of my buyout agreement. The loan note that you brought up, I have not seen that for years. I stick with what I said: yes, I received 5 per cent; it was an ad hoc, from various different companies, receipt. Often, I had to ask what it was for, which company it was. I wasn't aware that 95 per cent was going through the other door.

Q. Is that the reason that you have made up the story about the buyout agreement, to enable you to deny knowledge about the other 95 per cent?

A. It isn't a story, Mr Robins, it happened.

MR ROBINS: I don't know if that is a convenient moment.

MR JUSTICE MILES: We will return at 2.00 pm. (1.01 pm)

(The short adjournment)

(2.00 pm)

MR ROBINS: Mr Thomson, we looked at an email from Mr Sedgwick saying Andy has signed the contract, but then the version of the £6 million contract that we looked at seemed to have been cut off and I said we would find the correct version. So let me just take you to that. It is <MDR00005908>. On the first page, you can see the date 27 July 2015, I think.

A. Yes, I can see that.

Q. On page 7, at the top, there's the amount of £6 million. Do you see that?

A. Yes, I can see that.

Q. On page 46, that's your signature at the top of the page, isn't it?

A. Yes, I would have been asked to sign that by Mr Hume-Kendall, and Mr Sedgwick, as their lawyer, had drafted it, said it was fine. So I thought -- again, my buyout agreement, it was explained to me that this was part of that, so it's all okay, so I signed it. I should have paid a whole lot more attention to it than I did. I didn't. I can't say any more than that, really.

Q. You knew it had been backdated to 27 July, I think?

A. I can see it was there. I don't know if it was dated at the time I signed it.

Q. Let's look at <D2D10-00029050>. Mr Sedgwick says, "Here is the share purchase agreement". He also attaches a copy of the proposed variation agreement, which he says hasn't yet been completed. If we look at the share purchase agreement that he sends to you, that's <D2D10-00029051>. It is right to say, isn't it, you knew it had been backdated?

A. Yeah, I would have done this on the assurances of the two lawyers that were included in that email. One was Mr Sedgwick, the other one would have been Jo -- sorry, her name escapes me.

Q. Marshall?

A. Possibly, yes. She was the other email, I believe, that we saw at the bottom of that. They would have told me to sign it as part of my -- because it related to my beneficial shares. So I did --

Q. Is that something you say --

A. -- and it replaced the first agreement.

Q. Is that something you say you remember happened, or is that something you're saying you think probably would have happened?

A. It probably would have happened. I don't have a specific recollection of this. As I have said to you previously, I'm aware that I signed some documents that were -- that was explained to me I signed because I still retained the 5 per cent beneficial ownership until it was paid out, and I was told to sign these. The lawyers said it was fine. So I did. Obviously, I will be criticised over that, and it should have been done differently, but I can't rewrite history. I trusted others that they were doing the right thing.

Q. You knew it was being backdated to create a false impression?

A. To replace the first document. I believe that's what I would have been told.

Q. To replace the first document by creating a false impression?

A. No, to replace the first document.

Q. Was this another example of rewriting history?

A. No, I'm looking at this -- again, I was told by the lawyers it was absolutely fine, or I believe I was told -- would have been told at the time by the lawyers it was absolutely fine. The parties are, you know, two sides of a coin. They agreed with each other. This would have been driven by Mr Hume-Kendall and Mr Golding, who were quite strong characters, and, again, it would have been explained to me at the time that this was in relation to my buyout agreement and that's why I had to sign it. So, I trusted the others, and that's what I did.

Q. Your evidence is that, frequently, you knew nothing about payments until the money landed in your account, isn't it?

A. Yes. If you look at the loan drawing schedules of -- let's take Leisure & Tourism Developments until after it was sold. There were numerous drawings on their loan. I have looked at your written opening, and, yes, some of them can be correlated to me receiving funds, but a large proportion of

those aren't correlated at all, and I believe they were drawing -- they were borrowing money for the commercial purposes of furthering the various different assets.

Q. But you accept that very frequently you were paying out money to L&TD, knowing that a 5 per cent chunk of that would be transferred straight to your personal bank account?

A. I was aware that I was bought out of my 5 per cent position. I was aware that I was receiving funds. Yes. Obviously, companies -- when I was in the bank, companies geared up on their assets to buy shareholders out. It's leveraged finance. It happens every day. So, did I see anything wrong with gearing up on their assets to fulfil their obligations to me? No. I -- my directors were aware of this. I disclosed it to them. I disclosed it to my accountant. I even discussed it with Kerry from Surge and she refers to it in an email in my buyout agreement in early 2016, which I believe, Mr Robins, is part of your written opening. So, it's -- I trusted people and I shouldn't have done. I wish I had done things differently. But, no, I don't believe that there was the correlation between all funds they were borrowing just arriving at my doorstep.

Q. You and Mr Hume-Kendall, Mr Barker and Mr Golding had a shared understanding that LCF should advance as much as possible to Leisure & Tourism Developments?

A. No. They ran that on their own. It was nothing to do with me after I left. Yes, I do accept I have signed some of these documents, but that was under the -- produced by lawyers and told that it was the right thing to do and, yes, I can see they backdated it, but I believe I would have been told at the time, "This just replaces the original and it's all okay for this to happen, and you need to sign it because it relates to your buyout agreement". So, they ran their companies, not me. They took the decisions in their companies to do whatever they did and, as a lender, I relied on them to run their companies properly.

Q. Can we go to <MDR00077921>, please. Do you see at the top, the right-hand column is headed "Funds sent to LTD less all funding costs"?

A. Yes.

Q. So this looks like the LTD loan ledger, doesn't it?

A. It could very well be, yes.

Q. The "Gross Borrowed" column is the gross liability of LTD to LCF?

A. Yes.

Q. So, if we go to page 4, it's the case, isn't it, that by 3 March 2017, Leisure & Tourism Developments owed in excess of £34.7 million to LCF?

A. Yes, that looks that way. Again, it looks like it is a loan ledger from LTD from LCF.

Q. That's, of course, way in excess of the original £25 million borrowing limit, isn't it?

A. Of the original loan, yes.

Q. In fact, it is in excess of the increased limit of £30 million that you put in place, isn't it?

A. I believe we would have allowed it to overdraw, if, indeed, we have. I'm struggling to remember. Because we had a continuing security over the assets of the company.

Q. You were worried that, because Leisure & Tourism Developments was in excess of the limit, you would be asked some uncomfortable questions when you came to be audited?

A. I would have been asked the question. I don't -- I'm trying to remember what was going on then.

Q. Let's look at <MDR00077754>. You email Mr Hume-Kendall and Mr Barker and, in the second paragraph, you say: "Also as LTD has continued to borrow past the £30m facility can you let Alex and I have a breakdown ..." Then you say you would like to get the restructuring completed:

"... as LTD is way past its original limits and has exceeded its temporary increased limited so we will be asked some uncomfortable questions when we come to be audited which will only get more in-depth the greater the overdrawn figure becomes."

Looking at that, I think you'd accept that L&TD was in excess of even the temporary increased limit and you had concerns about how this might look from an audit perspective?

A. Absolutely. One would have done that at the time, looking at -- that's a month or so before there was the -- I believe, the sale to Elysian, so we would have known that was going on. At that time, I believe we were talking to LTD because of the size of their loan and I think we expressed concern as well that the borrowing should be sitting in the companies that actually had the assets, not the parent. We had a continuing security so the directors were comfortable, but, also, you have to appreciate that all of the loan drawings that you took me to previously, for a loan drawing to go out, it had to have a drawdown request. I believe it had to have two signatures on the mandate and also approval from a director. So, those drawings that you took me to would have had to have the nod of a director that they were okay to go out. So it's not just me allowing those figures to go out.

Q. You were the director who gave the nod, weren't you, Mr Thomson?

A. And others were too. All directors were empowered to allow the loan drawings to continue and, as I say, we had the continuing security. We would have known at that time that there is an upcoming sale transaction. We would have -- we were discussing at the time the splitting down of the facilities -- the facility into the subsidiary companies that actually held the assets, so you had the loan in the company that held the assets, so there would have been a decision at the time to allow it to overdraw its facility and that would have been on the back of, are we comfortable with the security that we held? And the directors confirmed that that was okay.

Q. In reality, you were the only LCF director involved in drawdowns?

A. Not at all. It's been a feature of various different people's interviews that I wasn't in the office often and you needed a director to approve the drawdown. It wasn't -- I obviously confirm that some of those drawdowns I approved, but others, others approved.

Q. Normally, it was a question of you just telling Mr Barker, "We are going to send over 200,000 this afternoon", or something like that?

A. It could have very well been based on a conversation like that and he would have had a requirement -- asked how much did we have, so a drawdown request would have gone in. If I was the person dealing with it, yes, when the time came and the drawdown request arrived, the back office team at LCF would have asked the question. If I was dealing with it, I may have pretold them, because it was already happening, or it may have been a different director. All were empowered to make that -- to give that instruction.

Q. But, in practice, only you were involved?

A. As I have told you, Mr Robins, everyone was involved. If it was just me, the company would have come to a grinding halt because I was often out of the office doing other things.

MR JUSTICE MILES: Could you give approval by email or telephone?

A. It was both, my Lord. Or it could have been in person from a director that was standing there. Mr Huisamen was in, at that point, three to four days a week.

MR JUSTICE MILES: You could have given it when you were out of the office?

A. I could have given it out of the office. It could have been -- it was all directors, my Lord, that provided the approval.

MR ROBINS: It was text messages between you and Mr Barker, wasn't it, with you saying, "This is how much we are sending across"?

A. It could very well have been. If that was in the conversations that we were having -- it was just a media of communication.

Q. But it didn't require you to be in the office to communicate it?

A. No. As I said, it could be verbal, it could be written, it could be standing next to someone as they're doing it. But all directors were empowered to do it.

Q. You understood that one of the reasons for Leisure & Tourism Developments exceeding its borrowing limits was the very large amount of money that it was paying to you, Mr Barker, Mr Golding and Mrs Hume-Kendall?

A. Again, I've not shied away from admitting that, yes, I was receiving money from my buyout agreement and it's clear where it's come from, but, again, providing leveraged debt to a company, they borrow it for their commercial purposes. Part of that is buying me out. So, yes, I did receive funds from it. I have not shied away from admitting that. But to then go on from there and say that I knew everything else that was going on is incorrect.

Q. You knew that the others had received their entitlements as well?

A. I would have been aware that they'd received some, not the quantum that they did. I would have been aware, because I would have seen the agreements, that they were due. But I trusted these people to use the funds that they borrowed to develop -- primarily to develop the assets that they had in their possession.

Q. Do you remember a discussion about how the total amount paid to you and the others had reached about £13.85 million and it was time to activate clause 3.4?

A. I don't have a specific recollection of that, but I may or may not have done. I was aware that they were getting paid. I wasn't aware that -- of the quantum. I was only aware of the quantum that came to me. I wasn't privy to their bank accounts and what they did. But, obviously, with the agreements that we have seen, there was funds to be paid.

Q. Given that your 5 per cent was 5 per cent of 100 per cent, it wasn't difficult for you to extrapolate, was it?

A. I see where you're going, Mr Robins, but what I'm saying is, I wasn't aware of everything that was going to them. How could I have been? Yes, I am aware of the 5 per cent that was coming to me. Again, they were borrowing money for their commercial purposes. Once they have it, it's their

commercial purposes. Yes, I -- there are purchase agreements that we have seen and gone to. Was I aware of, at the time that they were doing it, the figures that they were paying themselves at the same time as paying me? No, I wasn't aware at the time. Could I have become aware of that later on? Possibly. I don't remember.

Q. Is it your evidence you were aware they were getting paid but you weren't aware of the precise figures?

A. Obviously, under the contract -- the agreements that we have seen, there is an amount due to them under those agreements. What I am saying is, I wasn't aware when they were being paid. I trusted them to borrow the money and -- all the directors trusted them to borrow the money for the commercial purposes of the borrowing company, one of which -- you know, again, leveraged finance buying me out, I wasn't aware that -- although I am now -- the amounts that they were paying themselves. Did I become aware of it later? Possibly. I don't remember.

Q. You would have been aware of it from discussion about how £13.85 million had been received by the four individuals and it was time to activate clause 3.4, surely?

A. If you can take me to a document, Mr Robins. I'm struggling to remember.

Q. <D1-0003697>. This is Mr Sedgwick emailing Mr Hume-Kendall, Mr Barker, you and Mr Golding on 18 April 2017:

"Further to recent discussions here is a variation agreement ..."

So, you accept that you had been involved in recent discussions?

A. Not necessarily. I may just have been copied in for my reference.

Q. If the attachment was an agreement that you were going to have to sign, then you would have been involved in those discussions?

A. When I signed the agreement, it was usually at the end, after discussions had been had.

Q. Can we look at <D1-0003699>. Do you see your name as a party?

A. I do, yes.

Q. On page 3, clause 2, "Variation":

"The parties have agreed to value ..."

So had you agreed to value the Magante asset at £4 million?

A. I don't remember that. Again, this is -- yes, I am part of this, I believe, because of historics. I am part of this -- I believe it references the July 2015 agreement. I believe I am part of this because of my buyout agreement. And I believe I would have been told by the lawyers, "This just relates to that, so get on with it".

Q. So, you're saying you hadn't agreed to value the Magante asset at --

A. No, I agreed -- what I'm saying is, the other parties -- so the parties, I'm talking about Mr Golding and Mr Hume-Kendall and Mr Barker -- they would have done this and I would have just been told about it. The decisioning is theirs. They run -- they ran the companies. I didn't have anything to do with running the companies. And I believe that this would have just been provided to me as a fait accompli, "This is what we're doing", and the lawyers said, "There you go. Get on with it".

Q. But you knew that the Magante asset wasn't worth £4 million. You knew that they hadn't actually bought any land at Magante, and Tenedora had just had a contested purchase agreement?

A. The Magante asset is in the profit. The options are for greenfield value. But the valuations are brownfield zoned tourism value. So you had a difference there. And the difference is the profit, which is the asset.

Q. We looked earlier at the definition of the Magante asset and you said you thought there was no such agreement and Mr Sedgwick seemed to have got it wrong?

A. I said I didn't -- I can't remember what I said at the time, but I wasn't -- didn't remember the clause.

Q. But you didn't have any basis for concluding the Magante asset, as defined, was worth £4 million, did you?

A. I can't remember if we talked about the figure when we discussed it earlier, Mr Robins.

Q. Your evidence a moment ago was you weren't involved in agreeing the Magante asset was worth £4 million and you didn't have any basis for thinking it was worth that amount, did you?

A. No, what I said is I didn't get involved in putting this together and agreeing the figures. What I tried to explain to you is the value in Magante is the difference between the options to purchase, which are priced at rough greenfield figures, and the actual valuations, which are brownfield zoned development with planning. So, there's your difference. So there's the profit. I was just trying to explain where the profit is in the asset of Magante.

Q. I think the answer to my question was, "No", wasn't it?

A. Could you perhaps rephrase it?

Q. You weren't involved in agreeing that the Magante asset was worth £4 million and you didn't have any basis for thinking that it was worth that amount?

A. The first part, yes; the second part, no. I didn't take any part in producing this and putting these figures in, but the second part of your question, that I didn't have any basis for the Magante asset valuation for £4 million is incorrect.

Q. So you're saying you think it was worth £4 million?

A. I believed what the valuation said it was worth. So, there were options to purchase, which I thought those options were being exercised and paid down, and that had a figure -- I want to say $3.6 million. I might be wrong. And brownfield valuation that was done by the valuer in the Dominican Republic had a considerably higher value. So there's your profit. So, buying cheaply an asset that is actually worth a lot more is reasonable purchase practice.

Q. Let's go back to <MDR00005908>. On page 3, I think it is, possibly page 4 or 5, we saw, about two-thirds of the way down, the Magante asset defined to mean: "The agreement with Sanctuary PCC whereby the company [LCCL] agreed to fund the development of a site at Magante ... in consideration of a share in the proceeds of sale of that site."

You agreed this morning, I think, that Sanctuary had actually sold Tenedora to IRG?

A. Yes. But I also said to you, Mr Robins, you are leaving out the other agreements. There's the development agreement, which I think was in 2014, and the understanding between the parties. You

are completely leaving that out. This definition should have been updated, and it hasn't been, and that will be a criticism of the lawyers that drafted it. But I didn't pay this document, as I have said several times, anywhere near enough attention, but I should have done, but that's historics, I can't do anything about that. What I'm saying is, there is value in Magante, but you're not representing the correct position because you're leaving out various different parts that happened well before this.

Q. Did LCCL fund the development of the site?

A. I believe there was some payments to Sanctuary from LCCL.

Q. Was the site developed, do you say?

A. Define "developed", Mr Robins. Taking a site that you need to go and -- deslinde, you need to test, you need to get planning, you need to -- you know, until you start building a site, especially one of significance as this, and Inversiones, there is a lot of work to go into it beforehand.

Q. Did Sanctuary PCC then sell the site, do you say?

A. Possibly by that point, the Magante was owned by IRG. I can't remember. Because we are 2017 now, aren't we? I think, in this.

Q. Had a share of the consideration of the proceeds of sale been paid to Lakeview Country Club Limited?

A. I agree the drafting of this leaves a lot to be desired.

Q. In fact --

A. That, again, would be a question I would love to put to Mr Sedgwick.

Q. The date of the draft variation agreement we were looking at, you knew the contract for the sale of the property at Magante hadn't yet been completed, it hadn't even been acquired yet?

A. My understanding, 2017, is they were acquiring it and when -- where you look at the value of the asset is the difference between a very low greenfield valuation and then you turn the asset into something else, which it is, which is a brownfield zoned for tourism with significant tax breaks, there's your profit, but you're jumping from 2015 to 2017 and I agree they replaced the documents and they shouldn't have done, and this should have been redrafted. I didn't pick it up at the time. I didn't pay anywhere near enough attention to it. Again, I was just told, "This is historics, this is part of links to your beneficial ownership, just execute it", so I executed it. And two lawyers had said it was fine.

Q. Let's look at <MDR00080319>. This is Mr Lee's email to you just a month earlier. At the end of the first paragraph, he says:

"What I do gather is that the position appears to be that the contract for the sale of the property there has not yet completed and, in fact, there is going to be a new contract with respect to it."

So you knew that they hadn't even acquired the land at Magante yet?

A. As I have said before, it is a staged purchase. So my understanding was that they were acquiring and exercising the options that they had. I think there were 36 of them, if I remember correctly. So, that's -- what I took from that is that I was told that they were acquiring. There are options to

purchase. And they were exercising those. They weren't simple pay on one day and get done. They were a staged acquisition.

Q. Can we look at <MDR00005398>, please. We saw this before, the value of Magante is said to be £14 million. Was it £14 million or £4 million, Mr Thomson?

A. It would be whatever the valuation that they had at the time. That's from Mr Hume-Kendall, so he would have had a document to rely on there. Again, I didn't draft or give instructions on that document. Why he's using £4 million is the -- can we go back to the document where he has 4 million?

Q. We can do that in a moment. You mentioned the valuation --

A. The point I'm trying to make is, in the document, it says the value is what LVCCL provided to Sanctuary, so what I'm saying is that could very well be the difference. I don't have the bank statements, I don't remember. So what I'm trying to explain is, you've got a valuation of a site there and in the document I believe it was referring to the value of the benefit that was provided, if I remember the clause correctly.

Q. Let's look at --

A. But I'm slightly getting pulled around everywhere, so trying to keep --

Q. <D1-0000457>. We looked at this before. At page 10, we saw Mr Marshall giving a value on the basis set out in his report of $37.95 million. You told us that you thought that was a prudent security valuation for LCF to use. It could have used a higher value. So, is it $37.935 million or £4 million?

A. Again, I come back to the £4 million, that -- I don't have the document in front of me, so I'm trying to give you an answer. I don't know why Mr Hume-Kendall uses 14 million in his letter. He's just being prudent, maybe, maybe he's written down the value, I don't know. But the agreement that you took me to before that had 4 million, is that the value that LVCCL -- the value of the assistance that LVCCL provided Sanctuary/Magante. That's why it's the difference. I don't have the document in front of me. I don't remember it. I have not read it for years. And the document was drafted by others. The terms of it were dictated by others, not myself.

Q. To you and Mr Hume-Kendall and Mr Golding, the value of any asset was simply whatever it needed to be in order to justify whatever it was being used to justify?

A. I disagree. Again, the 4 million valuation, I'd like to look at those documents again and read them over properly. I have not seen them for years and I didn't draft them and I didn't give instructions to draft them. Why Mr Hume-Kendall used 14 million there -- maybe he wanted to be prudent and he applied a writedown percentage. I don't know. This is a draft valuation from Mr Marshall. It is the company's choice if they want to use a lower valuation.

Q. You said you wanted to go back to the draft variation, so let's go to <D1-0003699> at page 3. What needed to be justified here was payments totalling £13.85 million, and so, all that was required of the assets was that the individual values added up to that amount. That's the position, isn't it?

A. I didn't come up with those figures. I'm just trying to read the background in point B. So, again, the 4 million is what it's worth to LVCCL. I believe what they're saying here. I don't believe they are saying that the Magante asset as a whole, as you're trying to suggest it is, is 4 million. I don't think that is what this agreement is trying to do. I think it's -- I believe -- just reading this, and I haven't seen it for years, and I'd like to study all these agreements in due course, but I think what they're doing there is

trying to value the -- value the assistance value that Lakeview provided to Magante. I don't think they're trying to say that the asset, as in the development site, is 4 million.

Q. What they're trying to do is come up with some numbers that add up to 13.85 million?

A. I didn't come up with those. I didn't insert them. I would have hoped that there would have been basis of that calculation. I trusted the people that put it together, I trusted the lawyers that put it together, that this was correct.

Q. You didn't have any basis for thinking that the Telos claim was worth £1 million, did you?

A. Again, same answer: I didn't deal with the Telos claim. The Telos claim was dealt with largely by Mr Hume-Kendall. I believe that the Telos claim did actually ultimately produce a decent sum of money. I don't know what that was. I understand it was successful. I didn't value that. I didn't put the figure in. I didn't come up with the figure. Others did. Again, this is -- I believe this -- I was told I was part of this because of my buyout and because of the original agreement back in 2015. I didn't put this together.

Q. You didn't have any basis for thinking the timeshare claim was worth £2.85 million, did you?

A. Again, I didn't deal with the timeshare claim. I couldn't have told you if it was 5 million or 1 million. I trusted others to do what they said they were doing. And the lawyers put this together and I would have hoped that the lawyers would have had some documentation to justify that figure. Again, I didn't do this. This was others. I had left by this point. I had left almost two years before this. I'm running LCF. I didn't pay this anywhere near as much attention as I should have done. I was asked to be involved in it and explained by the lawyers because of what happened historically. Naively, I went along with that. I didn't come up with these things.

Q. Now, this version of this agreement wasn't actually signed, was it?

A. I don't know.

Q. You do know that LCF paid some further sums to Leisure & Tourism Developments after the preparation of this draft agreement?

A. What happened between LVCCL and Leisure & Tourism Developments was between those two companies. I had left by then.

Q. No, LCF paid some further sums to Leisure & Tourism Developments --

A. Sorry.

Q. -- after the preparation of this draft agreement?

A. It could very well have done, in the course of its businesses loaning it money.

Q. You received some further payments from Leisure & Tourism Developments into your personal bank account, didn't you?

A. Again, my buyout agreement, I received funds from various different companies at various times. Often, I didn't know they were arriving in my bank account until after the fact.

Q. Can we look at <MDR00088015>. Mr Sedgwick, on 22 May 2017, sends an email to you and Mrs Hume-Kendall saying:

"As you know, the agreement for the sale of Lakeview Country Club had a provision for a variation of the price and I understand that agreement has been reached to increase the consideration to £14,260,361.10."

You had been involved in an agreement to increase the consideration to that amount, had you?

A. I had nothing to do with those discussions, those agreements. Yes, I'm being sent it because I'm named in it, that's why Robert is sending it over, but where it says "understand that agreement has been reached to increase the consideration", that would have been Mr Hume-Kendall, Mr Barker, who I see are in copy, and would have also been Mr Golding. I didn't have any part of this. My sole part was that I'm named on it because of, again, my buyout and what happened historically. Mr Sedgwick is sending me this because I would no doubt be named in that agreement. But the conversation, the understanding, the agreement, the provisions, the variation, the price, I didn't take part in that.

Q. But you knew that there had been a first draft version for £13.85 million and then some further payments funded by LCF, including to your personal bank account, and then a new draft with a bigger number in it. So, you understood at the time that the £14,260,361.10 was the precise amount that had been paid out to the four individuals by Leisure & Tourism Developments?

A. No, I didn't. Again, this was put together by other people. They dealt with the background of it. They engaged with Mr Sedgwick. Sadly, he's not giving evidence, you can't ask him the question. They did this. I didn't. I wasn't part of this. They drafted this. They reached the agreement. They made the changes. I don't know why it's gone from 13 to 14. I can't remember -- did you take me to a document that showed I was provided with the one that was 13 million-odd.

Q. Yes.

A. We are jumping around so much, Mr Robins, I'm slightly losing things.

Q. You understood this was an agreement you were going to need to sign?

A. It says, "Please can you sign this and return it to me".

Q. Are you in the habit of signing documents that you know to be untrue?

A. I was looking at this. I don't remember specifically. But it's probable that Mr Sedgwick explained that, "This is part of what's happened historically. It's part of your beneficial interest. It's part of what happened in 2015 and the variations because of an increase in value. So, just please sign it". So I took everyone at their word and I went along with it.

Q. Can we look at the attachment, <MDR00088016>. At the bottom of page 3, it's changed. You didn't have any basis for thinking that the Magante asset was now worth £4,328,288.88, as opposed to £4 million, did you?

A. I don't know why this has increased in value. I didn't increase -- I didn't provide the rationale for the increase in value, I didn't provide the instruction for the increase in value. I don't know why this has gone up.

Q. You didn't have any basis for thinking that the true value of the Telos claim was actually £1,082,072.22 as opposed to £1 million, did you?

A. I didn't deal with the Telos claim. Again, I couldn't have told you if it was 700,000 or 2 million. Mr Hume-Kendall dealt with the Telos claim and valued it accordingly. I trusted them to be doing the right thing. I don't know why these have increased in value. It wasn't my doing.

Q. But you were kept informed about Mr Hume-Kendall's thinking on these matters?

A. I was net-net at the end of the line. I wasn't involved in the discussions to do any of this. That was between them. That was their business. I wasn't involved. I'm involved in this bit because my name is on it because they're replacing -- or they're updating a prior document and a prior agreement. So, that's why I'm there. I didn't take part in this.

Q. Can we go to <EB0048652>. Mr Sedgwick tells you: "Following discussions with Simon the breakdown of the increased price has been slightly varied ..." So this is something that you were always kept informed about, isn't it?

A. Well, Mr Robins, you have just changed tack. You said before that I was involved in the discussions, and now I'm just being kept informed. So, "Following discussions with Simon the breakdown of the increased price", I'm just being told. The discussions and decisions happened elsewhere.

Q. My previous question was, you were kept informed about Mr Hume-Kendall's thinking on these matters. Is the answer yes or no?

A. I'm a net receiver of information. When I find out, decisions have already been made and documents have already been drafted.

Q. But were you kept informed about Mr Hume-Kendall's thinking on these matters?

A. After things have been put in place, because I have received the documents like this from Mr Sedgwick, but the discussions and how it is all broken down, those have already been agreed between them without me and the instructions given to Mr Sedgwick to draft, and I believe I was told at the time by the lawyers, "This is part of what happened previously. Because you have a beneficial interest, you just need to execute". But the decisions and the rationale behind it all was not me. That would have been Mr Hume-Kendall, and it would have been Mr Barker, and it would have been Mr Golding.

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

A. If you are trying to infer I knew before all of this happened, no. I found out at the end. So, yes, I found out at the end, like this; not, "Andy, let's sit down and discuss how we can increase the price". That didn't happen.

Q. So if we look at the attachment, <EB0048653>, page 3, the bottom half of the page, is your evidence that you would have had no idea why the Magante figure has changed again?

A. Yes. I mean, standing here, I have no idea. I mean, loads of 4s across a page looks really odd. I didn't pick it up before. I don't know why.

Q. So, your evidence is, essentially, you didn't really know the underlying facts, you just did what Simon told you?

A. The lawyers explained to sign this because it was part of what happened historically and part of my buyout agreement, and I trusted Simon, I trusted Mr Sedgwick, I trusted all of them to do the right thing, and that trust looks like it's been misplaced, but I can't do anything about that now.

Q. You're told the Magante asset is worth £4 million and then there are more payments, including another 55,000 to you and then you're told, no, actually, the Magante asset is worth £4,444,444.44. Is that right?

A. (a) it's not the Magante asset. That is what it's worth, I believe, to Lakeview Country Club. So the Magante asset is considerably more than that. I didn't pay this anywhere near as much attention as I did -- I should have done. It was drafted. The decisions were made. I was given the fait accompli. I don't remember being involved in any of this. I trusted them to do what was right. I didn't come up with these figures. I didn't change them.

Q. You didn't pay attention to them because you understood this was just window dressing to justify the amounts taken from LCF?

A. I trusted them that there was a basis for valuation.

Q. Are you aware that this version of the agreement wasn't signed either?

A. No. No, I'm not. We've jumped from numerous different documents to numerous different documents, Mr Robins. Lots of these I haven't seen for years. So I am slightly struggling to keep up.

Q. Let's look at <D2D10-00029050>. We looked at it earlier. Mr Sedgwick says to you:

"Here is the share purchase agreement ... I am also attaching a copy of the proposed variation agreement. This has not yet been completed."

Looking at that, you will accept, I think, that Mr Sedgwick told you it hadn't been completed?

A. He pinged this over and there would have been -- he would have had a conversation with me as well at the time. I don't remember what the conversation was. Also, you've got Jo Marshall, who is the other lawyer, so I have two lawyers telling me that this is the case and everything is fine.

Q. Can we look at <MDR00090480>. In the middle of the page, Mr Sedgwick tells you that Simon asked him not to complete the variation agreement as the increase in the value of the assets of the company conflicted with certain other things that he was seeking to achieve, and Mr Sedgwick also tells you he had been asked to look for other methods of achieving the same objective. There is no-one else copied into that, so far as we can see, is there?

A. That email would have come through and I, as I said, pinged it straight back to Robert that there wasn't anything attached. I don't know if I would have read the body of the email. I'm just trying to read it now, if you give me a moment. We don't know what the other objectives that Simon is seeking to achieve that Robert is referring to. I may very well have had a conversation with him about it. I don't remember.

Q. Reading it now, I suggest what you would have understood at the time is that the objective was to justify the payments that had been made?

A. I don't know, Mr Robins. As I say, I don't remember the email. My email above is, "Robert, there wasn't anything attached. Cheers, Andy". So I would have given it a cursory glance. I'm just telling you what I think of this line here that says he is seeking to achieve. So that, to me, says that Simon is very much the driving force in trying to achieve these things. Robert and I are essentially behind the curve on that and, again, I think that supports that I'm just told how things are, because of the history. Simon and -- it would have been Spencer, would be the driving force behind all of this and these changes. I got bought out two years ago.

Q. Just looking at Mr Sedgwick's wording, "I have been asked to look for other methods of achieving the same objective". You'd have understood he was looking for other ways to justify the fact you had all received significantly more than £6 million?

A. No. I don't know what Simon's objectives are. It doesn't say here what his objectives are. So you're reading into it and what I'm saying is, it doesn't actually say that. I wasn't privy to Simon's objectives. I wasn't privy to Mr Golding's or Mr Barker's objectives, so I cannot tell you what they were and I'm not going to make a guess.

Q. You would have understood that the draft variation agreement -- increasing the value of the assets was said not to be a satisfactory way of achieving that objective because it conflicted with certain other things that Simon was seeking to achieve?

A. What are the certain other things he was seeking to achieve?

Q. You will have understood what was being said was, we can't increase the value of the assets to justify the money taken because that would conflict with certain other things that Simon was seeking to achieve?

A. Again, I come back to, Mr Robins, I don't know what Simon was trying to achieve. I wasn't privy to what they were doing. Mr Sedgwick isn't telling me what they're trying to do. It says here he's been asked for other methods of achieving the same objective. I don't know what they're trying to achieve. I wasn't privy to their discussions. With these agreements, I come at the end.

Q. But it would have been perfectly clear to you at the time what they were trying to achieve was to put in place something to justify the fact that you had all received significantly more than £6 million?

A. Again, I disagree. Yes, the asset values had gone up -- 2017, the value of Lakeview had gone up considerably. I'm being told by the lawyers that everything is fine.

Q. Well --

A. So, naively -- I should have looked into it in more detail. I didn't. Again, looking at the timescale, we are halfway through 2017. I'm out of the office three to four days a week, up and down the country meeting IFAs, in with Lewis Silkin drafting a regulated prospectus, so we are June 2017, that's just before it goes off to -- no, we are EWSM bond at that point and then starting to draft the regulated -- so I'm running around quite a bit. I don't know what Simon's objectives are. I'm not privy to them.

Q. You have been asked to sign an agreement which you must have known was with the objective justifying the amount of money that would be paid to various people, including yourself?

A. Again, Mr Robins, I was told by the lawyers that this was absolutely fine, it was part of the mechanism. If the asset value goes up, consideration goes up. And they told me everything was fine. Did I read each variation as they came through? No, I didn't. Because I was told it was a variation on the same thing and everything was okay. And I trusted them.

Q. Well, let's look at --

MR JUSTICE MILES: Mr Robins, just before you do that, if we can just keep this email a minute. Mr Robins, have you got questions about the tax treatment?

MR ROBINS: No, my Lord.

MR JUSTICE MILES: Can I just ask, Mr Thomson, did you disclose the various payments that you received for the purposes of your tax returns?

A. I did, yes.

MR JUSTICE MILES: How did you describe them?

A. I described them as 5 per cent of what I used to earn -- own, sorry, was being paid out and the tax returns, I discussed them with Mr Davidson, they did detailed returns to HMRC. I don't know if I still have them, but there was letters attached to them that accompanied the tax returns that set out all of those positions.

MR JUSTICE MILES: Do you remember whether you disclosed the LCCF sale agreement for that purpose?

A. I was open and honest with Steven. I have known him for years, and I gave him everything.

MR JUSTICE MILES: Can you remember whether your tax returns referred to those agreements?

A. The 14 million springs to mind. I was looking at them about four months ago. I can go and have a look, my Lord. They are not up here with me. They are in hard copy. But it was my practice to disclose absolutely everything to my accountant. They had all of my bank statements. They wanted all the documentation that went with any payments that I received and I gave them absolutely everything. I can have a look when I go home. I don't have a soft copy.

MR JUSTICE MILES: What do you think you referred to in explaining these payments to the Revenue? What do you think you said they were?

A. They were -- I would have to check, but I believe they would have been, essentially, a sale of a 5 per cent interest in various companies. I can't remember if they qualified for entrepreneur's relief. I think that came into it. I'm not sure. But all were given to my accountant and there are letters from my accountant that deal with some of this stuff.

MR JUSTICE MILES: Thank you.

MR ROBINS: Can we look at <D1-0004424>, please. This is an email from Mr Sedgwick to you and Mrs Hume-Kendall saying:

"Following some discussions with Simon, I understand that there have been some adjustments to the agreed values ..."

He says he understands the values are:

Magante 4.25 million, Telos 1 million, timeshare 3.01 million:

"This means that there is additional stamp duty to be paid."

Based on what you said earlier, is it your evidence that you have no idea why Magante, which started at 4 and had gone up to 4.44 has now come down to 4.25?

A. Well, as it says there, Mr Robins, "Following some discussions with Simon", it doesn't say, "Following some discussions with Simon and Andy". This clearly has come from him. I'm, as I say, being emailed by Mr Sedgwick just to tell me what it is.

Q. You were essentially happy to sign whatever needed to be signed?

A. Again, I'm being told by lawyers this is part of what's happened in the past, part of my buyout agreement covers this, part of the documentation I had previously signed -- this was a continuation of that, and we have got two lawyers on copy here, both of which were telling me everything is fine.

Q. What they were telling you is, "This is what you need to sign to justify the money you have received"?

A. No, they were telling me this is what I needed to sign.

Q. Do you think you would be happy to sign this?

A. I can't remember if I signed this at all. I don't remember the email. Again, it is part of historics, it is part of -- linked to my buyout agreement. If the lawyers had said, you need to sign this because it is part of what's happened historically and it is just an evolution of the old agreements, yeah, I would have just signed it, assuming that the terms and conditions that were -- they told me previously were okay still held. I didn't have any reason to doubt them.

Q. You didn't seek any further explanation?

A. I can't remember if I did, Mr Robins.

Q. You didn't ask, for example, "Why has Magante gone down from 4.44 to 4.25?"

A. I can't remember, Mr Robins. Again, these should be questions that are for Mr Hume-Kendall, Mr Barker and Mr Sedgwick to answer. I wasn't party to what they were doing. As it says, "Following some discussions with Simon", it is not, "Following discussions with Simon and Andy". I was a net receiver. Yes, I had -- was told after the fact.

Q. Can we look at <D1-0004430>, please. The reason I'm asking you, Mr Thomson, as opposed to any of those other people you just mentioned, is because it is about an agreement that you signed. At the bottom, you told Mr Sedgwick:

"I'm in France at the moment but can sign the doc on Wednesday."

Do you see that?

A. Yes, because he asked me to sign it. If that is, indeed, the document that relates to the things that we have been discussing, I was asked to sign it.

Q. Yes. You didn't go back to ask, "Well, hang on a minute. Why has Magante gone down from 4.44 to 4.25"?

A. As I have explained on a couple of occasions now, Mr Robins, I just trusted these people. They provided all of that. They decided it. I was at the end of the chain and executed, I was assured everything was fine. The transaction was -- had an appreciating element to it that I was assured was absolutely fine. The lawyers asked me to execute it, so I did. I didn't have reason to doubt them at that time. Hindsight is a wonderful thing. But I executed it because they asked me to.

Q. The reason you didn't ask for any explanation is because you understood this was just window dressing to justify the sums that had been paid?

A. I disagree with you, Mr Robins. The sums paid to me were from my buyout agreement. My understanding was, these were their companies, I'm essentially being bought out, these are their lawyers doing all of this, it's linked to what's happened historically. Because I was involved, it's an

evolution of the agreements that happened previously, so I just need to sign them. Rightly or wrongly, that's what happened.

Q. Can we look at <MDR00005904>. On page 4, that's your signature, isn't it?

A. That is, yes. It might be the one that I signed it -- I mentioned in France.

Q. On page 3, at the bottom of the page, there's a division of the total amount. It's 76.25 per cent for you and 23.75 per cent for Mrs Hume-Kendall. Those are the percentages of the registered ownership of shares in Lakeview Country Club Limited before the sale to London Trading, aren't they?

A. This is before it all changed to 45:45:5:5; is that correct?

Q. Those are the ratios of the registered shareholding before the sale to London Trading?

A. Yes, so 71-point-something was held for the Golding family.

Q. I think you said a moment ago, for the payments in excess of 6 million, they moved to the 45:45:5:5?

A. No, that was a question for yourself, that this predates that, I think is what you were saying. Sorry, I was just asking for clarification.

MR ROBINS: I see. My Lord, I'm moving to a new topic, if that is convenient?

A. As you're moving to a new topic, any chance of five minutes?

MR JUSTICE MILES: Yes. We will take a five-minute break now.

(3.02 pm)

(A short break)

(3.09 pm)

MR ROBINS: Mr Thomson, LCF generally charged borrowers 1.75 per cent plus cost of funds by way of interest.

A. And a 2 per cent fee.

Q. Did you regard those two factors as a particularly strong selling point?

A. Sorry, say again?

Q. Did you regard those two factors as a particularly strong selling point?

A. I don't believe they were a selling point. They were just how the company charged. It's factual as opposed to a selling point, for want of a better word.

Q. Can we look at <C2/1>, page 13. In paragraph (6), you say:

"I regarded it as a particularly strong selling point that LCF would charge borrowers no more than an arrangement fee of 2 per cent and a marginal interest rate of no more than 1.75 per cent plus cost of funds." Did you read your witness statement before you signed it?

A. Yes, I did, and I said at the beginning of my evidence there are some things that I would change going through that and we would come across them through my evidence, and that is -- it shouldn't be a selling point, it should just be factual.

Q. So should it say, "I didn't regard it as a particularly strong selling point"?

A. No, it should just say it's a point that LCF charges -- it should be a neutral fact. It charges an arrangement fee of 2 per cent and 1.75 per cent plus cost of funds. There was various different, small wording points like this that I -- before I started giving my evidence, I had read through and, as I said at the start of it, there were a number that we would come across them through me giving the evidence. This is one of them.

Q. Because LCF's charging 1.75 per cent plus cost of funds, it was necessary for you to know what the cost of funds was, wasn't it?

A. For me to know, yes.

Q. Well, for you and the company to know?

A. For me and LCF to know.

Q. The cost of funds had to be calculated very precisely?

A. The back office people did that, yes.

Q. You say, don't you, you determined at an early stage it would be necessary to have internal systems which linked loans with the particular bonds which financed them?

A. Yes, it was a part of the audit that we went through, both PwC -- it was actually Oliver Clive first, they did a small audit for a short period of time. Then PwC and EY. They were provided all loan documentation, all information memorandums, and they traced funds that came in, did we charge the correct amount of interest in terms of our loans, did he provide the -- pay the correct amount of interest to our bondholders? So, yeah, you needed internal systems that showed where bond funds went and what loans they seeded because then you needed to oncharge those cost of funds to the borrowers. So, for example, if you had a loan at 6.5 per cent plus cost of funds, that's charged at X, but then 8-point -- 8 per cent or 8.5 plus 1.75 is Y. But, more often than not, it was a blend. So for each loan drawdown, we needed to know which bonds seeded those loans to calculate the interest that was charged to borrowers.

Q. Let's look, for example, at <MDR00166711>. There's an email from Katie Maddock with an updated table. You are copied in. The table is <MDR00166712>. It shows the different series and the different rates of interest payable. I think the point you're making, is this right, is that, if a particular drawdown has been funded purely from series 2, where the cost of funds is 8.5 per cent, then the interest is going to be 10.25 per cent, but, if a drawdown has been funded purely from series 3, the cost of funding is the 3.9, and so the interest is 5.65, et cetera. Is that the point --

A. You passed on the interest that was due to bondholders plus 1.75 per cent. It would have been nice if it was as easy as that and all loan drawings fell into one bond series. It didn't. It was a blend.

Q. So it sounds like it was something fairly complicated; is that right?

A. Once you got your head around it, and the back-office team were very good at doing this.

Q. So you said there had to be a back-office system which tracked, essentially, the origins of the money that was used for each drawdown?

A. Yes, there was actually two systems. We never got around to turning -- we started the company off using complex Excel spreadsheets. We went to a provider that wasn't sufficiently robust enough and we left them. We then found another company, GMP, who wasn't quite suitable, but they were agreeable to adapt their products to our needs. And we were trying to develop that product over the years. But we were effectively running two back-office systems in tandem, and we wouldn't turn off the Excel spreadsheets until the other system had run without fault for a year, and it never did.

Q. So, I think your evidence -- is this right? -- is that, throughout LCF's active existence, Katie Maddock and other administrative staff tracked this using complex Excel spreadsheets?

A. And what became known as GMP, yes, they did. So, we did have a reasonably large group of people in Eridge that that was their job.

Q. It is right, isn't it, that from May 2016 onwards, Oliver Clive & Company were helping you to get ready for an audit of LCF which was going to be conducted by PwC?

A. Yes, they assisted us. Oliver Clive & Co audited us first and then introduced us to PwC. So, yes, they were our accountants assisting in the preparation of everything.

Q. So, they were asking you for information about, for example, how much was owing on each series of bond?

A. They would have been asking for information like that across the whole company. They asked for lots of different bits of information. We provided them everything. We were an open book to our auditors. Oliver Clive & Co also had viewing rights on our bank account. There was nothing that they didn't see.

Q. By this time, so around middle of 2016, there had been drawdowns by, I think, Sanctuary, Leisure & Tourism Developments, LOG and Home Farm Equestrian Centre. Does that sound about right?

A. I would have to check the loan ledgers. I can't remember. I know we had a handful of borrowers. I can't remember who, at mid 2016, was actually onboarded by that time.

Q. Do you remember the problem that emerged around that time was it was impossible to say which bond series had funded which drawdowns; there weren't any records of that, and you couldn't calculate the cost of funds?

A. No, that's incorrect. I remember Oliver Clive & Co asking the question. I remember them coming to the office. And I -- and they understood how we worked. I believe what you are referring to is, if they didn't understand at that time, they sought further information. That entailed them coming and sitting with our back-office people so they understood how we operated.

Q. Can we look at <MDR00044864>, please. This is an email from Emma Benjamin. She worked for Oliver Clive & Co, didn't she?

A. Yes, she does. She's the audit partner, I believe.

Q. And Steven Davidson and Nick Angel, who are copied, are also accountants with that firm?

A. Steven owns the firm and Nick Angel did, or assisted in, the audit and also did the management information with another chap, whose name escapes me.

Q. The third paragraph, she says:

"We were originally under the impression that the bonds and loans are linked and I understand from your conversations with Nick that this is not the case." In fact, at this point, the bonds and the loans weren't linked, were they?

A. No, that's incorrect. I don't know why that's saying that. I don't know why. They have always been linked.

Q. She says:

"In actual fact, it does not matter whether they are linked or not but we are trying to reconcile the 'cost of funds' to the loans and the drawdowns and we do not have the information to do this."

That information simply hadn't been kept, had it?

A. No, absolutely not. The information was there from day one. I saw the spreadsheets. I didn't work on them. So -- it says -- you know:

"I know Katie worked with Nick on Tuesday on the bond side and we have fully reconciled all numbers and we were hoping she would be able to do the same on the loans side."

She won't be able to do the same on the loans side if she didn't keep the information. So, what I think the next paragraph is saying is they need to amalgamate the two so they can see the complete picture. It is not that we didn't have the information. I don't believe they had gone through it by the time they write this email.

Q. What Katie, ultimately, had to do was simply to allocate different series to different loans in an essentially arbitrary fashion?

A. The back-office system was Katie's to run. I didn't get involved in the back-office system. Yes, I had -- in the early days, I saw it, but my -- from day one, we linked loans to bonds. Katie ran that and further staff came on board to assist with that. So -- and both PwC and EY were very complimentary about Katie and her team and the accuracy of their record keeping.

Q. You were kept informed about the nature of the problem. You couldn't correlate bonds to loans. And you knew she was having to perform an allocation exercise to come up with a solution?

A. No. I disagree. I mean, it's -- Katie's primary role when she started was logging drawdowns and loans and running that back-office system. She built it. So, I don't understand the question. They were very complimentary of her.

Q. Can we look at <MDR00045991> at page 3, please. At page 3, we see Katie emails Nick Angel, copying you: "Over the weekend I have created the attached spreadsheet, breaking down the payments month by month per series ..."

And then -- is this page 3? Then, on the next page --

A. Can I just read that? I was halfway through it.

Q. Sure.

A. Can we make that bigger? The "Hi Nick" bit. Thank you. She's working with the accountant and creating spreadsheets so that he better understands it. I stick with what I said. She ran the back office. She created the back office. And bonds and loans were linked from the start.

Q. If we look at the next email on the left, Steven, of the accountants, emails Katie and you to say: "Thanks for the spreadsheets and loan invoices. "Unfortunately, I still can't see how the loan spreadsheets ties to the invoices.

"I can now agree the bank payments to the invoices but can't see how the invoices are related to each loan drawdown."

Then he explains:

"The reason we need this is that we are trying to accrue interest on each loan drawdown and without this information we can't."

The point you would have understood him to be making is, if the interest is X 1.75 per cent, you need to know what X is?

A. What I get from this is they didn't understand what Katie was doing and she's building something so that it furthers their understanding. The last sentence: "The reason we need to do this is that we are trying to accrue interest on each loan drawdown and without this information we can't."

Oliver Clive & Co -- and so did PwC and EY -- built their own financial models to track bonds and loans and check them against our back-office system. So they're working together so they understand. There was quite a lot of interaction with the back-office team and Oliver Clive & Co. I left them to get on with it. I didn't deal with the back-office system. I let the back-office team deal with that.

Q. Lakeview Capital was a company that issued some sort of bonds or loan notes?

A. Did a small, private offering.

Q. It lent the money to Lakeview Lodges?

A. And Lakeview Lodges bought the lodges. Lakeview Lodges had assistance from others as well in buying some other lodges. I don't remember the figures offhand, sorry.

Q. LCF essentially took over Lakeview Capital Limited, didn't it?

A. That was series 9. It was a closed offer for series 9 and Lakeview Lodges was incorporated, I think, into Lakeview Country Club Limited. So the loan got amalgamated into Lakeview Country Club facility or LTD's facility. I can't remember which.

Q. If we look at the previous page, at the bottom, Katie replies:

"Hi Steven.

"It is almost impossible to allocate them to each drawdown.

"LVL loan profile is [Lakeview Capital]. "IRG loan profile is SAFE series 2 in its entirety." So, she's treating SAFE series 2 as having been lent to IRG in its entirety; yes?

A. So, we are now June '16. So series 2 was -- IRG was our only borrower. So that follows.

Q. "LTD loan profile is LCF series 2 & series 4 & series 5. "LOG loan profile up to April are in series 3 and 7 ..."

She's essentially saying, "We will say that series 2, 4 and 5 are money that was lent to LTD and series 3 and 7 were lent to LOG", isn't she?

A. I didn't get involved in allocating which bondholder funds seeded which loan. That was her job. These spreadsheets were created by the back-office team and run by the back-office team and it was their job to allocate bondholder funds to loans.

Q. She goes on to say:

"I am also going to allocate the Home Farm Equestrian Centre to series 3, 6 and 7 all other bonds will then be LTD. I am working on this at the minute, there may be a couple of clients for HFEC that will have to spread slightly in series 4 and 5."

It was clear to you, at the time, she was having to perform this allocation exercise because it was impossible to calculate the cost of funds?

A. I think she's doing this so Oliver Clive & Co better understand how she worked things out and the back-office system we had. I didn't get involved in the back-office system. Yes, I would have been on copy here. And, clearly, they did understand because the audit happened and was signed off.

Q. But you had understood this was not something that had happened already. She was doing it at the time, "I am going to allocate. I am working on this at the minute". This was something she was having to do for the first time so that the cost of funds could be calculated?

A. She may very well have been redoing the spreadsheets so the auditors -- sorry, accountants understood it. I didn't get involved in doing any of these spreadsheets. But, from the day we started, we allocated bondholder funds to loan drawdowns.

Q. No, Mr Thomson, that was done for the first time in June 2016?

A. No, Mr Robins, you're wrong.

Q. Do you remember Steven Davidson was concerned at how this would look to PwC?

A. I can see him saying, "If we don't understand it, how are PwC going to understand it?", but, at the end of the day, they did understand it, and the audit was completed and signed off to everyone's satisfaction. So, yes, Katie had to do a lot of work with the auditors so they understood how we worked. The auditors may very well have come up with a better way for her to account for things so she redid this. I can see that. I didn't get involved in the back office.

Q. She was doing it on your instructions.

A. The instructions were to run the back office and you have to allocate -- in order for us to function properly, you have to allocate bondholder funds to each loan drawdown.

Q. That's something you discovered in June 2016?

A. No, that's what we started.

Q. Can we look at <MDR00046021>. Katie Maddock sends you an email, 22 June 2016:

"Hi Andy.

"I have allocated the [Home Farm Equestrian Centre], LOG & LCAF loans to bondholders, some of the HFEC have had to go into series 4 as there were no bondholders suitable to allocate to in series 3, 6 or 7. "Are we now assuming the rest of the loans are LTD or would you like me to go through their loan profile and allocate. Once I know the answer to this I can send it to [Oliver Clive] ..."

She was doing this on your instructions, wasn't she?

A. The instructions are she needs to do it for the accountant. She's working with the accountant. I know the accountants, when they first started doing this, had trouble understanding how we did things. They made recommendations to how we should be doing it. Katie could very well be just going through what was put together originally in a different format for Oliver Clive & Co because they have suggested a better way to do it. But this is very much Katie working with the auditors. Yes, we would have discussed this, but, from the start, you allocate bonds to loans.

Q. Well, from the start, you should have allocated bonds to loans, but you discovered, in July 2016, you had a big problem?

A. It wouldn't have been discovered. It would have been obvious if we weren't doing it. We would have done it from the start.

Q. Can we look at <MDR00046301>. Katie emails the accountant, copying you, saying:

"I have allocated all loans up to the end of April." You understood this allocation process was something that she had been undertaking over the previous few days?

A. Mmm. If Oliver Clive & Co have provided a better way of doing things that they better understand it, she would have had to have reworked everything. I don't think this is saying that we didn't do anything from the start. I completely disagree with that.

Q. What you hadn't done from the start was allocate bondholders to each respective drawdown?

A. No, we did do that. It's clear that the Oliver Clive & Co had questions and it's clear that she is redoing it. That doesn't mean to say it wasn't done in the beginning. Katie and I aren't accountants. So we, you know, engage with our accountants and she's having to redo things to their satisfaction. That's working with our accountant, not just making it up.

Q. So, previously, interest rates had just been made up, had they?

A. No, I didn't say that. Making up these spreadsheets.

Q. Can we look at <MDR00046304>. Katie is emailing Phil Cooper at GMP. They were the people whose software you have explained you weren't very impressed by?

A. No. GMP were the second software company. They didn't -- their system didn't fully cater for LCF, but they were willing to work with us to try to create a system that would ultimately work and there was a lot of work that goes into it.

Q. She says to him:

"I have now been through all the loans to borrowers up to April and have allocated bondholders to each respective drawdown. My spreadsheet is attached ..." You understood that this was something that she had done for the first time in June 2016?

A. No, Mr Robins, you're completely wrong.

Q. What she had done was not to calculate the cost of funds by reference to which bonds had actually funded which drawdowns, but to do it, essentially, arbitrarily, so that the series would fit with the loans to the best of her ability?

A. It was done at the start, Mr Robins. We had to work quite a lot with our accountants for their understanding. We had to work with PwC so they understood. And we had to work a lot with EY so they understood how we did these. This is GMP. GMP would have -- I can't remember when we

started engaging with GMP. It probably wasn't that much before this email here. We spent a lot of time with them so they understood what we were looking at. I don't take your point that we made these up now. I take the point that the accountants wanted us to do some work and, yes, we had to redo things to better their understanding. But we allocated bonds to loans from the start.

Q. We saw Katie's email where, for example, she says LOG is being allocated to series 3. That was the 3.9 per cent --

A. One-year.

Q. -- one-year bond, wasn't it? So that meant that LOG was getting cheaper money?

A. For the year, yeah. It was cheaper than the other funds.

Q. There was no discussion with any of the borrowers about any of this, was there?

A. There was regular discussion on cost of funds with the borrowers.

Q. They just got what Katie allocated to them?

A. But there was still regular discussion on it. They knew how we operated. They knew that we had a -- bond funds coming in and they knew that it was our back-office team's role to allocate bonds to loans. So it would have been in their interest to suggest to us, "Well, actually, could you allocate cheaper money to us, please, so we pay less and give the more expensive money elsewhere?". That was a regular conversation through LCF's history.

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

A. Why would that not be true, Mr Robins?

Q. The reason it didn't matter until it came to the audit was because LCF didn't care what interest rate was payable. The borrowers didn't care. Because everybody understood LCF would just lend further monies to pay such interest as became due?

A. No.

MR ROBINS: My Lord, I'm moving on to a new topic. Mr Thomson, you say that there was a management buyout of L&TD's holding company in April 2017, don't you?

A. Is that the Elysian transaction?

Q. Yes, that's right. You say a company called Elysian Resorts Group acquired the shares?

A. Yes, Mark Ingham and Tom McCarthy.

Q. You say you were not privy to the parties' commercial negotiations?

A. I would have been told of what's going on. In terms of negotiations over the specific terms, that was for them to negotiate. We are the lender but we are kept informed, yes.

Q. I thought you said the parties' commercial negotiations were never explained to you?

A. No, their negotiations -- so when they sit down and negotiate and thrash out the terms, they would explain to us what they had arrived at and what they wanted to achieve. But, in terms of being party to, as in an active part in those negotiations, that was for them.

Q. So were you privy to their commercial negotiation?

A. I was told what they were doing. It's -- could you explain it further, Mr Robins? Are you saying that I was, or LCF was, in on the meetings when they were thrashing out what deals were agreed? No. Do we know what they were because we were informed of them? Yes, we did.

Q. For example, were you told that a debt owed by L&TD to LCF was going to be split and as to 25 million novated in segments?

A. Actually, I believe the -- so, the Elysian transaction was -- there were two stages to it. We had -- I think I touched on it earlier when we allowed the LTD loan profile to overdraw because we knew there was an upcoming transaction and we told -- we had already told the owners of LTD that we were uncomfortable with one large loan over multi subsidiaries. We wanted the loans in the companies that held the assets. I think I told you that this morning. So we knew there was a restructure coming up. We knew that restructure was going to involve moving loans down into asset-owning companies. We knew that there was a transaction with Elysian. We knew that it was Mark Ingham and Tom McCarthy. And we knew that they were going to continue to borrow. And we learnt different bits at different stages. So, it's --

Q. You said "moving loans down into asset-owning companies". Do you mean moving loans down into new companies owned by London Group LLP that would have the word "support" in their names?

A. That was part of the transaction, yes.

Q. These companies, I think you say, would get 25 million of LTD's debt to LCF; is that right?

A. I can't remember the specifics of the transaction, but what was -- what it was designed to do was the -- where the asset went, the loan followed, or what ultimately happened was, Elysian bought, it had its own subsidiaries. Part of their transaction was Elysian wanted -- didn't want to have the debt, so the purchase consideration was increased to include the debt. The Support companies were owned by London Group and they had the debt in them but they were parent guaranteed. We advanced facilities to Elysian's children and there was security between the support company and the Elysian child. For example -- I can't remember what they're called. It could have been Costa or Colina -- I can't remember which one. Colina Support, for example, had security from Colina that sat under the Elysian.

Q. I think you say the idea of splitting up L&TD's debt and reallocating it was driven by Elysian, do you?

A. Originally, we had indicated to LTD before the transaction we weren't comfortable with one loan and multi assets. The transaction happened. I can't remember -- there was numerous different conversations around that at the time in what we were comfortable with as a lender. We took advice from our lawyer, Alex, and discussed it. We were driven by what the other parties wanted to achieve. So, as long as we were comfortable with the security that was being put in place, we allowed the transaction to go ahead.

Q. So, the idea of reallocating the LTD facility was something that you and Mr Hume-Kendall discussed and agreed long before the Elysian transaction?

A. I believe there was a discussion before because we were uncomfortable with the size of the LTD loan and we wanted it to be more closely related to the assets, as opposed to having a one single parent company loan. I can't remember when those discussions were had and the parties involved

with them, so -- but I believe it would have been including Mr Hume-Kendall and myself and others; including the other directors of LCF and our lawyers.

Q. If we look at <MDR00074971>, is this what you were just talking about? Mr Lee emails you to say there will be new facilities, and he sets out various names and amounts?

A. Yes, so that was the discussion that we were having. As I mentioned to you earlier, the asset-owning companies were going to have the debt inside them, including what was already apportioned, was already drawn. So, effectively, you had the LTD global loan and it was migrated down into the companies that held the assets.

Q. You keep referring to the assets, Mr Thomson, but you knew, for example, CV Resorts hadn't bought Paradise Beach, didn't you?

A. My understanding is, at the time, they were buying it.

Q. LCF said it maintained a 75 per cent loan to value ratio, didn't it?

A. I believe so, yes.

Q. So a £21 million facility for CV Resorts would imply security over assets worth 28 million, wouldn't it?

A. That is a facility -- so what you're doing is you're looking at a limit on a developing property. We didn't look at it that way. We looked at the amount drawn against the security that we believed we held. So, you're looking at the fully-drawn limit there. Well, it hadn't got there.

Q. So 7 million already drawn would imply assets presently worth about 10 million, wouldn't it?

A. Call it 10 for cash.

Q. You knew that CV Resorts didn't have assets worth 10 million?

A. I believed they were buying it in staged purchases. I think we'd gone through the CV Resorts transaction before Easter, I think. They were due to get phase 2 -- phase 2 from SAFE? And they were buying units on the resort, which is what I believed they were doing.

Q. We looked at this earlier, <MDR00077754>. The second paragraph:

"Also as LTD has continued to borrow past the £30m facility can you let Alex and I have a breakdown of the proposed splits ..."

This is a proposed reallocation of the facility among other borrowers, is it?

A. The children, yes, of the parent.

Q. The parent --

A. Being LTD.

Q. -- being LTD at this point. When Mark Ingham came to be involved, the idea became that these liabilities of LTD would be apportioned to new companies that would be owned by London Group LLP?

A. That was what I was trying to explain earlier. Perhaps I didn't explain it very well. The Elysian transaction, so Mark and Tom wanted the debt added to the consideration, and they wanted clean

companies that had the assets inside them under Elysian, which clearly we weren't happy with because there's no security, therefore. So there is a mechanism in the Elysian transaction that deals with -- I think they are called the novating companies, which became the Support companies. They held the debt. They were guaranteed by, I think, the debentures -- I want to say Colina, I've seen -- from the companies in Elysian because they owned the assets. There was also parent company guarantees and cross-guarantees. So there was quite a lot of security that Alex put in place, drafted and worked with Robert and Jo Marshall, I want to say, to put all the security in place, and they confirmed it was all good, so we were happy.

Q. We will come to the rest of that, but the idea, I think you said, was what you might call the legacy debt would be put into what I think you just described as the novating companies?

A. I think the agreement defines them as the "novating companies".

Q. And they would be newly incorporated subsidiaries of London Group, and then the subsidiaries of Elysian would be able to borrow fresh from LCF with a clean slate?

A. But LCF would -- there is guarantees from their companies with the assets -- debentures, I want to say -- there was cross-guarantees, parent guarantees and the -- LCF's back office, essentially -- for our purposes, we took into account the debt in the Support company as well as the drawn debt in the Elysian-owned company. So, we merged the two. So, it was still the same global loan quantum against the same asset. So, it wasn't that we would just let the subsidiary of Elysian draw and the novating company not have any security attached to it.

Q. I'm not sure that's right. We can come back to that tomorrow morning. The point I was just asking about at this point, if we go to <MDR00090417>, there's an email from Mark Ingham to Graham Reid. He says: "The deal has been structured on the basis there is no legacy debt within the new group (Elysian Limited). This will be restructured away at the sellers discretion. New debt, ie borrowings from LCAF, money raised from bond will be securitised against existing assets."

I know it is Mark Ingham's words, but does that broadly encapsulate what you were just saying?

A. There is legacy debt because the subsidiaries of Elysian provided security to the novating companies. So it is okay -- if you look at, let's just say, Colina, under Elysian as a parent, it would have no debt sitting there, but it provided security for a debt sitting over here and LCF merged the two.

Q. Potentially, this enables LCF to merge for a second time on the same assets; is that right?

A. No, I don't think that's correct. Perhaps I'm not explaining myself. If the asset is worth £15, for example, you've got £5 of legacy debt and then the company under Elysian could only draw up to 75 per cent of the total, including the £5 of debt that was sitting in the novating company. So we accounted for it. So the global debt between the two companies didn't go over what was allowed. Perhaps I'm not explaining myself well.

Q. Let's have a look at <MDR00084180>. This is an email from Alex Lee to Mr Sedgwick. It doesn't involve you. But I just want to ask you about the underlying agreement to see if this correctly reflects the position.

The second paragraph, he says:

"In relation to GRP (and the subsidiaries, namely, Colina, Costa, Waterside and CV Resorts) I gather that there is an agreement whereby London Group LLP (and its yet-to-be incorporated subsidiaries) will be taking over the debt by way of a contract between GRP and LG LLP ... £24 million (of the

£40.4m LTD indebtedness) will be spread among those new subsidiaries and LG LLP itself." Although he wasn't certain what amounts are attributable to which entity.

Then, the next paragraph:

"The remaining £16.4m will be taken up by Atlantic Petroleum."

He says he is not certain of the name, but it is Atlantic Petroleum Support Limited, isn't it?

A. I think that's right, yes.

Q. So, is that, essentially, what you had agreed?

A. I remember the Atlantic Petroleum. I think that's something -- I think you've got two transactions there. You've got the -- just dealing with the -- can we make the paragraph above it bigger, sorry? "In relation to". Thank you. What this doesn't do -- hang on, where are we? What that doesn't do is -- it says: "The documentation will comprise the new facility agreements, debentures in first position and cross-guarantees including parent company guarantee." It doesn't include the security provided by the Elysian subsidiary.

Q. We will come to that. Just sticking with these paragraphs, this is what you and Mr Hume-Kendall had agreed, is it?

A. This would have been what -- they came to us as a company. This is what the parties were agreeing in this transaction. Yes, you're missing the bit that you have security from the Elysian companies to cover the novating companies, which this deals with. Yes, there is debentures, cross-guarantees from the parent, and so on and so forth. There is also, on the Elysian side, cross-guarantees and debentures that support the novating companies. But that's the bit you're missing.

Q. Is that perhaps the next paragraph, is that what you are talking about, if we look at that? Alex Lee says: "Finally, in relation to GRP itself I gather that there will be new facilities to be granted (both to GRP but also to the GRP subsidiaries (Colina/Costa/WS/CV) ..."

Those are the new facilities from LCF to the subsidiaries of Elysian?

A. Sorry, I'm just reading that. That sets up the Elysian side of things, but there's no mention of the security that the GRP subsidiaries will be providing the novating companies that hold the debt.

Q. The GRP subsidiaries were to be debt free to allow further facilities from LCF to be advanced.

A. Yes, but then they provided security to cover the novated debt, so, essentially, they could only draw up to a certain amount when taking into account the associated debt in the novating companies. And I believe, if you read the Elysian transaction, it goes into that.

Q. You've mentioned the Elysian transaction's terms a few times now. That's something that you would have been very familiar with at the time, then, is it?

A. I would have looked at it at the time. I would have been told by the lawyers it was fine. It would have gone to our lawyer. Did we go through it in great detail? No, we didn't at the time. We relied on our lawyers telling us that it was okay. We had Robert Sedgwick and Jo Marshall on one side, you had Graham Reid from Lewis Silkin as well, and you had Alex Lee on the LCF side of the fence.

Q. From your perspective, on behalf of LCF, this made -- this proposal made little difference?

A. It overly complicated it. It would have been nice if they just took -- reduced the consideration paid and retained the debt. That would have made it a whole lot easier. But the parties chose not to do that, so there was complications there, yes, that we could have done without. But, in terms of where we were and how we were viewing it and the advice that we got, as long as the asset-owning -- I think that's how they refer to it in the Elysian agreement -- the asset-owning company provided security to the novating company, then we had wrapped everything up.

Q. So, it is your position that you were solely concerned with the value of the underlying property assets and with ensuring LCF was at least no less well secured than it had been previously?

A. Yes. We were an asset-based lender, so we lend against the asset. As long as the loan has a see-through to the asset and also other security as necessary, then all parties would have been comfortable. We were advised by our lawyers that that was the case. There was other lawyers in the transaction that they were all happy with the transaction. Other directors of LCF were happy with the transaction. The transaction went ahead.

Q. In reality, you, Mr Thomson, knew that the security was already wholly inadequate and would continue to be wholly inadequate?

A. We took advice on it and the lawyers structured it and the lawyers said it was fine.

Q. But you personally knew that it was inadequate and would continue to be inadequate?

A. No.

Q. You knew you would be piling even more debt onto inadequate security?

A. No.

Q. You knew you would be doing that to fund further payments to you, Mr Hume-Kendall, Mr Barker and Mr Golding?

A. No.

Q. Can we look at <MDR00084233>, please. It is an email from Mr Lee to Mr Sedgwick copying you with the subject "LTD refinancing". He says he's attaching a draft debenture. If you were solely concerned with ensuring that LCF was at least no less well secured than it had been previously, you would, no doubt, have paid attention to this email and the attachment?

A. Not necessarily. If I'd already discussed it with Mr Lee and he said he was happy with it, then this is just him -- as I said this morning, I received an email, if I'm aware that other parties are dealing with the subject tasked, if I'd had discussions with them already, I may not have opened the email because I may have already discussed it from Alex and this is just what they're getting on with between lawyers.

Q. You would have understood at the time that what the lawyers were getting on with was drafting a facility between LCF and CV Resorts?

A. Yes, it says "Subject: LTD Refinancing". You would see the attachments and:

"Dear Robert, further to my email yesterday, I am attaching a draft debenture ..."

Okay, the lawyers are getting on with it.

Q. You would have understood that CV Resorts was going to be giving a debenture to LCF?

A. This is what it says, yes.

Q. If we look at <MDR00084281>, in the bottom half of the page, Mr Sedgwick emails Mr Lee, copying you and, at the end of the first paragraph, he says: "CV Resorts at the moment does not have any property in its name only the contracts to acquire the land in the Cape Verde."

If you were solely concerned with ensuring that LCF had good security, that's obviously something that would have been seriously problematic for you?

A. I believe I brought this up this morning, Mr Robins. This was the email I was referring to between Mr Sedgwick and Mr Lee. I was in hospital seeing an ENT consultant, so I would have -- wouldn't have -- this was a Friday, I have checked my diary. I may not have even opened this.

Q. ENT, as in ear, nose and throat, is it?

A. Yes.

Q. Did you have any condition that prevented you from looking at emails on your phone?

A. What I'm saying is, I wouldn't necessarily have done that. I'm in hospital seeing a consultant. This comes up and, as I explained this morning, I can see who it is from, I can see who it is addressed to, I would see, "Dear Alex, thank you for the draft which in principle seems fine. I will check them in detail". Again, it's the subject line that's come up in previous emails. These are lawyers just getting on with it. So in terms of -- I may not have even opened this email. I can't remember this brought up by our lawyers.

Q. Can we look at the top of the page. On the same day, less than an hour -- just over an hour later, you're forwarding it to Mr Hume-Kendall saying: "We've had Alex run around to get the docs as ready as can be but we can't go any further without input from Robert. Are you able to chase him up/give him an instruction to proceed?"

Whether you were in hospital or not, this is something you were reading and dealing with?

A. I forwarded it on, perhaps had a conversation with Alex. Mr Lee didn't bring up the bit about CV Resorts. However, if it was discussed at the time, just looking at, "CV Resorts at the moment does not have any property in its name, only the contracts, they're buying on a staged basis". I can see me having a conversation about that, if, indeed, I did notice that.

Q. You're talking about a multimillion pound facility to CV Resorts on a loan to value ratio of 75 per cent. You knew that it had insufficient assets to secure the proposed liability?

A. We believed that they were buying that. This is part of a much larger transaction. I don't know if I picked up the CV Resorts bit. I'm just looking at it now. It's not brought up by Alex. I have not seen it anywhere else. The purchase of CV Resorts was on a staged basis. I don't know if a conversation was had with regards to that sentence. I don't remember it coming up again. I don't remember Mr Lee bringing it up with us. I can see we forwarded this on to Simon to run around. I'm in hospital dealing with it on my iPhone. Perhaps I had a call from Mr Lee, I don't know. But CV Resorts was a staged purchase.

We were -- even without this sentence, we were on the understanding that they were buying.

MR JUSTICE MILES: If you look at the bottom email, it says that they need instructions from the directors. Do you see that?

A. Yes.

MR JUSTICE MILES: Then, in the top email, you're writing to Mr Thomson [sic], saying, "Please can you give instructions to the lawyers"; do you see that?

A. Yes.

MR JUSTICE MILES: Looking at that, do you think it is probable that you read the email at the bottom?

A. My Lord, I could have scanned it very quickly -- I could have scanned it, I could have read it, I could have had a conversation with Mr Lee about it, "Look, we need to get this done". I don't remember the Cape Verde question coming up. It's clearly not come up in the email above that with Mr Hume-Kendall. Even without that, our understanding at LCF was they were buying, on a staged basis, the CV Resorts properties.

MR ROBINS: Does my Lord have any further questions? Could we look at <MDR00084663>. This is another email from Alex Lee to Mr Sedgwick. It is copied to you. In paragraph 2, halfway through the paragraph, he says: "Our instructions are that the GRP Plc 'group' is then to be debt free to allow for further facilities from LCAF to be advanced."

That was the instructions that you had given to Mr Lee; yes?

A. That was instructions. Our lawyers -- he's looking at this, but you're not taking into account what I've said before, which is the cross-collateralising of the asset security with the novating companies, and I believe the Elysian transaction sets that out.

Q. That's exactly the point. If the GRP Plc group is to be debt free, then the GRP Plc group can't have any liability for the legacy debt in the Support companies?

A. It does have liability, and the Elysian -- so he's wanting to understand the transaction. The Elysian transaction deals with asset companies and novating companies. And I believe it deals with the asset-owning companies providing security to the novating companies. But that's not brought up in here.

Q. The Support companies were going to be empty of assets, weren't they?

A. But they were getting security from the companies that held the assets as well as cross-guarantees, parent company guarantee. The parent company guarantee went up to London Group so we had, therefore, security of London Group assets, which I think -- I believe, at that time, contained in the LOG which would be down to Independent Oil & Gas, but it doesn't take into account the part of the Elysian transaction, I believe, that says the asset companies provide security for the novating companies.

Q. So, if the Support companies are going to be empty of assets, how do they pay the 40 million-plus that's being imposed on them? How do they pay that to LCF?

A. Sorry, say that again?

Q. If the Support companies are going to be empty of assets, how are they going to repay the 40 million-plus of liability?

A. The requirement in the -- you're not bringing up the Elysian transaction document. The requirement was -- if I remember it correctly, but I've not gone through it for a while -- part of the

purchase consideration, included the historic debt, and part of that purchase consideration was to be used to pay down that debt.

Q. So, is it your evidence that the subsidiaries of GRP would not be debt free, but would be liable to pay to the Support companies the full amount that the Support companies needed to repay LCF?

A. No, the consideration that Elysian owed for the transaction, part of that consideration was to be used to pay down the liability in the Support companies. The asset-owning companies in the Elysian transaction were to provide security for the novating companies. So the asset-owning companies sitting inside Elysian or GRP, I forget which way it was, yes, when looking in isolation at that company had no physical debt attributed to that company, ie, it hadn't entered into a loan agreement as yet and drawn anything. However, it did guarantee, and I think by debenture -- I can't remember; the Elysian document hopefully should tell us -- the liabilities of the connected support company. I think the Elysian transaction sets that out.

MR ROBINS: My Lord, I see the time. I know we said we would deal with the other matter at 4.15.

MR JUSTICE MILES: Yes. We are going to break from your evidence there, Mr Thomson.

A. Am I released to go, my Lord? Thank you.

MR JUSTICE MILES: Unless you want to stay. It is up to you.

A. I'm quite happy to go.

MR JUSTICE MILES: Your evidence will resume at 10.30 tomorrow.

A. Thank you.

(The witness withdrew)

Application by **MS DWARKA**

MS DWARKA: My Lord, this is an application made on behalf of the first defendant to vary the freezing orders to permit him to make payments in respect of his hotel accommodation in London whilst he is giving evidence at trial. Can I just check that your Lordship has seen the application, the correspondence clip, evidence in response and our reply, please? It has been filed and served, but the claimants have included it in the trial bundle at P13. I will briefly go through them, but I will explain the various bits --

MR JUSTICE MILES: I have read the application notice, I haven't read the correspondence clip, I have read the witness statement of Mr Davis dealing with this matter. That's what I have read.

MS DWARKA: Okay. All right, my Lord.

The parties have been in correspondence on this matter from 23 March. Originally, the amount was much higher, but we are now talking about £5,021.20. That is the amount that we are seeking. So, the first defendant is asking to be allowed to make a one-off payment of £5,021.20, representing seven days at the Rosewood Hotel.

Just to give you a breakdown of the value, the first three nights are at a higher daily rate of £673 per night because that's what we managed to negotiate, and the rest is at a rate of £600.44. This was negotiated by the firm for Mr Thomson's stay.

Now, within the body of the application, Mr Slade has provided three reasons as to why the Rosewood was chosen. The application is found at <P13/1> and the explanation is at pages 2 to 3. He says first it is the proximity of the hotel to the firm and to court. I know, my Lord, you haven't read Mr Balderstone's statement, but he explains --

MR JUSTICE MILES: Sorry, I have read that.

MS DWARKA: Mr Balderstone, in his statement, explains that the firm had grown accustomed to dealing with Mr Thomson's medical conditions, and Mr Slade and those dealing with Mr Thomson had, therefore, made certain allowances and adjustments. So, Mr Thomson is under purdah and everyone is very much aware of this, but the firm still wanted to be available in case he needed anything and in case anything happened whilst he's in London. His Lordship has allowed the firm and Mr Slade to assist Mr Thomson in relation to his health and other matters such as settlement and his move. So he is obviously otherwise not allowed to take to anyone about his evidence.

In terms of the second reason, Mr Slade explains, Mr Balderstone, in his statement at paragraph 11, provided some explanation. He said he made some enquiries as to whether the hotel could accommodate the medical needs of Mr Thomson and was told that adjustments could be made to accommodate him. So adjustments were therefore made to the bed to make it more suitable and comfortable for Mr Thomson. There is an issue, my Lord, as to whether the words "orthopaedic beds" or "orthopaedic adjustments" to the bed was used, but the point is that adjustments were made to cater for the needs of Mr Thomson. The bed was adjusted in a way to make it significantly safer and more comfortable whilst he gives his evidence and whilst he stays in London. The third reason given by Mr Slade is the level of seclusion provided by the hotel. My Lord has seen Mr Thomson's previous statement where he talks about his safety concerns. So, with his concerns in mind, and the fact that the case had attracted significant press interest, Mr Slade explained that the Rosewood was chosen to provide him with some safety nets. Now, I am aware, because this has been mentioned, that I did not mention the other reasons why the hotels were chosen previously when I first mentioned this issue to your Lordship, back when it was hotly disputed. At the time, I was only aware of one of them, but clearly there were other reasons in the background. The matter has not been resolved since. Mr Davis, in his evidence, provides various alternative hotels, but they do not appear to consider Mr Thomson's needs. We know that they don't have orthopaedic beds. Mr Davis also explained in his evidence that the Rosewood had said to a remember of Mishcon de Reya that they did not provide any orthopaedic beds, but I suspect that the confusion here is the fact that there is a difference between asking for an orthopaedic bed as compared to asking for adjustments to be made --

MR JUSTICE MILES: What adjustments have been made?

MS DWARKA: As I understand it, the bed has been made softer and they have provided an orthopaedic pillow --

MR JUSTICE MILES: But an orthopaedic pillow is a portable thing, isn't it?

MS DWARKA: Yes, and they have made some adjustments to the bed. I'm not really sure --

MR JUSTICE MILES: An orthopaedic pillow is something that could be put on any --

MS DWARKA: That could be provided.

MR JUSTICE MILES: That could be provided, and is readily available.

MS DWARKA: I have understood they have added a thing underneath the bed to make it a bit adjusted.

MR JUSTICE MILES: What have they done to make it softer?

MS DWARKA: I don't have instructions specifically, because Mr Balderstone was the one who dealt with the hotel and he got told that adjustments were made. I don't actually know what adjustments, my Lord. To continue, my Lord. Mr Balderstone had checked with the other hotels following your comment whether enquiries were made in respect of other hotels that could essentially be cheaper in the vicinity, and he provides his explanation in his statement at paragraph 11. That's found at <P13/6>, page 4. He explains none of the hotels were ready to make any form of adjustment and, if anything, they were worried, once they explained the conditions that Mr Thomson was suffering from.

Seeing that the matter wasn't resolving, and with an aim to try to come to a suitable solution, Mr Slade had asked the claimants whether they were ready to accept that £500 per night would be an acceptable or reasonable price to pay for a hotel in London, bearing in mind the situation we are dealing with. I know that your Lordship has not looked at the correspondence clip, but if you had looked at it, it is quite clear that communication had broken down at some point and the correspondents were quite tense.

Last week, on Thursday, I had written to Mishcon de Reya, after court, and after having read Mr Davis's statement, with a view to try to see whether we can bridge the gap and find a solution. I have passed a copy of my correspondence to Mr Robins and to my learned friends Mr Ledgister and Mr Curry. Can I pass a copy to your Lordship and ask you to read it, please? (Handed).

MR JUSTICE MILES: Yes.

MS DWARKA: Unfortunately, I didn't hear back. I did enquire with Mr Robins whether I would hear back and he told me he believed the previous emails were very clear, the previous emails being the ones between Mr Davis and Mr Slade.

I had a look at the correspondence. I think we go back to the various rates being offered. So, I have taken a view on what are the rates that we are talking about. Taking the higher rates, which is at £277, if I take that as a rate, there it looks like they are offering -- for seven days of that, it would be £1,939. But they have not taken into account any adjustment to be made in order to cater to Mr Thomson's medical needs. That, we say, is not enough.

It is clear that the claimants are not ready to pay for the Rosewood, but we still need to find a solution for this, because Mr Thomson is here, he is expected to be in the witness box for four days, and he's been checked in at the Rosewood for this week because he's happy there.

In light of his medical condition, we are doing what we can to accommodate him. We do not want to face a situation where we may have inadvertently contributed to any degradation of his health. That is all we are doing, my Lord. We are just trying to do what is best for him in the circumstances.

The hotel has been booked for this week and the cost has been incurred. So, your Lordship is invited to decide whether to allow the amount we ask for, bearing in mind the particular circumstances of this case. Unless I can assist you further, my Lord, those are my submissions.

MR JUSTICE MILES: Thank you.

Submissions by **MR ROBINS**

MR ROBINS: My Lord, no sufficient justification has been put forward for this extraordinary expense, and the application is entirely unnecessary and could have been avoided.

Before any of this started, on 23 March, the claimants offered to book a hotel room at their own expense for Mr Thomson's accommodation whilst in London. We can see that at <P13/2>, page 1. Two hotels were offered: Apex Temple Court and Z Hotel, Holborn. The cost of those options has been explained in Mr Davis's statement at <P13/4>, page 3.

MR JUSTICE MILES: When you say at the claimants' own expense, you mean they would agree a variation?

MR ROBINS: No, that they were going to pay for it.

MR JUSTICE MILES: Let's go back to that. Let's have a look.

MR ROBINS: At the end of the first paragraph.

MR JUSTICE MILES: So that would then just be added on to your client's costs, effectively?

MR ROBINS: Yes.

MR JUSTICE MILES: So it would depend on the outcome of the case? Presumably, if you're --

MR ROBINS: Yes.

MR JUSTICE MILES: It would effectively be treated as costs in the proceedings; is that right?

MR ROBINS: I think that's right. I'm not sure it was being offered in any event, but it was -- Mr Thomson had said he needed to be within a 20-minute walk of the court and so we were offering hotel accommodation within walking distance.

My Lord has seen the costs of those at <P13/4>, page 3, at 8.1 and 8.2. 8.1 is Apex Temple Court Hotel. That's 300 metres from the court, according to Google, a five-minute walk from the Rolls Building. It is from £180 for a City King Room to £210 for a City King Room with balcony to £277 for a Junior Suite. The Z Hotel Holborn is also very close -- it is a 14-minute walk from the court -- and the cost of one night's stay ranges from between £130 and £135 a night. That offer was rejected --

MR JUSTICE MILES: Is the Apex Temple the one that's sort of next to the Temple, in that courtyard?

MR ROBINS: I can show your Lordship a map in a moment that might assist. But, just chronologically, our offer was rejected and we were told that Mr Slade's firm had booked a suite at the Rosewood for Mr Thomson. That's obviously a far more expensive option. We see the response at <P13/2>, page 2.

We were told that they'd booked a room at the Rosewood already, obviously considerably more expensive. That didn't seem, to us, to make sense. Our options were far cheaper. Given that Mr Thomson is arguably spending the claimants' money, he shouldn't be spending it on the most expensive or most luxurious options. Secondly, in terms of the distance from court, one of our options was actually a lot closer and the other was certainly no further away than the Rosewood. The maps I mentioned are <P13/5>, page 2, that's the Rosewood, and the dotted line is the walk to court. So that's what he booked.

The next page is the Apex Temple, which -- yes, it looks like it is down by --

MR JUSTICE MILES: Yes, it is the one I thought.

MR ROBINS: The other side of The Strand. Then page 6, the other hotel that we found is certainly no further away than the Rosewood. I don't know why it is taking so long to load.

In court, Ms Dwarka told your Lordship that the sole reason for booking the Rosewood was that it was able to provide what was described as an orthopaedic bed. That's at <A5/19/16>, internal page 64, if we could --

MR JUSTICE MILES: Don't worry about that. I can remember it.

MR ROBINS: She said:

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

Certainly Mr Slade's firm's enquiries to other hotels seem to have asked, "Do you have an orthopaedic bed?" We can see that, for example, at <P13/2>, page 7. At the bottom of the page. Mr Pease had emailed some other hotel saying:

"We have a client that requires an orthopaedic bed. Does your hotel have any such facilities?" And they were told no. But then the Rosewood told us that they don't offer an orthopaedic bed either, that's at <P13/5>, page 42, where we enquired to say, "What's this about orthopaedic beds?", and they replied: "I have checked with housekeeping and regret to inform you that we do not offer orthopaedic beds." So we then explained to Mr Slade that the sole reason put forward was not a good one, and he sought to change it: first, at <P13/5>, page 31. In the first main paragraph, Mr Slade said:

"As to the ... expression of 'orthopaedic bed', [that] was shorthand. To be more precise, the Rosewood is prepared and able to adjust the hardness or softness of its beds to assist guests with back problems and to provide orthopaedic pillows. No other hotel within a half-mile radius is prepared or able to make any adjustments ..."

The basis for that is not clear. My Lord saw the email from Mr Pease asking another hotel if they had an orthopaedic bed, and they said no. It is not clear that those other hotels have necessarily been asked the right question, which seems to be, "Can you supply a pillow or do you mind if we bring one along ourselves?". The justification has since changed again. We now have three new reasons, which are <P13/1>, page 2, at paragraph 2. Orthopaedic adjustments, as they are now known, have been demoted to second place. The first reason is proximity:

"It is close to my firm's offices and the court building."

The second is level of amenity, which is now the new term for "orthopaedic bed". And, thirdly, is level of seclusion. We don't accept that those reasons are good reasons. We have set out our position in the evidence of Mr Davis, <P13/4>, page 4, 14 to 15, where he makes the point in 14:

"[We] accept the Rosewood is close ..."

MR JUSTICE MILES: I have read that.

MR ROBINS: I'm grateful, my Lord. The point to emphasise is, there is still no real evidence as to what these orthopaedic adjustments are, which is the second reason that is given. It sounds as though it is just a case of "bring your own pillow".

As regards the SFO, whose consent will also be required, all that we have been told is that they remain resistant -- that's at <P13/5>, page 31 -- in Mr Slade's email in the penultimate paragraph. The final three lines of that paragraph, talking about Mr Crome of the SFO:

"He has indicated resistance to the costs of attending trial. But I suspect that he will follow your lead or the court's lead on this. If my client's costs of attending ... are approved ... I consider it unlikely that the SFO will refuse."

That's Mr Slade's expression of opinion. The only information we have as to the facts is that they are -- they have indicated resistance.

No correspondence with the SFO has been provided. Mr Davis pointed that out in paragraph 19 of his statement. The evidence in reply does not disclose any correspondence with the SFO, so we are none the wiser. It seems that the SFO are still resistant. When Mr Slade's firm booked the Rosewood, without first seeking or obtaining the claimants' consent or the court's permission, Mr Slade's firm took the risk that they may need to pay for it themselves to avoid a breach of the freezing order in the event of the claimants and the court disagreeing.

A solution is obviously required. No-one is suggesting that the Rosewood should go unpaid. But it seems that Mr Slade's firm, who made the booking, is going to have to bear the cost.

MR JUSTICE MILES: Would you oppose a variation up to the sum of £275 a night?

MR ROBINS: That's at the higher end of what we offered --

MR JUSTICE MILES: I know it is.

MR ROBINS: -- but we wouldn't oppose that. We have made our position clear, from 23 March, what we would accept.

MR JUSTICE MILES: Thank you.

MS DWARKA: My Lord, I think I have only one point to make. Their offer doesn't cater for Mr Thomson's medical needs and that's the reason why it wasn't accepted. I had invited the claimants to try and bridge the gap and come to some sort of solution, but they didn't take up that offer, so we ask the court to make a decision based on what's appropriate and necessary, taking into account Mr Thomson's needs. Thank you, my Lord. (4.35 pm)

(Ruling extracted for approval)

(4.45 pm)

MR ROBINS: My Lord, to avoid any arguments of costs at this time of day, can I suggest costs in the case?

MS DWARKA: Yes, my Lord.

MR JUSTICE MILES: Costs in the case. 10.30 am tomorrow. (4.46 pm)

(The hearing was adjourned to Tuesday, 16 April 2024 at 10.30 am)

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