

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 27 - Thursday, 18 April 2024

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

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

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

Elten Barker (D3) settled and is not appearing

Spencer Golding (D4) is debarred from defending the claim

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

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

Robert Sedgwick (D8) appears in person

Thursday, 18 April 2024 (10.30 am)

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

MR MICHAEL ANDREW THOMSON (continued)

MR ROBINS: Can we go to <11/5> at page 1, please. Mr Thomson, do you remember we were looking at this yesterday?

A. Yes.

Q. Page 10, please. Page 11. Is it the next page? We were looking at how, on the right, under "Review of historical financial information", we looked at: "The historical financial review will seek to analyse the performance of the potential borrowing company over the last three years ..."

I think you accepted, yesterday, for a number of your borrowers, it was not possible to conduct a historical review going back three years because they hadn't been trading for that long?

A. I do accept that the borrowing company, because they couldn't have been trading that long, some of them were newly incorporated. However, the correct -- what we should have done, the wording should have been expanded on, and the -- if I can use the word "venture" or "asset", that would have provided historical, so that's what I believe we would have been reviewing, but I agree the wording isn't ideal.

Q. In terms of the companies we are talking about, Colina Property Holdings hadn't been incorporated for three years when LCF granted its facility, had it?

A. No, but the venture had, the asset underlying it had, and that's what we would have looked at.

Q. Colina Support hadn't been incorporated for three years either?

A. The same answer.

Q. Costa Property Holdings as well?

A. The same answer.

Q. Costa Support?

A. Again, the same answer.

Q. FS Equestrian Services --

A. That, we -- that came out of Home Farm.

Q. -- or River Lodge, as it was then?

A. Yes, River Lodge, that came out of Home Farm.

Q. But it hadn't been incorporated?

A. It didn't have three years' trading but it did have assets and it did have trading.

Q. And LOG hadn't been incorporated for three years, had it?

A. No, but the asset that underpinned it had, and that's what we were looking at.

Q. Waterside Support hadn't been incorporated for three years either, had it?

A. The same answer as I've previously given.

Q. Or Waterside Villages?

A. Exactly the same answers.

MR JUSTICE MILES: Did the Support companies have any business?

A. The Support companies, for the period -- and it wasn't my choice to do this, my Lord. The period between the Elysian and the Prime, the Support companies, because of what the parties wanted to do, the Support companies had the novated debt. The Elysian kept the property/ventures in new companies, so the property/ventures had history, and the security that underpinned those was security from the asset-owning company to the relevant Support company and the deferred decision -- it wasn't paying preference shares because they didn't happen, but, still, payments happened and that was paying down for that period of time, six months, and I've seen it, the Support company debt. So there was a link between -- still a link between the debt and the asset that underpinned it and the profitability of it. That all changed when Prime bought them all and brought them all back under the same roof again.

I think it is section 5 in the Elysian transaction that I believe deals with it, but I may be wrong.

MR ROBINS: It goes on to say:

"The review will determine whether the current profitability of the potential borrowing company is sustainable."

You were saying you only lent to profitable borrowing companies, weren't you?

A. The ultimate profitability. We would have had financials and projections for these that we would have looked at. There is -- each of these assets is a venture in its own right, it is in a development stage, and we believed that, as they continued down their development road, they would ultimately either be profitable or -- when they are sold, or be refinanced out.

Q. None of these companies had actually made any profits, had they?

A. Again, we looked at it from the venture that is the asset underneath them, not necessarily the new company, and we looked at the financial surrounding, including the valuation, of the asset. So we based it on that, not simply, it was a company. And, I agree, the wording isn't ideal in this, but this was what we wrote at the start. The company evolved and went into a slightly different direction. This was written -- I agree. It is not -- the word isn't ideal. I think I said that yesterday.

Q. None of the companies had actually made any profits, had they?

A. Not at that time, no, because they were in a development phase. They couldn't have made profit because they hadn't -- the asset hadn't been developed.

Q. When you say the wording was not ideal, you mean that it came to be inaccurate. Is that what you are saying?

A. So, we have got written here -- so:

"Company over the last three years and determine whether the current profitability of the potential borrowing company ..."

Well, "potential borrowing company", or underlying asset that we are lending to, "is sustainable". Yes, the wording isn't ideal.

Q. Do you accept that LCF continued to raise monies on the basis of information memoranda containing exactly this wording in, let's say, June 2018, even when, on your own evidence, it was inaccurate?

A. Again, the wording is not ideal. It is not just me approving this. The lawyers that wrote it with us all knew what we were doing. So, Kobus signed all of these off when he was at Sentient or LCF, so it wasn't just me doing this.

Q. But is the answer to my question "Yes" or "No"?

A. I agree, it's --

Q. Is the answer to my question "Yes" or "No", though?

A. Sorry, yes, the wording isn't ideal.

Q. But that wasn't my question. Would you like to repeat my question?

A. Yes, please.

Q. Would you like to repeat it, or can you not remember?

A. No, I don't remember. Please, could you repeat it?

Q. Do you accept that LCF continued to raise monies on the basis of information memoranda containing exactly this wording in June 2018, even when, on your evidence, it was inaccurate?

A. Yes.

Q. The wording we are looking at also says: "... this review will seek to determine whether the potential borrowing company would have been able to afford the level of debt it is seeking, or whether LC&F will be relying on future trading performance to ensure the debt servicing costs and ultimately the principal sum borrowed are repaid."

Do you agree this gives the impression that interest and principal will be repaid from trading income?

A. Define "trading income". Trading income for a company -- for a development company, trading income would be, ultimately, the sale of the asset. So, I disagree. I think that statement loosely says what we were looking at. We were looking at what the future trading performance of these assets are going to be and will they repay the debt.

Q. You agree that none of the borrowers actually ever made any trading income?

A. Because they hadn't got to the phase in their development to do that. If we hadn't been shut down, LOG would have actually achieved that in, I believe, February '19, but it wasn't -- we weren't allowed to get there.

Q. You agree that the information memoranda did not say that LCF would be lending the money in speculative developments, seeking repayment on completion or through refinancing of the borrowers. That's not mentioned anywhere in the information memoranda, is it?

A. No, it isn't. Again, we wrote it with our lawyers, the lawyers knew what was happening, they said that they believed this was okay, that was their advice. It was approved for promotion by Kobus.

Everyone had a hand in this. Looking at the market for this, raising funds to do these types of things, the wording that you're suggesting doesn't appear in other fundraising documents that deal with property development.

I'm not quite sure I'm answering your question properly, Mr Robins. I'm getting slightly lost. But this is what we wrote. We didn't believe that we needed to put further in there because we weren't exactly sure, when we were writing these things, where the company was going, but that's what we wrote.

Q. At the bottom, it says:

"Nonphysical assets (eg, the potential borrowing company's debtor ledger and the value of contracts) will be assessed in line with UK accounting standards." Do you see that?

A. Yes.

Q. That never occurred, did it?

A. Well, I completely disagree with you. If you take LOG, for example, and the analysis that not only IOG provided but also the CFO of LOG LPC, they absolutely reported the figures in line with UK accounting standards. The use of net present value -- a combination of net present value and Black-Scholes was agreed with LPC and LOG as the accounting method to use to value their holding in IOG. That was approved by BDO. If you look at IOG, the figures that they have to report to UKLA are highly regulated. They would be in line with UK accounting standards. So I disagree with you.

Q. Point (c) talks about an appraisal of property assets and says it will undertake an assessment of the current market value of the property offered as security: "This will entail the property being assessed by an independent surveyor to confirm the property's market value."

Do you see that?

A. I do.

Q. You knew that the valuations of the property assets were inflated, didn't you?

A. No, and I believe that statement there -- so when you looked at (a) and (b), you were looking at company, and I think, when looking at (c) here, (c) better defines what we were going to do with those ventures that were property related. So, for property development funding, the survey will include a GDV, or someone did -- the GDV came from the financials that were provided alongside that. So, yes, we had surveys that gave the market value and we believed what those surveys said.

Q. You would have understood from your time in the banking industry that real, legitimate lenders look at the value that can be achieved on the security assets in a fire sale?

A. That is one of the metrics to have a look at, not all of them.

Q. You understood that that's what Ultimate Capital had asked GVA to do in their valuations?

A. Ultimate Capital are a bridging lender, a chunky interest rate in line with normal bridging debt and bridging lenders do look at fire sale values. The banking world takes a different view.

Q. Do you accept or not accept that (c) is misleading?

A. No, I don't accept it.

Q. (d) says:

"... LCF will require potential borrowing companies to provide projected financials for the period of the loan to demonstrate that both interest and principal are able to be repaid."

That's something that never occurred, is it?

A. It did, and those spreadsheets were in disclosure. I have seen them.

Q. Well, LCF was paying existing investors using money from new investors, wasn't it?

A. I believe we went through that yesterday, Mr Robins, and, as I explained, we allowed them to use - gear up on the assets that they had, because they were in the development phase of their growth, to meet that, as other lenders in the market do. They hadn't reached the stage that they could monetise the asset to stop paying so LOG almost got there.

Q. It says:

"This assessment seeks to determine whether the repayment proposals are realistic, understandable and in line with financial information ..."

You weren't given any realistic repayment proposals by any of the borrowing companies, were you?

A. We were, and, again, they are in disclosure. I have seen them.

Q. And (f) says:

"An assessment of the ..."

MR JUSTICE MILES: Sorry, just on (d), Mr Thomson, do you say that you were provided with projected turnover and profits for the length of the loans?

A. Yes, we were, my Lord. They are in disclosure. I have seen them.

MR JUSTICE MILES: Sorry, Mr Robins.

MR ROBINS: Just picking that up, let's say, with regard to Atlantic Petroleum Support, you weren't given such information, were you?

A. Atlantic Petroleum Support had a novated debt inside it and it was guaranteed by its parent company and it also was then linked to a convertible loan into shares which would then provide a royalty through Atlantic Petroleum. We were provided with the financials and the projections of that royalty. Base case for that was \$30 million. The high case for that was \$66 million. Again, those figures are in disclosure.

Q. (f) says:

"An assessment of the potential borrowing company's management, track record and experience [took place]." That is something that never happened either, is it?

A. It absolutely did. The CVs are in disclosure. The smart searches that we have done, there is writeups on them. So, yes, they absolutely were. If you look at LPC, David Peattie, who I think the government has appointed to the head of the Nuclear Decommissioning Authority, he was significantly high in BP. I believe he was the one that dealt with BP Russia before they exited. David Peattie was the gentleman who was responsible for the sell-off of BP's assets in Alaska. You have got Mike Starkie, the group CFO of BP, you have got the ex-Minister of Energy. That's just LOG and LPC.

Q. You keep focusing on LOG and LPC, but what about Mark Ingham, who you knew had run Sanctuary into the ground? You weren't assessing his management track record and experience and saying a thumbs-up, were you?

A. We looked at what he did historically with Sanctuary. A lot of the issues that happened with Sanctuary, when we looked into it, were with regard to Andrew Woodcock, who was the person on the ground in the Dominican Republic. Mark was -- very much managed the back-office side of things in the UK. He seemed competent. We were, as I said, happier with Prime. They had greater depth. Prime had a very experienced property developer that had -- was a qualified quantity surveyor. He was MD of ING's real estate. He dealt with distressed assets. He dealt with purchasing, developing, selling assets. He then moved on from ING after, I think, 12/18 years to a boutique property fund and then ran that. Again, in exactly the same arenas, their chairwoman had history in the leisure and tourism market with some very high brands. They brought on some very decent experience. So we were happy with that, we looked at that, we met them.

Q. The only thing you really assessed was whether the borrowers would facilitate payment of monies to you, Mr Hume-Kendall, Mr Barker and Mr Golding?

A. I disagree with you, Mr Robins.

Q. If you had set out the true position here, that LCF was lending to what are, at best, speculative development ventures associated with you and your associates, that they were largely new companies, that they'd never been profitable, that the security was not being valued on a fire-sale basis and that a large part of the money was being paid to you and your associates, do you think LCF would have had the same success in raising money from members of the public?

A. Sorry, that was quite a long question. Could you just rephrase that and simplify it for me?

Q. If you had set out the true position, if you had set out that LCF was lending to what were, at best, speculative development ventures associated with you and your associates, that they were largely new companies, that they'd never been profitable, that the security was not being valued on a fire-sale basis, that a large part of the money was being paid to you and your associates, do you think LCF would have had the same success in raising monies from members of the public?

A. We wouldn't have written a document like that, Mr Robins, and I don't think it correctly reflects the position. And I wouldn't know because we never wrote a document like that. It is a speculative question.

Q. You didn't put any of that in the document because you knew it would be fatal to LCF's chances of raising money?

A. No, I didn't put that in the document because I don't agree with what you have said.

Q. If we go to page 13, under "Income generation", it says: "Income is generated by charging a borrowing company lending fees of 2 per cent and making an interest 'turn' on the funds LC&F lends. As an example: for a £1 million loan, a setup fee of £20,000 would be charged and a target 10 per cent would be charged for the loan. On a 3-year bond the interest payable to bondholders would be 8 per cent ... or £80,000pa ... and the interest charged to the borrowing company for this loan would be £100,000 per annum. After deducting interest owed to bondholders, LC&F in this example would earn £20,000 per annum in interest and £20,000 in fees." You agree there is no mention there of 25 per cent being paid to Surge?

A. No, and this is LCF income generation. The Surge fee wasn't income for LCF.

Q. You said yesterday that you thought Surge's fee was unsustainable?

A. Yes, and that's why, from mid 2016, we were looking for other sources of fundraising.

Q. So the Surge fee would have been of significance to the decision that members of the public were making as to whether or not to invest in LCF?

A. That isn't the advice that we got from our lawyers who wrote this with us. This is LCF income generation.

Q. You didn't include it because you knew that that would make the bonds deeply unattractive to members of the public?

A. We didn't include it in this because this is LCF income generation. Again, we were advised by our lawyers, they knew about the Surge fee. This is what we wrote.

Q. You deliberately omitted that information to give an impression that you knew was false?

A. No.

Q. If we go to page 12, the final paragraph says: "Once a potential borrowing company has been assessed as creditworthy, agreed security is taken and legal documents are prepared and signed. Only when all legal and security documentation has been completed to LC&F's satisfaction will funds be transferred to the borrowing company."

Do you see that?

A. I do.

Q. You accept that LCF often made advances to borrowers before any documentation was in place?

A. No, I don't agree with that. Yes, there are times that we allowed our borrowers to overdraw their facility when security is imposed. I believe we have gone through that during my time of giving evidence, and I think we have gone through this before.

Q. We saw, in the case of Leisure & Tourism Developments, advances were made before any facility was put in place, weren't they?

A. We disagree on that. As I said in my statement, I don't have the documents to hand. We have gone through that, Mr Robins, and we disagreed on that.

Q. LOG advances were made before any facility was put in place?

A. Again, we went through that yesterday and we disagreed on the point.

Q. You put things that you knew were false into the information memorandum because you were trying to raise as much money as possible to distribute it to you, Mr Hume-Kendall, Mr Barker and Mr Golding?

A. No.

Q. The best way for you to try to achieve that objective was to present LCF as a safe investment?

A. No.

Q. That is why you said what you said in the information memoranda and other materials?

A. No.

Q. You said that, even though you knew it was untrue?

A. No.

Q. You didn't care, provided the money kept coming in?

A. I disagree with you, Mr Robins.

Q. Can we look at <C2/1> at page 65, please. Paragraph 200 of your witness statement. You say:

"... there was no 'Ponzi scheme'. No fraud. Instead, there was a relatively young lending business which had just reached the point of being able to spread its wings and fly when it was closed down by the authorities without investigation and without any good reason."

Everything you say in that paragraph is untrue, isn't it?

A. No.

MR ROBINS: My Lord, I have no further questions for this witness.

A. My Lord, before we continue on, can I just add a couple of things to my evidence of yesterday? Is that possible?

MR JUSTICE MILES: I think as long as it's simply clarification of evidence you gave, then I'm happy for you to do that. It is not an opportunity for you to, as it were, provide further evidence. It is just -- I will allow you to clarify answers that you gave yesterday.

A. Thank you, because I was a little flustered on points yesterday, my Lord.

So, just a couple of things. Mr Robins took me to a text message that was with regard to me opening a company for Mr Golding. I believe it's got to be incorrect and mistaken. I wouldn't have any idea how to open a company, so wouldn't have agreed to anything of the sort.

Mr Golding had at his disposal a long-term accountant in Mr Peacock, who dealt with all company matters, and it would have been a simple thing for Mr Golding to ask to open a company. The message is so far out of the ordinary, it's -- I believe it is simply a mistake on Mr Russell-Murphy's part.

The other message he took me to from Mr Russell-Murphy is suggesting a lowering of Surge's fee by 1 per cent if LCF lowered Mr Golding's loan fee. On reflection, I think he's referring to, looking at the time, the loan to RLE, which Mr Golding had a sizeable interest. The suggestion, I believe, was either Surge's or Mr Russell-Murphy's, I can't remember. And I believe they made the suggestion so they didn't physically have to make a payment to Mr Golding but were trying to honour an agreement with him by securing benefit for LCF. It didn't go past the suggestion stage, as far as I'm aware, as LCF could not have been able to offer the cost of funds to one borrower and another cost of funds to another borrower. Again, I think this is a JRM/Surge suggestion, not something that originated from LCF. I did become a little flustered yesterday when discussing my fellow directors. I find it hard to read what they have written about me, seeing as the amount of time I spent with them. I think it would assist the court if I explain the day-to-day running and the directors' responsibilities. I should have done that yesterday. As I say, my Lord, I was a touch on the flustered side.

All directors had responsibilities for day-to-day tasks. I relied on them to carry out their tasks. Kobus was risk compliance, oversight of Surge, financial promotions, oversight of borrowers and regulatory reporting, including capital adequacy on Gabriel and operational running, day-to-day. Katherine was risk, operational running, management of migration of LCF's Excel system onto GMP. Kevin Maddison was IT, management of the migration with Katherine Simpson and developing an IFA network with me.

Myself, I was developing future fundraisings to try and lower the cost of funds, strategy, direction of the company, oversight of borrowers and operational running when I was in the office.

These were the day-to-day tasks and I trusted my fellow directors to carry out their tasks. It is worthy of note that the operational running of the company included oversight and approval of loan drawings. Due to the size of the company, all directors were also board directors -- as can be seen from the board minutes going back to 2016 -- with all of the authority you would expect a board director to have. Until mid '18, it is correct that I was really the only true executive director, in that I was the one dealing with the direction and strategy of the company, but I reported to the board of directors and acted with their continued approval and support.

That's all I really wanted to say, my Lord.

MR JUSTICE MILES: Is there anything, Mr Robins, arising out of that?

MR ROBINS: I don't think so, my Lord. I think I put my case sufficiently to Mr Thomson yesterday.

MR JUSTICE MILES: Thank you.

Cross-examination by **MR LEDGISTER**

MR LEDGISTER: Just as you have done, Mr Thomson, and on occasions, following a short adjournment or an overnight adjournment, you have reflected on the evidence that you have given and you have sought to perfect it or correct it when continuing your evidence; yes?

A. That is correct. I go and reflect. I have been a witness for a considerable amount of time now. I do struggle with various different things. I do struggle with my mental health. So, yes, I do reflect on things and try and come back and give the court a view that I think will assist.

Q. At times, you have had the benefit of interrogating the disclosure database; is that fair to say?

A. At times, yes, I have had a look, yes.

Q. And it has assisted you?

A. Yes.

Q. You seem to know your way around the database, or certainly have become acquainted with it, haven't you?

A. I have got a rudimentary knowledge. I wouldn't say that I'm an expert in it, no.

Q. Certainly, at times, you have given Mr Robins a hard time that he hasn't found things that you have?

A. Yes, so, my understanding of it is, you type a search term into a certain box and it brings up documents.

Q. You're probably much better than me, I hasten to add as well, so it is not a criticism of anyone else. I'm just saying you're quite adept at finding your way around the disclosure system.

Now, at the start of Mr Robins' cross-examination of you, you were asked a number of questions with regards to the topic of the signing of the LCF/Surge agreement?

A. Yes.

Q. For the purposes of my cross-examination, I am going to refer to it as the Surge agreement. That's the only agreement I'm talking about; okay?

A. Okay.

Q. That's the only thing that I am interested in in my cross-examination. In summary, what you told him was that, when you received the signed agreement from Surge, or when you received the agreement from Surge it was already signed, bearing Kerry Graham or Kerry Venn -- I'm not quite sure what she was then. I will just refer to her as "Kerry" for the moment?

A. Yes, please. I'm not sure when it changed.

Q. We will leave it as "Kerry". Either way, what you told him was the document already had Kerry Venn's signature on it, you countersigned it and then forwarded it on to PwC for their audit. Now, that's what I understood you to be telling Mr Robins; is that correct? That's what you told him?

A. Yes, that's what I told him.

Q. I'm going to invite you to apply the same treatment or reflection, like you have done overnight and you have done on previous occasions, to what you have already told Mr Robins with regards to the signing of that agreement. Before I ask you my question, and it is going to be a very simple and a very clear question, I want to remind you that you are under oath. You do remember that, don't you?

A. Yes.

Q. It is very important that the answer that you give to my question is true. You appreciate that?

A. I appreciate that.

Q. Here is the question: did you receive a signed Surge agreement which you then countersigned and forwarded on to PwC? Did you receive a signed Surge agreement?

A. LCF received a signed Surge agreement. I do not remember which email account it came into.

Q. That's not the question I asked you.

A. Sorry.

Q. The question I asked you was, did you -- you; I'm not talking about LCF. Did you receive a signed Surge agreement. You?

A. That's what I was trying to answer. I do not know -- I do not remember which email it came into. We, as LCF, received it. I cannot remember if it was sent to the back-office team, I can't remember if it was sent to me. So, I'm trying to answer your question. I don't know if it was sent directly to me.

Q. I didn't ask you about email. Why did you mention emails? Why are you talking about emails?

A. Sorry, because I was inferring you're saying it came to me, as in it was emailed directly to me. What I'm saying is, I don't remember if it was.

Q. In fact, it wasn't an inference. It was a very simple question. I am going to try again. Did you -- you -- receive a signed Surge agreement?

A. Ultimately, because I signed it. So I'm trying -- sorry, I'm struggling with your question. I have tried to answer. I don't know if it came to -- which email it came into. I'm trying to answer your question as best I can. If I didn't receive it and it was handed to me, then that's another thing. But, ultimately, did I receive it? Yes, I did.

Q. You did receive it. But you're not sure where you received it from?

A. That's what I'm trying to explain.

Q. Well, that's what I'm trying to understand as well. Shall we explore that for a minute? Who could have given it to you?

A. Would you like me to expand on what I think it is?

Q. Go for it.

A. So, at the time, we were in various discussions with Surge. We had received from Kerry -- again, I don't know if she was Venn or Graham -- previously received a signed agreement.

Q. Yes.

A. There is -- I believe, even in her interview, she confirms that she has sent signed agreements. She confirms in her interview she is aware that would not be the final agreement, but she was trying to get it over to me, or LCF, for audit. I was also discussing with Mr Careless. He was well aware that we needed the agreement signed for audit. I was discussing the same with Mr Russell-Murphy.

In Kerry's interview, she confirms that Surge held an electronic signature for her. She also confirms in the interview that they had a signed agreement with LCF. So she knew that it was signed.

My belief is, one of them, and conversations with me, because they were aware that we needed it for audit, attached the signature maybe without Ms Venn's knowledge and sent it over. I appreciate the documents that Mr Robins has taken me to, I appreciate that there was conversations between all parties at the time, and we had to move things on. I appreciate that. My view, having looked at all of these things, is perhaps one of the others attached it because they wanted to get it for our audit and then progressed with Ms Venn, telling her at a later date.

Q. You didn't receive a signed agreement, did you, Mr Thomson?

A. I believe I have answered that already.

Q. You see, that's not the truth, is it?

A. Again, I've told you what I believe is correct.

Q. When are you going to start telling the truth about the agreement, Mr Thomson?

A. I believe I've given you my answer to that.

Q. You had discussed this agreement, the Surge agreement, with both Kerry and Paul Careless, hadn't you?

A. And I believe I've discussed it with Mr Russell-Murphy. I've discussed most of the other things with Mr Russell-Murphy as well.

Q. This was an important agreement and it was very important that it was discussed amongst the senior participants in the organisation, so Kerry Venn -- Kerry Graham and Paul Careless were responsible for the important Surge agreement. Would you accept that?

A. I would include Mr Russell-Murphy in that as well.

Q. All right, Mr Russell-Murphy as well then. But, mostly, the person responsible was Kerry, wasn't it?

A. The majority of my conversations actually happened with Paul.

Q. What about the majority of your emails?

A. Paul and I tended to talk more. Emailing was usually Kerry, although I discussed with her as well. And Mr Russell-Murphy was a bit of both.

Q. But the communication would have been by way of email, calls?

A. Yes.

Q. Messages?

A. Various different forms of communication.

Q. Because it couldn't always be confined to emails. You were a busy man at the time, weren't you?

A. Yes.

Q. On the move, like you've told us on a number of occasions, you were very busy doing -- having your focus on a number of things at time?

A. Yes. For example, I remember having a conversation about this very agreement standing at the end of my drive with Mr Careless and him telling me that, yes, it will get sorted.

Q. You remember that clearly, do you?

A. I --

MR JUSTICE MILES: Sorry, do you mean Mr Careless was on the end of the phone --

A. Yes.

MR JUSTICE MILES: -- or do you mean he was on your drive?

A. On the phone. I had conversations with Ms Venn -- Kerry --

MR JUSTICE MILES: You were on the phone, Mr Careless was on the phone?

A. Yes.

MR JUSTICE MILES: You were at the end of your drive?

A. Yes.

MR JUSTICE MILES: Sorry, Mr Ledgister.

MR LEDGISTER: Not at all, my Lord.

You remember that clearly, do you?

A. It is one of the conversations that I had. I don't -- I remember having conversations with him about it. I couldn't exactly date stamp it for you.

Q. I'm not asking you to do that. But you remember that clearly, though, don't you, because you have told us about it twice in cross-examination by Mr Robins, having a conversation -- please forgive me -- with Mr Careless whilst you were standing at the end of your drive, talking about the agreement?

A. Yes.

Q. But you don't remember who gave the agreement to you?

A. Not at the time, no.

Q. Right, okay.

A. I have asked the claimant for copies of my entire inbox, and it's been refused several times.

Q. The relationship that you had with Mr Careless and Kerry was a business relationship, wasn't it? Would you accept that?

A. The one with Kerry was more formal. The one with Paul was far more relaxed and informal. We met, we had dinner, we had drinks. So, it was a far more informal relationship with Mr Careless. We talked about lots of different matters, not just this agreement. We were both forming relatively young enterprises, so we had a lot in common. So we discussed lots of different things.

Q. You wouldn't sort of pop over to each other's homes or things like that?

A. He lived in Brighton, I lived in Eridge. So, I think he came to my house a couple of times, but I don't think it was around that time.

Q. You'd turn up at each other's offices unannounced?

A. No, we would have arranged it. We didn't do just -- I didn't pop down to -- at that time, I think they were based in Hove and Eastbourne. I don't think they were in the Brighton office at the time. I wouldn't have just turned up, I don't believe.

Q. The topic of the agreement had been in play for quite some time, since as early as 2015, middle of 2015. Would you accept that? August 2015?

A. Yes, and it rolled on for a fair while afterwards as well. So the conversation between the two companies on agreements rolled on -- I think it may have even gone into 2018 with appointed representative status, which didn't happen.

Q. Can we just bring up a document, please, to try and timestamp where we were when the discussions were very much key on getting the agreement in place. <D1-0000788>. This won't be controversial. It is just the -- this is a document where Kerry Graham, as she was then, was emailing you to say -- and the last paragraph, the last passage, is the most important bit there: "We need to put an introducer agreement in place between Surge Financial Limited and London Capital & Finance Limited ..."

This was 3 August 2015. So this is when it really began in earnest, I say?

A. Yes, we were -- I would agree with that.

Q. As you rightly say, there was a number of discussions about it, there were drafts that went backwards and forwards to one another about the agreement, and, if I can bring up another document, just to help jog your memory, <MDR00016952>, this was in, also, August 2015, where Kerry Graham sends you a copy of an agreement which she has signed. She says:

"I attached the signed contract, when you sign would you please scan and send me a copy."

Do you see that?

A. Yes. Was that the one that Mr Robins took me to as well when he was cross-examining, could have been?

Q. Quite possibly and quite probably. I'm not sure. Would you like to see the agreement?

A. No. Sorry, just in conversation, that's --

Q. For the purpose of my cross-examination, I certainly won't take an unfair point with you. It probably doesn't matter. But the point I'm making is, at that time, she had sent you, back in August 2015, an agreement that she had signed which was waiting for your signature?

A. Yes.

Q. A month later, she chased you for your signature on that agreement because, having sent it to you, you hadn't returned it to her. I'm going to bring up, please, if we can, <MDR00017384>. This is, we can see at the bottom of the page, the email we have just seen, and at the top she's chasing you, 15 September 2015?

A. Yes.

Q. "Have you had a chance to sign this yet please?"

A. Yes.

Q. You didn't reply to her?

A. I may very well have spoken to her. As we have heard, my modus operandi is more to talk than email. So I may very well have discussed this with her, or we talked about this. It was an active time with the company, so there would have been a fair bit of correspondence, not just email, but discussion.

Q. Would you accept, though, between August and September, having received that agreement, you hadn't signed it, so she was now chasing you in September? That would be logical, wouldn't it?

A. That follows.

Q. So it would seem that you weren't overly motivated to get it signed, for whatever reason? I'm not criticising you, but that appears to be the position?

A. It was -- looking at the date, it was a very busy time, and we were kind of developing our relationships at the time and finding our feet, and Surge were doing -- starting to do more for us as well --

Q. But --

A. -- and we were discussing more.

Q. Very well. Again, please, <MDR00018729>. Notwithstanding the fact that you may have spoken to her in response to her last email, here she is chasing you again:

"Hi Andy.

"I forgot to mention that we need a copy of the completed distributor agreement with your signature. Please can you bring with you tomorrow." So she's chasing you again for the agreement?

A. Yes, and "forgot to mention", so we probably had discussions about it. So, yes, I accept that.

Q. Still busy, other things going on?

A. Yes.

Q. Not particularly motivated to sign the agreement?

A. I wouldn't say not particularly motivated. Just we have got lots of other things going on so I didn't sign it. I didn't remember why. There would have been a reason.

Q. It wasn't at the top of your priority list, was it? Two months had passed since she last sent it to you?

A. No, Surge were getting on with things anyway, I was getting on with things. It wasn't, as you say, at the top of my priority list then, clearly.

Q. But roll on 2016, things changed considerably, and your motivation is in a different place altogether?

A. So we are now discussing the upcoming audit?

Q. "We are now discussing the ..."? Sorry, I didn't hear what you said.

A. Upcoming audit.

Q. Correct, yes. Would you accept that?

A. Yes. If things would have changed -- I don't remember how much correspondence there was on this point between October and -- in 2016. It may have just got put to one side by both parties. But, yes, I accept the motivations would have changed.

Q. The audit was very important to LCF and, indeed, to Surge, wasn't it?

A. Both parties, yes.

Q. A clean bill of health would have been beneficial to attract investors; do you accept that?

A. I accept, yes, that's why it is important for both parties. You are correct.

Q. Absolutely. Good for business?

A. Mmm-hmm.

Q. Great for business, it would be fair to say, if it was a good audit?

A. A good audit for any company is a clean bill of health. But the audit should not be used as a promotional tool.

Q. But it is certainly something which is beneficial. As you say, it is a clean bill of health, isn't it?

A. It is a clean bill of health. A member of the public can look up the audit and have a look at the company. So a clean bill of health is beneficial for any company.

Q. The issue with the audit was, they required a copy of the Surge agreement, didn't they?

A. They wanted a copy of the Surge agreement. There would have been an issue if we didn't. We would have had a qualification. I think I went through that with Mr Robins right at the beginning, some, I think, four weeks ago now.

Q. Can we have <MDR00059484>, please. At the bottom of the page, here we have an email from PwC, from Jennifer Hale at PwC, where she's emailed your accountants and copied you in, or either emailed both of you -- it is addressed to both of you, anyway, "Andy/Emma"?

A. Right, okay.

Q. "Further to my call yesterday with Andy and from our alternative procedures we have performed on the debtor balances, we have two follow-up points which we will need additional information to clear."

She goes on in the next passage, and in the third passage, which is the important one, she says: "Secondly, in order for us to conclude on the appropriate accounting treatment in relation to the deferred income, we would appreciate if you could send across the contract in relation to Surge Financial." Do you see that?

A. Yes.

Q. So, here they were chasing -- well, let me rephrase that. Not chasing, but they were making it clear they needed the Surge agreement?

A. Yes, they definitely wanted the Surge agreement. I don't deny that.

Q. Did you appreciate the importance of them needing the Surge agreement, insofar as getting the audit completed at that stage?

A. Yes, it says there:

"The terms in this contract will be key to enabling us to determine how the cost of funds ... should be accounted for."

Which we went through how to account for the cost of funds with our accountants and auditors.

Q. Just at the top of that page, you have got Oliver Clive -- Emma at Oliver Clive just confirming that she will chase you regarding the issues that had been raised?

A. Yes.

Q. That's just for completeness' sake, but what happens next is you reply the very same morning. Perhaps "reply" is not the right word. The very same morning, you send a copy of the Surge agreement to Kerry, and that can be found at <MDR00059585>. Just for context, you have been chased. The same morning you actually take action and you send it to Kerry. No criticism. Just setting out the picture.

A. Yes.

Q. She, in turn, replies to you, <MDR00059706>

A. Is this the email where she sends it to her lawyers?

Q. No.

A. Did we go through that one before?

Q. No, she replies to you, the same day: "Hi Andy.

"Sorry I know you really need this signed ASAP for your audit but I do have to run it by our solicitor."

A. Yes, that was what I -- I think Mr Robins took me through this and that's why I said, "Is this the one to her solicitor?"

Q. No problem at all. You became quite irritated at that stage, didn't you, would it be fair to say?

A. Yes, there is a requirement -- there is pressure for me to get this done. I would have -- as you can see -- as I said previously, Mr Careless is involved in this. You can see him cc'd. And Mr Russell-Murphy is involved in this. You can see him cc'd on this as well. So all three of them were well aware of this.

Q. And you were under pressure at that stage?

A. Yes, they wanted the agreement. We had -- as I said to Mr Robins, "Either we get it or we don't and have a qualification". No-one wanted a qualification in our audit, including, as you mentioned earlier, Surge, because it is good for Surge, good for LCF. There was pressure, I would say, on everyone.

Q. Absolutely. I think your irritation can be seen at <MDR00059776>. You send an email to PwC. It is a bit of a rant, really. Again, not a criticism, just stating the position. It is a bit of a rant.

A. Hang on. Let me have a read before I agree with you on that one.

Q. You have a read.

A. Yes, I can see, the tone of that, I was frustrated, yeah. I wouldn't call it a rant, but something has obviously been said and I'm responding to that.

Q. No criticism for the rant. You were under pressure?

A. Yes, clearly, I can see I was irritated.

Q. You needed to get the audit done, or you would like to have got the audit done?

A. I think the email is about original documentation, so -- that I believed they hadn't been asked for and, clearly, they have, so ...

It was an irritating email, yes.

Q. Again, no criticism. Just drawing your attention to it. But of interest is the last passage. You say: "I appreciate all at PwC are trying to get the audit finished and to aid that I will be at your offices with the documents requested at 9 am this morning."

A. Yes. I don't remember what documents -- all the documents. I can see that, yes.

Q. But that would have included the Surge agreement, wouldn't it, considering --

A. Potentially, it could have done. I don't know -- it said "audit queries". I don't know -- yes, they are after the Surge agreement. I don't know what documents that I said I would be bringing to them in the morning. I'm just -- I'm not trying to be contentious. I can't -- we don't have the list here.

Q. Well, it is not "Potentially, it could have done". This whole train of emails -- the email thread started with Jenny from PwC talking about the Surge agreement, didn't it?

A. That was the email with the 1 and the 2.

Q. That's right. And this was your response in relation to PwC following on from Jenny's email.

A. I think it actually builds on that because I think there's other things. Just reading this, you know, "the various documents requested", so it is not just one document, it is various.

Q. I'm not saying it was just the Surge agreement, but it included the Surge agreement?

A. Quite possibly. I'm just saying I don't know. I don't have the list in front of me and I don't know what I took to their offices "at 9 am this morning".

Q. You were quite confident, weren't you, that you were able to turn up to their offices at 9 am that morning with a copy of the Surge agreement?

A. Again, you have me at a bit of a loss.

Q. What are you lost with?

A. I don't have the document list. I am in discussions with all of the others. I have told you what I believe happened. There was pressure on everyone to get this done. I think someone attached her signature to it -- it may have been her, it may not have been her; it may have been one of the others - - and sent it over because we needed it.

Q. You told Mr Robins in cross-examination that Surge were -- you were their biggest client?

A. Yes.

Q. If I can put it this way, you thought that they would play ball, didn't you?

A. I thought they would work with us.

Q. What does that mean?

A. It is a symbiotic relationship. We were their largest client. They were our sole provider of funds. If we did well, they did well, and vice versa. So symbiotic.

Q. You thought that you were in a position to say you were going to be at PwC at 9 am in the morning and you will have that Surge document in hand because they will play ball because of the relationship that you had with them at the time?

A. I wouldn't characterise it as "play ball", work with.

Q. I will use your words. You thought they would work with you and you had the confidence?

A. Yes, I did have the confidence. I had discussions, as I said, with all of them that we needed this, and Mr Careless said yes, he would get it sorted, and I believe Mr Russell-Murphy said the same. I'm not ...

Q. You believed you were aligned? Is that fair to say, you and Surge were aligned?

A. Yes.

Q. Again, it is no criticism. I'm not seeking to criticise. I'm just trying to understand.

A. We were aligned. What was good for us was good for them. What was good for them was good for us.

Q. PwC replied to you -- as I said, I'm going to refer to it as a rant, or your frustrated email.

A. Frustrated email.

Q. Frustrated email. <MDR00059780>, please. This is from James Hewer at PwC, the same day, 29 September 2016. The second passage is the most important passage, but please feel free to read it all. I don't want to take an unfair point. To be fair to you, there was clearly some confusion as to what they had requested.

A. Yes.

Q. But in the second passage, he says this: "Re the comms on a site visit my understanding from talking to Jessica is that while this was discussed we were assured it would not be necessary ..." And then this:

"... and that all the documentation we would need would be in the audit file."

So their understanding was all the information they wanted would be in the audit file.

A. So they are saying it would not be necessary and all the documentation would be in the audit file, okay. That would --

Q. That was their understanding?

A. Yes, they would have been liaising with Emma at Oliver Clive with regard to what they wanted. Emma would have just told us in the office what was needed.

Q. The following day, 30 September, you reach out to Paul Careless with regards to the Surge agreement. Why did you feel it was necessary to speak to him at this point when Kerry had been dealing with everything?

A. As I said previously, I had also been dealing with Mr Careless on this, and Mr Russell-Murphy, and, as we have seen previously, they were copied in to the emails when -- on the agreement.

Q. <D1-0002988>, please. I will read it all so it saves you reading it and me having --

A. Can I read it? It sits in my head better.

Q. Whatever makes it easier for you.

A. Yes, so PwC required further information as Surge was a key supplier, I believe that says it there, and it also confirms the point I've been making, that if we didn't provide -- if there wasn't an agreement in place, they would put a qualification in the audit. So that's what I've said previously.

Q. Thank you. In the practice of letting you have your opportunity to read the documents, can you just wait for my question and then you can answer?

A. Yes, sorry.

Q. It will probably get through a lot quicker?

A. Apologies.

Q. Not at all. I'm just trying to get you out of the witness box as quick as possible. I'm sure you're eager to get off.

A. I've been here a while.

Q. You have. But you were complaining to Paul about Kerry involving solicitors. Would that be fair? Is that a fair categorisation?

A. No, it was more the delay it would cause, not the fact that I was bothered about them going to solicitors. It was more the time, I think was the frustration there.

Q. In your mind -- this was a very easy thing to sort out?

A. Yes, and I agreed with Mr Careless and said he'd get it sorted. And, again, I would have discussed, had discussed, it with Mr Russell-Murphy. As I say there, it's -- it would have been far easier if she had just signed it. Unfortunately, now PwC required further information, which I think Kerry mentions in her interview that they kindly provided. So it would have been easier if she had just signed it.

Q. The last passage:

"On a separate note, when PwC visit (Monday) if we don't have an agreement in place they will put a qualification in the audit regarding the robustness of LCF as a going concern as it does not have an agreement in place with a business critical supplier ..." Do you see that?

A. Yes, and that's what I was referring to when Mr Robins cross-examined me, that if we didn't have a signed agreement, there would be a qualification in place and, as I mentioned to you earlier, it was a symbiotic relationship. They were providing all of our fundraising, we were their biggest client. So, yes, that is a fair reflection of the position.

Q. In other words, "Paul, listen, if you don't get this agreement sorted out, it's going to be bad for business"?

A. Yes, and the same conversation would have happened with Mr Russell-Murphy.

Q. Well, we don't have those transcripts --

A. Again, I tend to speak to people on the phone as opposed to emails.

Q. The very same day, you message Kerry. Now, as you say, you were under pressure. PwC are expecting this document.

A. Yes.

Q. Surge aren't signing it and returning it?

A. Kerry has obviously sent it to the lawyers. But I'm being told it's going to get sorted.

Q. Surge aren't signing it and returning it to you?

A. When this -- at this point that this email goes, I agree.

Q. That's what I'm talking about. I'm talking about this point.

A. Sorry, my apologies again. At the point of this email, no, it hadn't been signed and returned, I don't believe.

Q. And the pressure, as I say, is building?

A. Yes. It's either we evidence it or that we get a qualification.

Q. If we can look at <D7D9-0006795>. Now, what we have here appears to be a screenshot from Kerry's phone where she's sending a snapshot -- a screenshot of a conversation that she's had with you to Paul Careless, so that's the context.

A. Yes. Sorry, this is a screenshot of a conversation she's having with --

Q. Let me start again. This is a screenshot of a conversation that you have had with Kerry, and she's forwarding it on to Paul Careless?

A. Right, I'm with you.

Q. What this actually says -- it starts with you sending her a message at 13:29. The top line says: "I'm in a meeting but will call later, I really needed it yesterday morning, not having it has created additional work and has prompted PwC looking into us in more detail."

First of all, who is "us"?

A. It would be LCF and Surge.

Q. Right.

A. So as the -- I think the previous email said they wanted more information on Surge's processes as a critical business supplier. I think that's what that's referring to.

Q. Why did you feel the need to tell her?

A. Tell her ...?

Q. You have told her -- you have already impressed upon her the urgency, haven't you?

A. In the email? Or --

Q. Apparently you have a number of conversations as well.

A. Yes.

Q. So you have impressed upon her the urgency by email, by text, by telephone call, that you are under pressure here, "We need to get this agreement signed"?

A. Yes, she was well aware, and so were others.

Q. So why are you now having to tell her that, effectively, if we don't get this agreement over, PwC are going to have to look into both LCF and Surge in more detail? Why did you feel the need to say that to her?

A. To keep her informed.

Q. To keep her informed or to put pressure?

A. To keep her informed. As I said, it is a symbiotic relationship. We needed more information on them. It has now been asked for. It was easily avoidable. So -- who is the big message in the middle? Is that Kerry --

Q. I will come to that in a minute. That was just her thoughts about you.

A. Yes, we didn't have the best relationship.

Q. I think that would be fair to say.

A. Yes.

Q. But you carried on in your message:

"We have nothing to hide but this will add more time to the production of ..."

I'm guessing "the audit"?

A. Mmm-hmm.

Q. Why did you feel the need to say that?

A. To keep her informed.

Q. What, "We have nothing to hide"?

A. No, it was just in conversation. It's ...

Q. I understand you telling her they are going to take a closer look. Why did you feel the need to say to her --

A. Sorry, I'm trying to listen to you, but there is whispering going on here. I'm trying to concentrate.

Q. Why did you feel the need to say "We have nothing to hide"?

A. I don't know.

Q. Have a think.

A. I don't know. I don't remember sending the message.

Q. Well, you did send it.

A. I know. Obviously, I did send it. But I don't remember sending the message and I don't remember why I would have said that. She may have asked. I don't know.

Q. She may have asked you what?

A. Asked why PwC are looking into it. I don't know. I don't remember the message.

Q. Let's explore that then, Mr Thomson. This is a message from you sent at 13:29. It starts off:

"I'm in a meeting but will call later, I really needed it yesterday morning, not having it has created additional work and has prompted PwC looking into us in more detail."

At what stage would she have asked you the question for you to be able to reply in the next sentence: "We have nothing to hide."

A. I don't know. Maybe, in conversation, she had asked what they are looking at. I don't know.

Q. You don't know why you said that?

A. I don't know.

Q. You then carry on, in the next passage, which is pretty much in the same vein, ie, this is a very simple request -- I will read it:

"You have completely missed the point ..." We can't see her answer, unfortunately.

A. I think it says -- "[something] explain" at the end.

Q. "[Something] talk" and "I will explain". Nonetheless, you carry on:

"You have completely missed the point of why I needed it, this was the contract we agreed last year ..."

Yes?

A. Mmm-hmm.

Q. "... I thought it would be a simple request to simply sign it. I needed Surge's support to get the audit concluded and it didn't happen and has had knock-on issues. As you are wanting to go down the solicitor route I will forward your revisions to Lewis Silkin who will no doubt advise me that LCF needs a far more robust contract to protect its position esp [especially] as the FCA are looking at ..."

It carries on. Do you see that?

A. Yes.

Q. She replies to you, doesn't she:

"I'm not signing a contract that a solicitor hasn't reviewed. Let's get it right first time."

A. Yes, I can see that.

Q. So, notwithstanding the information about PwC wanting to take a closer look at yourselves and Surge, notwithstanding the fact that you have told her there is nothing to hide, although you don't know why you told her that, she is still standing firm, "I am not signing a contract that a solicitor hasn't reviewed". You see that, don't you?

A. I do, yes.

Q. Not much by way of activity, in terms of getting this agreement signed, takes place. I don't want to be unfair to you. There is a number of communications back and forth, and I think Mr Robins has taken you to a few of them, and I don't propose to do so unless you wish me to. But will you accept from me that Alex Lee was now looking at the agreement on your behalf?

A. I think Mr Robins took me to those.

Q. And what would happen is, he would send you a draft, you'd send it to Kerry, she'd have a look at it, she'd get her advice, she'd send it back to you, you'd send it to Mr Lee. It was a bit of a circular --

A. Toing and froing.

Q. Absolutely. But, nonetheless, still no agreement that was signed at that stage?

A. That we were working on, yes.

Q. So certainly, by 2 October, there is no agreement signed. I think you will accept that because PwC don't receive it, actually, until 7 October, when you email it over?

A. Yes.

Q. Again, I don't want to take an unfair point with you?

A. That's okay.

Q. So, on 2 October -- please, <MDR00060092> -- Kerry sends you her signed version, and it reads:

"Hi Andy.

"I attach the amended contract for you to review. All changes are done as tracked changes so you will be able to easily identify the requested variations." Next passage:

"Recognising that this is time critical, I also attached a signed version so that you have this in place to use at your meeting on Monday (assuming you are happy to accept the changes made).

"I am sure this raises questions which is why I have been keen to speak on the phone to clarify, please do call me when you have time to discuss. The significant changes have been made for the benefit of both companies."

You see that, don't you?

A. Yes, I think Mr Robins also took me to this.

Q. In the vein of what have I described as you receiving a document and forwarding it on to Alex Lee, and so on and so forth, what happens next, <MDR00060232>, it is an email from you to Alex Lee, on 3 October, where you have attached a copy of a Surge agreement. We can see that in the attachments.

A. Yes.

Q. The subject matter is "Hi, please can you call me ASAP re the attached ..."?

A. Yes.

Q. Again, you were keen to get this sorted out quickly?

A. As we have agreed, there was pressures.

Q. There were pressures. And there are other emails where you're chasing Alex for it, saying you're being pushed by PwC. No point me taking you to that. You accept you were under pressure?

A. I accept that. That was all going on at the time, yes.

Q. Absolutely. A quite stressful period?

A. Yes, there's pressure.

Q. Then, on 5 October, if we could please look at <MDR00060609>, this is an email where PwC are chasing you for that Surge agreement. So it is Jessica Miller at PwC. She says:

"Andy, hope you are well. Would it be possible for you to arrange for a scan of the Surge Financial contract to be emailed to me today/tomorrow, this was the one document that you didn't have when we met last week."

So, you have met them the week prior?

A. Mmm-hmm, yes.

Q. All the other documents, it would seem, but the one document you didn't have was the Surge agreement?

A. Yes.

Q. She continues:

"We have had one of our final quality reviews of the audit and we need this to be documented on our file. This will not lead to additional work or further queries on our side as you answered them all on Thursday. However, it is a documentation requirement which we need to fulfil before we finalise the accounts." Do you see that?

A. I see that.

Q. She continues:

"As an update, as per the emails with Emma yesterday, we spoke to Nick this morning and we are expecting a revised set of accounts by COP today ..."

A. "Close of play".

Q. "... which I understand from the team should be complete and ready for our final review."

So that was good news, wasn't it?

A. Yes, they're getting on with it.

Q. They're getting on with things. And they're expecting a revised set of accounts by the end of the day, 5 October?

A. It looks that way, yes.

Q. Well, they have also made it very clear that they needed that Surge agreement?

A. You've gone through the paragraph and, absolutely, they did. That's what they're asking for.

Q. Now, you reply to that, and that can be found at <MDR00060610>. 5 October:

"Hi Jess.

"I completely forgot. I'm out of the office at the moment but I'll try to have a copy scanned over, if not I can do it first thing tomorrow morning."

A. I'm delaying, is what I'm doing there.

Q. Say that again, sorry?

A. I'm delaying, is what I'm doing there.

Q. So that was the reason for the lie?

A. I'm delaying, yes, to try and sort the problem out.

Q. You're stalling for time, aren't you?

A. Yes, delaying, yes.

Q. And, again, the pressure is building. They are still chasing this document, which is not forthcoming.

A. I agree.

Q. If we can now please turn to <MDR00060631>, this is an email from Alex Lee, on 5 October also, and it is an email from him to you and what he says is: "Further to our meeting today, please find attached the Surge agreement. I have accepted the changes that we don't find problematic, but have left some in that are problematic."

You can see that?

A. Yes.

Q. So, clearly, there were still some issues that needed resolving before this agreement could be signed off?

A. Mmm-hmm, yes.

Q. You accept that?

A. I accept that.

Q. If we can please turn to <MDR00060649>, at the bottom of the page, again, on 5 October, same date, you say: "Hi Kerry, I have just received this ..." This was the Surge agreement that you had received from Alex Lee. You're sending it on to Kerry. You say: "I've just received this, I haven't opened the doc yet as am in the car but will have a look when I get home. Alex does in his email pose a couple of questions I think we need to address."

A. Yes.

Q. You continue:

"The immediate issue is I have been able to put off PwC until now but they are expecting a doc first thing tomorrow, they have completed the accounts but won't release until [they] have a scan of the agreement", I think it should read.

You see that, don't you?

A. I do.

Q. She replies to you shortly thereafter. Now, interestingly, the timings of your phone seem to be at odds with everybody else's. I'm not quite sure -- I know you have your phone on UCT as opposed to GMT. Not important. But, a lot of the time, it will seem that you have replied to the emails before you have even received them, if one follows the timings on the emails?

A. Sorry, I wasn't even aware of that. I didn't pick that up. That may have just been a setting issue.

Q. Either that or you have a time machine, one or the other?

A. I don't even know what "UCT" stands for.

Q. Neither did I until I looked it up. But not important. Anyway, Kerry Graham replies to you shortly thereafter, and she says:

"Hi, I have read and made comments. Your solicitor makes helpful revisions; I am sure we can work this out quickly."

The next passage, she makes reference to the PI insurance, which gets resolved anyway, so I won't trouble anybody about that. But what she does do thereafter is raise a number of issues, and I am going to read this. It is quite lengthy, but I'm going to read it:

"Re the question raised by Alex concerning liability. Possibly these sections need rewriting from scratch as might be easier than amending now, what does Alex think? Can we agree the sentiment together and get your solicitor to propose the rework? I suggest the sentiment should be:

"(a) AML is outsourced to GCEN, we cannot take responsibility for that but we do take responsibility to supply them with everything they need to complete the checks and confirm pass or fail. The investment is not officially placed if they fail. GCEN inform us of the fail.

"(b) you agree to inform us of any legislation changes and assist us in changing our procedures accordingly. If you do not inform us of a relevant regulation and we fall foul of it, the liability is on you."

Are you following?

A. I am following, yes.

Q. She carries on:

"(c) if you have informed us of the regulation and we breach it, the liability is on us."

Finally:

"(d) the clause saying we indemnify each other can stay."

Yes?

A. Yes, I followed that.

Q. So, just from that -- can you just zoom back out? Just from that entire page, here is what the position was: you were making it clear in your email to Kerry that PwC are expecting the document first thing tomorrow, being 6 October?

A. Yes.

Q. And she is replying, saying, "There are a number of issues still". Would you accept that?

A. I accept that.

Q. So, it is encouraging, but you are still not quite there?

A. I agree.

Q. If we can please turn to <MDR00060722>, this is Alex Lee responding to Kerry's observations. This is a slightly longer document. I think it goes over the page, please. If we see here, just at the top of the page, Kerry Graham -- that's the email she sent to you?

A. That's the email that you took us to before.

Q. Exactly. So back to the first page, you can see at the bottom:

"Hi Alex, can we talk through the below first thing?"

That's what you are making a reference to, Kerry's observations?

A. Yes.

Q. He replies to that at the top of the page.

A. Yes.

Q. I'm not going to go through what he was saying, but if we just get to the final passage -- if you want to read it all, by all means you do so, but I don't --

A. I think Mr Robins took me to this.

Q. Okay. Can we just go to the final paragraph, please. He says:

"Perhaps I have missed something ..."

This is in conclusion:

"Perhaps I have missed something but it seems that Surge are trying to say that they do not want to take the requisite responsibility for the work you are asking them to undertake."

And then this:

"In which case I am struggling to advise you that such a contract is ok to enter into."

Do you see that?

A. Yes.

Q. There is a bit of a standoff here, isn't there?

A. I can see that, yes.

Q. But what he does, notwithstanding the standoff, and this is to be found at <MDR00060815>, is, he sends you over a clean version of what he had sent you previously; all right? So, just so we can follow, he originally sent you a document that you sent to Kerry and she made her observations known and clear?

A. Yes.

Q. You sent those observations back to him and he was saying, "Look, you can't sign this. I wouldn't advise you to sign it"?

A. Yes.

Q. He sends a clean version of what he previously sent -- yes? He sent a clean version of what he previously sent and he's asking you to let him know if any issues remain with that version. Do you follow?

A. I'm following.

Q. If we can please turn to <MDR00060730> --

MR JUSTICE MILES: Mr Ledgister, I'm just wondering, are you going to be a little bit longer?

MR LEDGISTER: My Lord, I think I will be. Not much, but a little.

MR JUSTICE MILES: So that's more than a couple of minutes?

MR LEDGISTER: Yes, my Lord.

MR JUSTICE MILES: I think what we will do is take a break for the transcriber, and for Mr Thomson's benefit also, for five minutes and then resume.

MR LEDGISTER: I'm grateful, my Lord.

(11.59 am)

(A short break)

(12.06 pm)

MR LEDGISTER: If we can turn to, please, <MDR00060730>, at the bottom of the page on the screen, this is an email from you replying to Jessica Miller's original email chasing the Surge Financial document which we have already been through. What you say to her, on 6 October, is:

"Hi Jess.

"Sorry not to have sent the Surge doc over ..." I'm not quite sure what's happened next: "... some point ... last night and I had to run off. I'm on my way back now and will get it sorted later today."

Do you see that?

A. Yes.

Q. How were you so confident that you would get that Surge agreement sorted later that day, when, clearly, as I described earlier, there was a bit of a standoff between you or between Surge and LCF?

A. I believe, because of the conversations that I would have been having also with Mr Careless and Mr Russell-Murphy, that they would get it sorted.

Q. So, are we to understand that there's parallel communications? There is what we see on the emails saying one thing and a completely different set of communication on the telephone that we can't see?

A. There is -- that's a facet of numerous things that Kerry has actually said in the correspondence that I've seen in Mr Robins' written opening, it says one thing here and says something else here. So, yes. There was conversations, not just on this, but on lots of other things through the history that I had with Surge, that was saying one thing over here and doing one thing over here, and there was, as I say, a bit of a symbiotic relationship. I dealt with, primarily, Mr Careless, also Mr Russell-Murphy at times. Kerry and I had an interesting relationship, if I can characterise it as such. We butted heads a lot. Then she started dealing with Kobus. But, yes, there was other conversations going on.

Q. Then you continue:

"Aside from the above, how are you getting on with the accounts?"

So you were keen to understand what the position was with the accounts, for obvious reasons?

A. Absolutely.

Q. She replies, at the top of the page, shortly afterwards: "That would be great if we can get it today." She gives some good news, it seems:

"We received an updated set of accounts from Nick about 20 minutes ago which the team are working through to ensure that all the required changes have been processed."

Do you see that?

A. Yes.

Q. I don't propose to read the rest of that passage, but you are more than welcome to, if you want to?

A. I don't think it's necessary.

Q. She carries on:

"Overall, we have progressed well over the past few days and subject to the final internal review we are in a good place, subject to receiving the Surge agreement and confirming that all the disclosures changes we requested have been processed."

So, in summary, she's basically saying they're in a pretty good place?

A. All is good.

Q. And, subject to receiving the Surge agreement, it is looking good, and --

A. That seems to be what she is saying, yes.

Q. -- those disclosure changes. What you then do is, at <MDR00060845> -- when I say "then do", I mean the same day, later on that day -- you send a copy of the clean version that Alex had sent you earlier?

A. Yes.

Q. You forward it to Kerry?

A. Yes, and I deal with the PI question as well, some good news for her.

Q. I'm not interested in the PI question.

A. Sorry, just for context, that's all.

Q. I'm not trying to be rude in saying that, but I don't want to distract you with that. But we have already agreed that the clean version that you sent to her was the agreement she already had issues with and we know she has issues with it, don't we, because, remember, there is still the outstanding matters that she's not keen on.

A. Mm mmm. Sorry, I said yes.

Q. She does say, "I'm around all evening if you want to talk" -- sorry, you say, "I'm around all evening if you want to talk"?

A. Yes.

Q. She replies to you, <MDR00060851>. 6 October, 8.44 in the evening -- sorry, 6.44 in the evening?

A. 6.02, isn't it?

Q. Sorry, 6.02 in the evening:

"Thank you. I'll review and come back to you. Good news on PI six years."

A. Yes.

Q. Now, what happens next, and this is shortly thereafter, is you receive a copy of the accounts, I think from your accountant. If we can look at <MDR00060875>, there is more to it, but I'm only interested in this page. At the bottom, you've got Emma Benjamin from Oliver Clive & Co basically saying, "Here we go", and sending you the accounts. Do you remember that?

A. I remember receiving them, yes.

Q. If we look at the top of the page, in the same email thread you're saying:

"Hi Ian.

"Finally we have received the accounts, this is an unsigned version, PwC are preparing a pretty version that we will sign later today."

Mr Robins took you to this?

A. Yes.

Q. It is not that I'm stealing his homework or anything like that, but he's taken you through some of these points already?

A. I do have a recollection of him taking me through some of these points.

Q. Before we get to that email that you sent to Ian the following morning, I just want to concentrate on what you knew at the evening of 6 October. Here is what we know. By 6 October, you had had sight of the accounts because they had been sent to you by Emma; is that right?

A. I don't know if I had read them at that point or not, but, clearly, they have been pinged over.

Q. So the accounts that you were keen to have that could help business, are you saying you wouldn't have read them? You wouldn't have looked --

A. I'm saying I don't necessarily remember if I would have read them that evening. It is 8.42.

Q. Is that late?

A. It is late, family time. I may not have read them then.

Q. By the following morning, when you are sending it to Ian, at 8.09 in the morning, when you say, "Finally we have received the accounts, this is an unsigned version, PwC are preparing a pretty version that we will sign later today", do you think you might have read them by then?

A. At that time, I may have just forwarded them on. I don't know.

Q. Mr Thomson, these are the accounts that you knew, if positive, would help your business, be great for business?

A. Yes, but it is 8.09 in the morning. I'm a family man. I have four children. I need to get up and get them off to school.

Q. You have told us that.

A. What I'm saying is, 8.09 in the morning, I may very well not have read them and am just forwarding them on.

Q. You have chased PwC for them, made enquiries on a couple of occasions prior to this?

A. Yes.

Q. You finally get them in?

A. Yes.

Q. Accounts that, if they are positive, will be good for business; if negative, could be bad for business -- yes?

A. I get that, yes.

Q. Is it really your evidence that you got them in your inbox and didn't want to have a look at them? Is that what you are trying to tell this court?

A. Looking at the time, I don't know if I would have read them. Again, it is in the evening when I received them, it is first thing in the morning before I have got to the office, get the kids out to school. I would have seen the drafts leading up to this. I don't know, at this stage, whether I would have opened them up. I would have opened them up at some point. That early in the morning, I may not have done. You know, it is --

Q. Let's talk about the family time in the evening then. What time do you put the kids to bed?

A. Kids, so we are 2016. The kids' bedtimes would have staggered from probably 7.30/8 o'clock through to the eldest going to bed at about 9.00. Dinner with the family --

Q. Dinner?

A. So, with the family --

Q. Presumably, before they go to bed?

A. -- prior to bedtime. Then, when the kids finally go to bed --

Q. 9 o'clock.

A. -- have some sitdown with the wife, watch TV and go to bed.

Q. So watching TV was more important than reading the accounts that would either make or potentially break your business. Is that what you're telling us?

A. I don't accept potentially make -- or your characterisation of potentially make or break the business.

Q. But the accounts would have been, if positive, very good for business and, if negative, bad for business, wouldn't they, surely?

A. As I have said to Mr Robins and I said to yourself earlier, we had considered the position if we had a qualified audit. We had -- I had, leading up to this -- would have looked at all the drafts that had arrived, but I'm just -- given the time, I don't -- I don't remember if I did or didn't. But, given the time, what I'm saying is, it is likely, at that time of night, I wouldn't have. My wife has an issue if I work through the evenings. And, at that time in the morning, we would be getting up, getting the kids

breakfast, getting them out to school. I don't believe I would have sat down and gone through the accounts, especially if I knew what the drafts looked like. I'm not saying I wouldn't have looked at them at a later date. At that time in the morning, there is lots going on.

MR JUSTICE MILES: Can I just ask, the top one seems to be from a computer; is that right?

A. Or it could have been my iPad.

MR JUSTICE MILES: But it is not from your phone?

A. It doesn't look like, because, otherwise, it would have "sent from my iPhone".

MR LEDGISTER: You would have seen the drafts leading up to this stage?

A. Yes, I would have done, absolutely.

Q. So, you had a fair understanding of what the accounts were looking like by this stage?

A. By this stage, and that's why I believed I wouldn't have an urgency -- if I hadn't seen any drafts, then I agree with you, I may well have opened them up, but it is, as I say, family time.

Q. As at the evening of 6 October?

A. Yes, and the morning of the 7th.

Q. And the morning of the 7th. By the evening of 6 October, you knew, didn't you, that PwC were expecting the agreement? In fact, they wanted it that day, didn't they? They were expecting it that day?

A. That's the correspondence we went to before.

Q. That's right. You also knew, didn't you, that the audit was in good shape, save for the fact that the outstanding Surge agreement was required?

A. Yes, from the drafts and the correspondence we have seen, it was all -- it was positive.

Q. And, also, the accounts couldn't be finalised without the scanned agreement. That you also knew?

A. Yes, because, if they didn't have the agreement, then they would have had to have redone it and added the qualification.

Q. Absolutely, qualification loomed in the absence of that agreement?

A. Yes.

Q. But you also knew, didn't you, that Kerry and, as I suggest, Kerry and Alex were still far apart. You say you had telephone calls in the interim, all right?

A. It was my practice to keep Paul and co up to date on everything we were doing, yes. We discussed -- Paul and I had frequent conversations.

Q. Because the last document she had, as we have already mentioned, there was issues with it?

A. Yes, I believe we have been to that.

Q. I suggest to you that she didn't come back to you on the eve of 6 October at all. What do you say to that?

A. The evening of 6 October -- do I remember a conversation with Kerry on the evening of 6 October? I don't know. I do know I spoke to -- and over this time spoke to the other two parties about this, yes.

Q. During your family time when you're dealing with your kids?

A. Conversation is one thing. A sitting down and reviewing accounts is another.

Q. Your wife would be happy for you to take the conversation when you're watching TV in the evenings in your family time?

A. It depends how long the conversation is, but, yes, sitting down and reviewing accounts and working is one thing, taking a conversation on the phone is another.

Q. You sent the agreement -- a signed copy of the agreement, <MDR00060881> to PwC on 7 October, 8.31: "Hi Jess, I finally got back to the office this morning (it's been an entertaining week!!!) and have scanned in the agreement below."

A. Yes.

Q. Now, this agreement -- Mr Robins has taken you to it, I don't propose to take you to it again --

A. Can we just go to the last page?

Q. Certainly. Of the agreement?

A. Yes.

Q. <MDR00060883>, the last page -- I think it is page 11, please. Sorry, the page before this. Back then. There we are. This is the agreement that you sent over. Now, in order to print this document and scan it, you must have received it?

A. Yes.

Q. Now, help us again, please: where did you receive it?

A. Again, as I've said, I don't know which email it came to. I would have had conversations -- I believe I had conversations with both Mr Careless and Mr Russell-Murphy that we required this document.

Q. That's the sender. You're dealing with issues of the sender. It could have been Mr Russell-Murphy?

A. Yep.

Q. Could have been Paul Careless?

A. Yes.

Q. Could have been Kerry Venn?

A. Yes.

Q. Who would they have sent it to, if not you?

A. If it was coming from Mr Russell-Murphy, he corresponded more with the back-office team than myself.

Q. All right.

A. Also, I don't know if this is in my inbox --

Q. You do know, don't you?

A. -- in my LCF email, because I've tried to get access to it and I have not been allowed.

Q. Are you suggesting that the incoming email with this document is in your inbox somewhere but you haven't had access to it?

A. What I'm saying is, it could be. If it has come from Mr Russell-Murphy -- because in -- I don't know if she was Venn or Graham. In Kerry's interview, she confirmed Surge held an electronic signature for her. If Mr Russell-Murphy has asked Jo Baldock to do this, she corresponds with the back-office team. I don't remember. I know we got -- it would have been -- if there's this much pressure to do this, it would have been -- and I just needed a document and, as Kerry says in her interview, that she appreciated that the agreements weren't going to be the final ones because the companies were evolving together, I believe this has been electronically signed and sent over by one of the others and I have received it, signed it. It would have been an easy thing for me, instead of doing what you are suggesting, to either --

Q. What am I suggesting, sorry?

A. You're suggesting I have attached her signature to this, I believe. It would have been a really easy thing for me to do to just sign the one she sent over a year ago or sign the one she sent over previously.

Q. This is an agreement that had caused you some angst for quite some time, hadn't it?

A. We can see in correspondence it had been toing and froing, yes.

Q. It caused a lot of pressure; yes?

A. Yes.

Q. You spoke to Paul Careless about it?

A. Yes.

Q. Kerry about it?

A. Mr Russell-Murphy about it.

Q. Possibly Mr Russell-Murphy about it?

A. He's been on copy in the emails. He would absolutely know what's going on. He knows everything else that's going on in LCF, so, yes, I would have discussed this with him and they would have known I needed it for the audit. They would have known the pressure on Surge. It would be better for them with a clean audit. It is not just pressure on me, it is pressure on the others as well to do this. It would have been a simple thing for me to do to have just simply, as I believe Mr Robins said when he cross-examined me on this, to sign one of the ones that she had sent over as a signed copy. That would have been the really easy thing to do.

Q. You were relieved when it came in, though, weren't you?

A. The audit or this?

Q. The agreement, the signed agreement.

A. Absolutely. And signed it and sent it off.

Q. Absolutely relieved. You would remember it, wouldn't you?

A. Signing it and emailing it to them.

Q. Hold on. Let's take this in stages. You must have remembered when it came in. It put an end to your misery, an end to the angst, an end to the pressure. Who sent it to you?

A. I'm afraid I don't remember.

Q. You don't remember?

A. I don't remember. I remember us getting it. I don't remember if I received it or if it was received into the office. I would very much like to search my inbox and the other emails to try and find the solution for you. I don't have the solution. It would have been a really easy thing for me to do to sign one of the other things.

Q. Absolutely.

A. A very, very simple thing.

Q. Mr Robins put to you you have been untruthful about this account, didn't he, and as you say, as you have done, if you wanted to prove him wrong, you would say, "Actually, Mr Robins, here is the agreement. I have found it. What are you talking about? Here it is". Overnight, you could have done that, couldn't you, if it existed?

A. I don't have access to my LCF email account.

Q. You don't have access --

A. Not all of it has been disclosed. I don't have access to the other emails accounts from LCF. I would very much like to have a look through them, but I can't.

Q. Are you saying that your email with respect to Surge and the agreement, your inbox, has not been disclosed?

A. I believe not all of it. My understanding of disclosure is there is only the key word, I think it is called --

Q. What might be the key word be: "Surge agreement", for example?

A. Something like that. I don't know, I don't remember -- and I'm really sorry that I don't -- where this came into, but it would have been really easy for me to sign one of the other documents that she sent over and then dealt with another agreement afterwards. That would have been the simplest thing to do.

Q. You have told us that. We have Surge agreements, or Surge agreement drafts, that you forwarded between Alex Lee and Kerry. We have got those. No problem with your inbox then. Do you accept that?

A. I do. What I'm saying is, I don't know if this one came into my inbox.

Q. Where else might it have come?

A. That's what I tried to explain earlier. If it was Mr Russell-Murphy doing it, working with Jo Baldock, it would have come into the other office accounts. I don't know.

Q. Before you signed it, who gave you the piece of paper to say, "Here it is. Here is the document, Andy. Finally, the document we have been waiting for, here it is". Who was that person?

A. It could very well have been Katy Eaves. I am struggling to remember.

Q. You are struggling to remember because it didn't exist, did it, Mr Thomson?

A. We received a signed document. I signed it and sent it off. It would have been really easy for me to just sign one of the other ones she had already signed. It would have been a simple thing to do.

Q. Mr Robins took you to another document, please, <SUR00051281-0001>. If you look at the middle of the page, 26 October. You write to Kerry. This is a couple of weeks after?

A. Later.

Q. "Hi Kerry, I believe he has an old copy. I will have an updated copy sent over."

She is referring to something else, which is the information memorandum, I think.

A. Yes.

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

You see that, and you gave an account to Mr Robins; okay?

A. Yes.

Q. I don't want to go on to that, but I will ask a simple question: why are you talking about the agreement if it is already signed and in place?

A. I'm just trying to remember that time. I was probably aware that it was sent over and she may probably have been aware that she had signed it, someone else had done it for her. I add to that, she's well aware of the audit. The audit would have come out by now. She was well aware that there would have been a qualification on the audit if the Surge agreement hadn't been signed. So there's no question from her, "Where is the qualification on the audit because I didn't sign the Surge agreement?"

Q. If I understand you correctly, you are saying that she would have been aware that someone else had signed the agreement on her behalf; is that right?

A. I'm posing the question.

Q. Don't pose a question to me.

A. I'm sorry, I'm just trying to go through it in my head. So, we received the agreement, signed it and sent it off. She was well aware that the agreement was needed for the audit: clearly, I'm asking her about the contract. I spoke to Mr Careless, I spoke to Mr Russell-Murphy, they said they were going to get it sorted. I believe someone else attached her electronic signature to it, sent it over and, looking at this at the time, I would probably have been aware that she didn't, someone else did, and I'm trying to just deal with it. But my point about the audit, she would have seen the audit papers, there's no qualification on it, and she is not raising any question about, how did you get the audit

through without a signed Surge agreement, she's not raising that question, and also in her interview --

Q. Sorry, can I pause you there? She is not raising that. What would that tell us? So, if she was asking the question, "How did we get this through without the signed Surge agreement?", what would that tell us?

A. If she's saying, "How did you get the audit through without qualification without it signed?", it would tell us she didn't know that someone had signed it for her. The question is, who signed it for her?

Q. But you would remember that, wouldn't you, if Kerry was suggesting that someone else had signed --

A. No. I'm looking at the email here, I'm saying "Let's discuss the contract". She isn't coming back to me saying, "How did you get the audit through without me signing the contract?", because she would have seen the audit by this time.

Q. Would that surprise you if she said something like that?

A. Not if I understood that one of the others signed it with her electronic signature and sent it over.

Q. But did you understand that or are you just considering the various ways how you can explain --

A. I'm trying to remember. We received a signed copy. Can I tell you if it was Mr Careless, Mr Russell-Murphy, Ms Baldock that pinged over a copy so we could get the audit done? I don't know. Both said they would get it sorted. Again, it would be a really easy thing for me to do to have just signed one of the other ones she signed, instead of going to all of this trouble, it would have been a very simple thing for me to do.

MR JUSTICE MILES: Sorry, I'm not sure -- I'm sorry, Mr Ledgister, to ask a question, but if I may, I am not sure I have understood your evidence on this question, Mr Thomson.

A. Sorry.

MR JUSTICE MILES: Perhaps Mr Ledgister could ask again about this email and what your evidence actually is, because I'm struggling a little bit to follow.

MR LEDGISTER: My Lord, I'm unclear also.

MR JUSTICE MILES: In fairness to you, Mr Thomson, you should have another opportunity to explain what you thought and why you sent this email to Kerry.

MR LEDGISTER: Let's read it again. This is an email from you, on 26 October, to Kerry.

A. Is this the top email?

Q. This is the middle email. 26 October. This is the one that's made large on the screen:

"Hi Kerry.

"I believe he has an old copy I will have an updated copy sent over."

That relates to something completely different; all right? But this is what you say:

"On a separate note I haven't heard anything from you on the proposed agreement I sent over a couple of weeks ago."

Now, the agreement you sent over a couple of weeks ago is the agreement that Alex Lee had sent to you; all right?

A. Yes.

Q. "Do you have any questions or are you happy to agree it?"

"It" being the agreement that you sent over to her a couple of weeks ago that Alex Lee had sent to you. Why are you writing that to her after you have already served it on PwC already signed?

A. Because I believe I'm aware that one of her colleagues has attached her signature to it and sent it over.

Q. Let's pause there, please. You were told, by who, that one of her colleagues had attached a signature to the agreement and sent it over?

A. I was -- conversations with Mr Careless and Mr Russell-Murphy, "I'll get it sorted". As I said, I remember having conversations at the end of my drive with Mr Careless, and they will get it sorted.

Q. That's not the question I asked you.

A. Sorry.

Q. Please listen very carefully, Mr Thomson. Who told you, who told you, that somebody else had put Kerry's signature on the agreement? It is a very simple question?

A. I may very well have made the assumption --

Q. Right.

A. -- because the other two said they would get it sorted. We received the document. It was signed. I signed it and sent it off.

Q. Why did you make --

A. Speaking to Kerry, it may very well have become apparent in discussions with Kerry she didn't do it. So I'm trying to work through with her.

Q. How did it become apparent, speaking with Kerry, that she didn't sign it? How? Tell us how that came about?

A. I don't remember -- I'm trying to look at the situation here. Why have I written this?

Q. Take your time.

A. As I said, it could have become apparent from a discussion I had with her that she wasn't aware.

Q. I don't want to interrupt you and I don't want to consider what could have happened or what might have happened. I want to know what happened. Did Kerry tell you she hadn't signed the agreement? Yes or no?

A. Clearly, from this, she hasn't.

Q. Right. We know that. That's the case I'm putting to you.

A. Yes.

Q. Did she tell you she hadn't signed the agreement?

A. Because I'm discussing with her, I'm asking her if she's happy to agree it. I can't -- I don't remember. We received a signed agreement. I had discussions with Kerry, I had discussions with Mr Careless and Mr Russell-Murphy. Both of those said they would get it sorted. We received the agreement. I do not remember if Kerry said to me -- as she said in her interview --

MR JUSTICE MILES: Don't worry about the interview, Mr Thomson.

A. But there is a --

MR JUSTICE MILES: Don't worry about what other people have said on other occasions. You are being asked about your own evidence.

A. Yes. I'm not sure if she said to me she had signed it or not, and the reason -- the explanation for that does tie in with what Kerry said in her interview, my Lord, that she said that this document is just a placeholder essentially -- I forget the exact wording -- that we needed for the audit and we were going to be building on that. She said that in her interview. I can't remember if she said to me "Yes" or "No". I'm really trying.

MR LEDGISTER: Mr Thomson, is the reason for your confusion because you're trying to think on your feet as to how to explain away this email?

A. No. I don't know which of them attached her signature to it. I don't know.

Q. You're assuming that somebody else put her signature on that page, but you can't say who. Is that what you're saying? Is that your evidence?

A. I don't know who.

Q. Okay.

A. They all had her electronic signature. They knew --

Q. So did you.

A. I had a copy of it on a document.

Q. Sorry?

A. Her signature on previous documents, yes, but that's not an electronic signature to attach to a document.

Q. I will ask the question again: did she tell you she hadn't signed the document; yes or no? That would have stuck out in your mind, surely? That would have stuck out in your mind. "Hey, Andy, you know that document you got the other day with my signature on it. It wasn't me". It would have stuck out in your mind, wouldn't it?

A. I don't remember that conversation.

Q. Because it didn't happen, did it, Mr Thomson?

A. I don't remember.

Q. Did anybody else call you up and say, "Hey, Andy, that document that Kerry is supposed to have signed, she didn't actually sign it". Do you remember that conversation with anybody?

A. I remember being told that they would get it sorted.

Q. That's not the question I asked. Please listen very carefully. Did anybody else call you and say, "Andy, the document, the Surge agreement, that you sent over to PwC that they needed for the audit, the very important document that was causing you so much pressure and stress, Kerry didn't actually sign it". You would remember that, wouldn't you?

A. I don't have -- I didn't -- I don't think I had those conversations, no, because --

Q. You didn't have those conversations, did you, Mr Thomson?

A. -- the audit was done and we moved on.

Q. I am going to move on. Kerry replies to you. If we can please turn to <MDR00063283>. 26 October: "Hi Andy, thank you, we have the updated IM to use now.

"Re the contract. This has been parked for a while to allow our accountant to investigate the VAT issue." So, clearly, she's saying, as Mr Robins has taken you to previously, the agreement had been parked for a while so they could investigate the VAT issue. She then goes on to say:

"I will chase for an update."

You see that, don't you?

A. Yes.

Q. You then reply to Kerry -- sorry, wrong reference. <MDR00063304>, I think is the reference. This is from you to Kerry on 26 October. This is -- we have done this one, haven't we? Forgive me.

MR JUSTICE MILES: No. It is at the top.

MR LEDGISTER: Sorry, I'm losing track myself. 26 October, you to Kerry:

"Hi Kerry.

"Appreciate you need to speak to your advisors but it's been weeks now and I haven't heard anything and we don't have any agreement in place."

Yes?

A. I can see that, yes.

Q. You then make reference for the first time certainly in writing about the difficulty you had with regards to the Surge agreement not being produced:

"I was put in an extremely difficult position with PwC over it which had the potential to damage everything ..."

So, here we are again, you making it quite clear this time that you were put in a very precarious position with PwC over this agreement. Why on earth are you saying that to her after it's already been served and signed?

A. Because we did have a difficult situation.

Q. Yes, we know that.

A. Yes.

Q. That's right. Remember we talked about the evening of 6 October, you were in a very difficult position because accounts had been sent to you, everything was good to go. The only thing outstanding was the Surge agreement. So you were in a very difficult position. But lo and behold, on 7 October, at 8 o'clock in the morning, minutes thereafter, the agreement is sent to PwC. So it was a very difficult position. I'm trying to understand how you solved it without the signature of Kerry Venn. Why were you sending her this email on 26 October explaining the difficult position if the agreement was already in place according to you?

A. Because we received the signed agreement. Yes, I was aware that we needed other things to work through. There was an additional VAT issue, as the previous email said. And, as Ms Venn says in her interview, she was aware that wasn't the final agreement. Yes, we got the agreement, it was signed, it was sufficient for the audit. But then we had to work through it. I cannot tell you who attached a signature to that agreement.

Q. Was it you?

A. No.

Q. Was it someone else from your office?

A. No.

Q. Was it Katie?

A. No.

Q. Did you instruct anybody else to sign that agreement on your behalf?

A. No.

Q. All right. Carry on.

A. Sorry?

Q. I said carry on. You were saying something. Or had you finished?

A. Sorry, I need to get my train of thought back.

Q. If we can turn, please, to --

MR JUSTICE MILES: On that email, before you leave it, why did you say, "We don't have any agreement in place"?

A. Because I believe we were working on the various different terms in the agreement. Yes, we had one in place that we received. So, clearly, at this point, my Lord, I'm -- I mean, I may have had knowledge at the time that I knew she didn't sign it but one of the others did, and I don't want to put those others in a difficult position.

MR LEDGISTER: No, no, please, please --

A. I'm trying to remember, and I don't have -- I know what it looks like.

Q. What does it look like?

A. If we are going through all of this, you're making the case that I, or someone in my office, attached her signature to this.

Q. Mmm.

A. I certainly didn't.

Q. Right.

A. I don't believe someone else in our office did.

Q. You don't believe?

A. I don't believe because I don't know.

Q. You don't know someone has done it?

A. Put it this way: I didn't instruct anyone in our office to attach her signature to this agreement.

Q. Right.

A. I have had conversations with Mr Careless and Mr Russell-Murphy. They said they would get it sorted.

Q. But none of those conversations, we have already established, with Mr Russell-Murphy or Mr Careless or, indeed, Ms Venn were to say that any of the Surge team were aware that somebody else had put Kerry's signature on the Surge agreement, because you would have remembered that. I will break it down.

We have already established that nobody told you from the Surge team that Kerry's signature had been put on there by somebody else, because you would have remembered it?

A. I didn't actively go and ask the question. I don't remember doing that and I don't remember it being brought up.

Q. It would be bizarre, wouldn't it, to ask that question?

A. It would be, yes.

Q. Of course you wouldn't have asked it because, according to you, you have got a signed agreement?

A. Got a signed agreement and it's fine. The others said they would get it sorted. I'm not going to phone up and go, "Hi, I've seen you" --

Q. "You've signed the agreement" --

A. -- "I've seen you've sent this over. Thanks very much for that. Does Kerry know about it?"

Q. Exactly. But what does seem bizarre, though, Mr Thomson, is that you will still be talking about an agreement post the agreement already being concluded. That's bizarre, isn't it?

A. I would have found out that she didn't. So that's why I'm talking about this. There are other things for the agreement to deal with.

Q. You would have found out that she didn't?

A. It would have become apparent, I imagine. I don't know. I can't remember conversations with the others. I don't have an answer for you. I know we received it. I signed it. It would have been an easy thing for me to do just to sign one of the other ones and not have this problem.

Q. Say again?

A. It would have been really easy, as I said before, for me to just sign one of the other agreements and -- instead of just doing what you are suggesting, or having someone in my office do what you're suggesting.

Q. There was a problem with the other agreements, wasn't there? Mr Robins took you to the problem.

A. Yes.

Q. So it wouldn't have been that easy to just apply a signature to one of the other agreements, would it?

A. It would have been a really easy thing to apply my signature to one of the other agreements because then PwC would have been happy and then I could have just worked through with Kerry and the lawyers and got another agreement in place later down the line.

Q. PwC wouldn't --

A. It would have been a really simple thing to do.

Q. They wouldn't have been happy with an agreement that referred to a different company, London Capital & Finance and the distributor agreement had different information on it which was no longer relevant?

A. What I'm saying is, it would have been a really easy thing for me to do just to sign one of those agreements just to keep PwC happy and then work through with the others to replace it. That would have been a really simple thing to do.

Q. Equally simple, Mr Thomson, would have been to lift her signature from the previous agreement and put it on the new agreement for PwC's benefit?

A. And it would have been equally -- and I deny that and it would have been equally as easy --

Q. You deny it would have been easy to do?

A. No, I deny what you are saying. But it would, equally, have been easy for one of the others to use the electronic signature they already had on file, attach it to the agreement and send it over.

Q. Why would they want to do that?

A. Because, as we have established at the beginning of your line of questioning, we have a symbiotic relationship. What is good for LCF is good for them and what is good for them is good for LCF.

Q. You see, earlier this morning, I took you to the message, the WhatsApp message, the text message, where that symbiotic relationship was explored. Now, you were still needing to put the pressure on Kerry to get her to provide the agreement, and she said she's going to do it right, "Let's do it right the first time". Do you remember that?

A. I remember that.

Q. Notwithstanding the pressure, they were taking their time, the Surge defendants, they were taking their time?

A. Kerry was.

Q. Yes.

A. She was working through it.

Q. She was still working through it on the evening of 6 October, wasn't she?

A. It is clear from the emails that we have been corresponding. That doesn't mean that one of the others didn't attach her signature to it and send it over.

Q. Why would they want to do that? Why not say, "Hold on, it is easy, isn't it? Hey, Kerry, just sign this agreement and send it over". Why not do that?

A. Maybe they didn't want the discussion with her.

Q. They don't want to discuss it with her, why not?

A. To get it done.

Q. Let's explore what you are saying. The Surge team, if what you are saying is correct, they have decided to falsify her signature as opposed to say, "Kerry, just sign this agreement and get it over to Andy". Is that what you are suggesting?

A. I believe one of them put the signature on there. It wasn't me.

Q. But why?

A. So PwC would be happy with our audit.

Q. But it is easier for them to just -- for example, Paul Careless just to instruct Kerry, "Just sign the agreement and get it over to them"?

A. That would be a conversation for those two.

MR JUSTICE MILES: Had Mr Careless himself signed it?

A. They have the electronic signature for her. That's confirmed in interviews.

MR JUSTICE MILES: But Mr Careless could just put his -- could sign it with a pen and send it back to you.

A. I believe it was Kerry who signed -- her signature was used on all their employment contracts and everything else.

MR JUSTICE MILES: But Mr Careless was a director of the company.

A. Was he? I can't remember.

MR LEDGISTER: He was. He could have signed it himself, couldn't he?

A. He could do.

Q. But he didn't. So, if your evidence is correct, rather than just sign it himself, take all the mystery out, all the issues out, he thought he'd falsify the signature of his colleague on an agreement that he

could have easily signed himself and it would have been perfectly acceptable and fine. Is that your evidence?

A. I don't know who signed it. We received a signed copy.

Q. You don't want to tell us who signed it, do you?

A. I don't know who signed it. I didn't sign it and I didn't instruct any of my team to sign it.

Q. <MDR00092487>. 30 June. This is an email from Kerry to you. At the bottom of the page:

"Dear Andy.

"Some good news, long overdue but I do now have a services agreement for your review and signature." What was your response to that? What would your response to that have been?

A. So, this is -- we are the next year.

Q. Next year, June '17?

A. The companies had been evolving. There was a VAT issue to work through for them. They were considering becoming an AR. The companies were evolving and we were constantly in discussions about the agreements between us.

Q. "Some good news, long overdue but I do now have a services agreement for your review and signature." Your response should have been, "Kerry, don't know what you are talking about. We have got the agreement". Right?

A. I believe, by this time, she knew. She says it in her interview --

Q. Let's not talk about what Kerry knew. I want to know what you knew. What did you know? At this time --

A. At that time, I knew we had a signed agreement and it was sent off to --

Q. So your response to that would have been, "Kerry, what on earth are you on about? What are you talking about?"

A. No, I don't take that because we are discussing other things. If you look at this agreement, and if I believe it is the one I think it is, which she got produced by their lawyers, if I'm correct --

Q. That's right.

A. It is completely different.

Q. Correct. Because they weren't happy with the agreement that I suggest you, or somebody on your instruction, had signed. They weren't happy with that agreement so they produced an agreement now, in June, that they were happy with?

A. No, the companies had evolved and what we were doing between us had absolutely evolved, and I believe I'm not -- this isn't, at this time, if I'm correct, and I don't --

Q. The next passage.

A. It goes through Lewis Silkin instead of Buss Murton.

Q. The next passage. She says:

"I have been conscious that we were not able to get this in place before your audit last year." So she's referring to 2016 PwC audit. I will say it again:

"I have been conscious that we were not able to get this in place before your audit last year and have now made sure this is ready well in time of your next audit."

What would your response have been to that?

A. I don't remember, Mr Ledgister. My response is in the email above.

Q. Exactly. Let's have a look at what your response should have been to that:

"I have been conscious that we were not able to get this in place before your audit last year and have now made sure this is ready well in time of your next audit."

Surely you would have been on the phone to Paul Careless saying, "Who on earth have you got working for you? She's lost her mind. We have got an agreement in place. We have had it in place for quite some time. Now she's talking about it again". But let's have a look at your response. You reply to her: "Hi Kerry, thank you for sending an agreement over. I note that it is a completely new agreement so I will have to send it to our solicitors at Lewis Silkin to look through. I have noted from my initial scan though that there are a number of [issues] ..."

A. That's a typo, I imagine that's "issues".

Q. "... that we will have though and there are some inaccuracies as well, for example, when we first started working together we paid for the website and paid you to create it but from the agreement it seems you are saying that the ownership of it is yours and additionally the 25 per cent we pay you includes the work on the website so surely the ownership should reside with LCF. "As soon as I hear back from Lewis Silkin I will be in touch regarding their advice or would it be better for our solicitors to speak directly."

You see that, don't you?

A. Yes.

Q. Now, this certainly isn't the response that one might expect if you had this agreement in place back at 2016 when you sent it over to PwC. That's not consistent, is it?

A. If I'm aware at the time that -- or was aware at that time when I sent the email that it wasn't her that attached her signature to it, I can see it follows that I write that. I'm --

Q. You're ...?

A. I don't know what else to say to you. We received a signed agreement. I appreciate what this looks like.

Q. What does it look like?

A. You're taking me through these things and, if one of the others hadn't done what I'm suggesting that they did, then it looks like someone attached her signature to it in LCF.

Q. Well, nobody, you see, had told you that they had done what you are suggesting that they might have done. Nobody told you that, did they? Not Paul --

A. I didn't go and actively seek it, but probably --

Q. Forget whether you sought it or not. Did Paul tell you that someone else had put the signature on there?

A. I didn't actively go and ask the question.

Q. I didn't ask you that.

A. No.

Q. The question is a very simple question.

A. I don't remember --

Q. I am going to ask it again, Mr Thomson. Listen clearly, please: did Paul Careless say to you somebody else had put that signature on that agreement. Yes or no?

A. I don't remember having that conversation so I would say no.

Q. Did Mr Russell-Murphy have that conversation with you? You would remember it, wouldn't you?

A. I don't remember having that conversation.

Q. Right. Kerry Venn. Same treatment. Did she have that conversation with you; yes or not?

A. It would have been no, because, clearly, through these conversations --

Q. Therefore, the residual position is, as you have just rightly alluded to, it must have been somebody else in LCF who had done this. That's right, isn't it, Mr Thomson?

A. Just because I didn't go and actively try and find the conversation on who did -- they said they would get it sorted, we received a signed document. I cannot tell you who did. I didn't actively go and ask the question. It, I believe, would have come out in conversation with Kerry that it wasn't her, so I didn't explore it further.

Q. You're still not ready to tell the truth about this, are you, Mr Thomson?

A. I'm telling you, we received a signed agreement.

MR JUSTICE MILES: I thought you just said to me, Mr Thomson -- can I just be clear about this -- that you didn't have that conversation with Kerry where she said that she hadn't signed it?

A. Yes, my Lord. What I was trying to say is I didn't actively go and pick up the phone and say, "I have received a document. Did you sign it?" That's what I was trying to say.

MR JUSTICE MILES: Do you say, then, that she picked up the phone to you and volunteered that she hadn't signed it?

A. I think it would have come out in conversations with her, her asking about the agreement --

MR JUSTICE MILES: I thought you just said to me -- I may have misunderstood this -- that you were not able to remember any conversation where she said that. But you must give your evidence. I am giving you another opportunity to explain yourself.

A. Yes, my Lord. Perhaps I'm not explaining myself well enough. Apart, for a moment, from what I keep saying, that we received it, I didn't, after that, go and speak to the other parties and ask them, "Did you attach Kerry's signature to that document?" I didn't do that. Looking at these emails, I believe it would have become apparent to me through conversations with Kerry that it wasn't her. I

didn't investigate it further and I just continued. But I didn't attach her signature to that document and I didn't give an instruction to do that.

MR LEDGISTER: If I were to continue cross-examining on this point, would you ever accept that it was yourself or somebody else on your instruction that had falsified Kerry Venn's signature?

A. I didn't -- sorry, can you rephrase that?

Q. If I were to continue cross-examining you on this point, would I ever get to a point where you will accept that it was either yourself or somebody else on your instruction that falsified Kerry Venn's signature?

A. No, because then I would have to admit that I did it, and I didn't, and I didn't give the instruction to do it. But what I will say is, the office was aware. Could it have been someone in my office just doing it? I don't know. I didn't do it. I didn't give the instruction to do it. As I have said before, it would have been really easy for me to just sign one of the other ones and work through another agreement, which it's clear that we're doing. It would have been the simplest thing to do. But I didn't do that.

MR JUSTICE MILES: Okay. We will rise now and come back at 2 o'clock.

(1.05 pm)

(The short adjournment)

(2.00 pm)

Re-examination by **MS DWARKA**

MS DWARKA: Mr Thomson, I just have a couple of questions for you. In cross-examination, before the Easter break, you were asked if LCF had sent a default letter on 5 December 2016. Do you remember this?

A. Yes, I do.

Q. In response, you said that you didn't remember the date, but you think you saw the letter and it said 5 December 2016.

A. That is correct.

Q. You also said that you imagined you would have looked at the document and that gave you the date.

A. Yes.

Q. Do you remember?

A. Yes.

Q. Can we look at <MDR00067824>, please. Do you recognise this letter?

A. I do.

Q. Is this the letter you were referring to --

A. It is.

Q. -- when you replied to Mr Robins?

A. Yes, it is.

Q. Can we now look at <MDR00068349>, please? Do you recognise this email?

A. I do.

Q. Is this the exchange you were referring to when you said in evidence that LCF had sent a default letter to L&TD?

A. It is.

Q. Now, last week, in cross-examination, you were asked a question about drawdown requests made by Sanctuary under the loan agreement but paid to One Monday. Do you remember that?

A. Yes.

Q. In response, you said, at some point, that One Monday had an agreement, an agency agreement, contained in the document or a document. Do you remember?

A. Yes.

Q. Can we look at <D1-0001319>, please. Can you have a look at clause 1.1?

A. Could you make it bigger?

Q. Is this what you had in mind when you mentioned the existence of an agency relationship or agreement between One Monday and a borrower?

A. Yes, it is.

Q. Last week, again, in cross-examination, you were referred to clause 4.1 of the SPA you signed in 2015 and asked about the content of the clause which deals with your resignation as a director for various companies. Do you remember?

A. Yes.

Q. In response, you said that you relied on Mr Sedgwick and Mr Peacock to deal with all of them but that you eventually realised that you were not removed and got that dealt with. You were referred to an email, between you and Mr Sedgwick, by the claimants, where Mr Sedgwick was going to prepare a letter to record your resignation. Do you remember?

A. Yes.

Q. Can we look at <D8-0005854>, please. The attachment itself is at <D8-0005855>. Can we have a look at that? Is this what you had in mind when you said you got this sorted later on to reflect the fact that you were resigning as a director following the SPA in 2015?

A. Yes.

Q. It was put to you that the date in the letter is said to be June rather than July. Can you tell us when the discussion about going solo or separating started and why you decided to go solo?

A. The discussion started in May/June. I was considering it earlier than that. There was quite a lot of friction that was going on inside the group, as a body of individuals. There were nearly daily arguments between Mr Golding and Mr Hume-Kendall. Mr Barker was a bit of a mediator. There was

another chap called Clint Redman. I even believe there was a punch-up in the office between Mr Redman and Mr Golding. It wasn't a place that I wanted to work. So, I know I wanted to leave and I had always wanted to progress the financial side of things. That was my intention, when I left the bank, to try and set up a counties bank. So I -- in discussions with them, it was agreed that I would leave, so I did.

Q. On Tuesday this week, you were questioned at length by Mr Robins about the assignment of the Atlantic Petroleum loan to Atlantic Support, and it was suggested to you that it was never assigned because of the documents that you were shown. It looked like LOG was treating it as not been assigned. Do you remember this?

A. Yes, I do.

Q. Can we go to <D8-0019457>, please. Can you tell us what this document is, Mr Thomson?

A. It is the assignment of the loan from London Oil & Gas to Atlantic Petroleum Support that I was alluding to.

Q. Can we look at the last page, please. Is this what you had in mind when you said the assignment had happened?

A. Yes, it is.

Q. Who informed you of the assignment?

A. Both Mr Barker and Mr Hume-Kendall and Mr Sedgwick. It was discussed not only with me, but also with our lawyers, our lawyer, Alex Lee, as well. So it was openly discussed.

Q. Yesterday, Mr Robins questioned you on Cape Verde and referred to a contract having been cancelled in Paradise Beach. Do you remember?

A. Yes, I do.

Q. In response, you said that they offered a security package to deal with this point, which included personal guarantees --

A. Yes, I do remember that --

Q. -- is that right?

A. -- yes.

Q. Can we look at <D8-0040616>, please. Mr Thomson, you are not copied to this email, but is this what you had in mind when you mentioned that there was a security package?

A. Yes, it is.

Q. Just for completeness, can we look at the attachment at <D8-0040617>. Does this look familiar?

A. Yes, it does.

Q. Can you tell us what you remember LCF did in relation to this offer at the time it was made and how this was made to you and/or LCF?

A. We were informed by Mr Barker and Mr Hume-Kendall that Cape Verde wasn't able to be progressed. We were informed that it was actually an issue between not them and the party that you

were purchasing from, it was an issue between the party that the people they were buying off -- I believe they were called the Cotters -- and the people they had bought. Because of that, we -- they informed us of that and we said, "Well, clearly, there is no security there, so either the loan needs repaying or you need to provide further security to secure the debt and also provide us with details of how you propose to pay the loan down".

Q. Now, when you say "we", who are you referring to?

A. Both myself and Kobus, and also our lawyer, Alex Lee, was involved.

Q. Can we look at <D8-0043685>, please. Can you have a look at the content of this email? Again, you are not copied, but do you recall anything about a meeting?

A. We had meetings on various occasions to discuss the CV Resorts and how they were going to progress it. I know we sat down and discussed it on a number of occasions. I'm just trying to remember the meeting. I don't seem to remember the details of the meeting.

Q. It is fine if you don't remember.

A. At the time, again, looking at November '18, I'd had Rickettsia, I'd been in hospital, I'd come back to work proper at the end of October/beginning of November. Yes, this was discussed on a number of occasions so the lawyers were dealing with it and, yes, we met and they provided proposals.

Q. Do you think there is a chance you weren't at this meeting then?

A. I may or may not have been. I don't remember, sorry.

Q. I think, at the very beginning of the cross-examination, at some point, Mr Thomson, you were questioned on when the SPA was created and was then told that it was not created in 2015. Do you remember this?

A. Yes, I do.

Q. It was put to you that the document was not created until the FCA intervened in December 2018. Do you remember?

A. I remember, yes.

Q. So, you were shown a document where the metadata showed February 2019?

A. Yes, I remember.

Q. Can we please go to <D1-0000766>. Do you recognise this document?

A. I do.

Q. Can we have a look at the metadata, please?

MR ROBINS: My Lord, I don't want to object unnecessarily, but this is a misleading question, and I don't know if my learned --

MR JUSTICE MILES: We haven't heard the question yet.

MR ROBINS: May I just say, I don't know if my learned friend is aware of this. This is one of the hard copy documents that was scanned in by Mr Thomson's solicitors and had metadata manually assigned for the purpose of the trial bundle. We know that because the time on every single

document that had metadata manually assigned is 12 midnight, or 12 pm, or whatever it is. It is exactly the same on all of them. If you open the native format document, you see something different. I just wanted to make that point before the question is put to ensure there is not a misleading question put to the witness.

MS DWARKA: I think the only question I was going to ask is, what is the date stated on the document? My Lord, I was not aware that that was the position in respect of the scanning.

MR JUSTICE MILES: I'm not sure I have quite understood that point, Mr Robins. Can you explain it to me?

MR ROBINS: The solicitors were provided with a number of hard copy documents. They scanned them in. If you look at the native format version, the metadata shows you the date of scanning. But, for the purpose of disclosure, they assigned a date which they took from the face of the document and, for every occasion where they did that, the time that they inserted, because it hadn't actually been created -- well, they didn't know whether it had been created on that date or not, they just took it from the face of the document, the time is the same: 12:00:00. So there is a series of hard copy documents where what you see in the document date is not a reflection of anything from metadata, it is a reflection of what solicitors inputted manually, taking the data from the face of the document that they were looking at. In other words, assuming that the document they were looking at was created on the date borne on its face. They assigned that in good faith. There is no suggestion that they were seeking to mislead anyone, but it is potentially apt to mislead, which is why I wanted to --

MR JUSTICE MILES: Yes, I understand.

MR ROBINS: -- raise the point.

MR JUSTICE MILES: Is the way this metadata works, it is different from the kind of metadata that was shown on the document that you put in cross-examination, for example?

MR ROBINS: That's right.

MR JUSTICE MILES: Can you show me that document, so I can see --

MR ROBINS: In most -- may I just say, in most instances, the metadata date will be exactly the same as the document date shown in the trial bundle because the document date in the trial bundle has simply been transposed from the metadata. But where the document provided to the solicitors was a hard copy which they scanned in, there is obviously no metadata other than the date of the scanning. So, for the purpose of disclosure, they assigned the document taking the information from the face.

If we could just look at the native format of this version, please, and look at the document properties, my Lord will see --

MR JUSTICE MILES: Which one is this?

MR ROBINS: This is the one my learned friend Ms Dwarka showed. If we look at the native format and look at the document properties, my Lord will see precisely what I mean because the metadata of the document itself shows -- it is right at the bottom, "Document properties". If you go to that, you see "Created 29/07/22". That's the date on which it was scanned in by the solicitors performing the document exercise. For the purpose of disclosure, they then looked at the document and thought, well, we need to assign a date for this, and they took the date from the face of the

document. But this is the metadata of the PDF itself, and you can see when it was scanned in by the solicitors.

MR JUSTICE MILES: So when -- on the previous thing which came up, which said "Metadata", it is not the metadata of the document in native form, which this is; it's something called "Metadata" but it is actually something which has been done forensically?

MR ROBINS: Yes, that's right.

MR JUSTICE MILES: So, if we go back to your bit, Ms Dwarka --

MS DWARKA: I was not aware of this, my Lord.

MR JUSTICE MILES: No, I understand and I think it has been helpful.

MS DWARKA: Yes, it has been helpful, but in that case, I don't think I have a question in respect of the metadata.

MR JUSTICE MILES: I follow you. If we can go back, just so I'm clear in my own mind, to the first lot of so-called metadata -- I don't mean that pejoratively -- one can see that because it's actually got a Bates number, for example, which is clearly something in the -- and it says when it was imported. So, this is, as it were, what I have called forensic metadata.

MR ROBINS: Yes. I should make clear, there is absolutely no criticism of the solicitors who were doing this, paralegals and so on. They needed to fill in a date, they looked at the document and they transposed it across. I don't mean any criticism. I fully accept my learned friend was unaware of the point.

MR JUSTICE MILES: That's not what I might call native document metadata.

MR ROBINS: No, that's right. My Lord has seen the native document metadata in the PDF.

MR JUSTICE MILES: All right.

MS DWARKA: In that case, my Lord, I have no further questions.

MR JUSTICE MILES: Mr Thomson that, completes your evidence. It has been quite a long haul, but you are now free to leave the witness box.

A. Thank you, my Lord.

(The witness withdrew)

Application by **MR ROBINS**

MR ROBINS: My Lord, it is for me to open the application for permission to amend as against the fifth and sixth defendants in respect of what we are calling the Isle of Wight amendment. Your Lordship has seen the text of the amendment, it has been set out by both parties in their skeleton argument. It is a further particular of an existing allegation of knowledge. Your Lordship has also been the chronology. Again, that's been set out by both parties. We have also both set out the principles from the authorities. I don't think I detect any dispute. My learned friend refers on the rather opaque comment in the White Book that the applicant must show that, "the prospects of success on the amendment eclipse the interests of the other parties in the litigation". It is a passage that he's quoted in his skeleton argument. That seems to be a reference to the balance of prejudice.

If the amendment has a good prospect of success, refusing permission prejudices the applicant. For it to be permitted, the prejudice to the applicant from refusal should outweigh the prejudice to the respondent from permitting it. I don't think the White Book is saying any more than that.

"Eclipse" is probably not a very helpful word. It is imprecise. It might be misinterpreted. I don't think the White Book is saying that the prejudice to one side must be so great as to make it impossible to see the prejudice to the other side or the prejudice to one side must obscure the prejudice to the other side. As I say, I think it is a reference to the balance of prejudice.

Certainly if "eclipse" is a helpful metaphor, then it is not total eclipse or nothing.

There are two points that are taken against us. First, it is said that we could have made this application at an earlier date. My Lord, we couldn't, realistically, have identified the point any earlier than we did. As my Lord knows, we received somewhere in the region of 700,000 documents in total from April 2023 onwards. They came in dribs and drabs with numerous supplemental tranches, including the 29,000 documents from the fifth and sixth defendants as tranche four in July 2023.

We were reviewing documents pretty much nonstop from around the middle of May 2023. I was heavily involved in that exercise myself. We had to review the claimants' disclosure. My Lord has seen that consisted of 225,000 documents and it might be said against us, well, you should have looked at all your own disclosure sooner. But my Lord will know that's not how litigation works. You take it in stages and you do each stage when you need to. If you settle, for example, it might turn out that future stages are unnecessary. You don't deal with trial preparation until you're in the trial preparation period.

But reviewing those 225,000 documents took us to 23 August 2023. We then turned to the seventh and ninth defendants' disclosure, then the first defendant's disclosure, the third defendant's disclosure, the second and tenth defendants' disclosure. Then, from 17 September, the fifth and sixth defendants' disclosure. Including the supplemental disclosure, we had over 160,000 documents from them to look through. We finished looking at their disclosure on 8 October. Then, until the end of October, we were looking at the eighth defendant's disclosure and the 11th to 15th defendants' disclosure. Then we had to begin to review our notes and piece it all together. If different people have looked at different parts of disclosure, they have to communicate. You have to try to see what it all means, see what the overall story is. As part of that process, as we set out in the evidence in the application notice, Mr Shaw took a closer look at the various rather puzzling references that we had seen to the Isle of Wight, which had been scattered through the disclosure of the fifth and sixth defendants and the seventh and ninth defendants.

Of course, we had no prior knowledge of these matters. Mr Shaw put it together, as set out in the evidence in the application notice, on the 24th and 25th --

MR JUSTICE MILES: I thought some of the documents you referred to were in your disclosure?

MR ROBINS: Some of them. There is a number of them in our disclosure. Mr Shaw drew it all to my attention on 26 November.

My learned friend says, "Oh, well, the claimants had all the documents that they have relied on in respect of the Isle of Wight point by 31 May 2023". He says later disclosure of other documents by any of the defendants, and indeed the claimants, is not relevant -- that is paragraph 10 of his skeleton argument.

But, my Lord, that reveals a complete failure to understand the nature of the exercise that had to be undertaken. As I said, we got about 700,000 documents in total. We couldn't say, on 31 May, "Right, let's extract all the Isle of Wight documents". I couldn't have sent an email to my instructing solicitors on that date to say, "Can you pull out the Isle of Wight documents, please?" We didn't know anything about the Isle of Wight at that point. We didn't know that the documents existed or how to find them. When we read the parties' disclosure, we weren't even looking for documents relating to the Isle of Wight because we had no prior knowledge of it.

We noticed, on reviewing our notes, that the Isle of Wight had come up. We didn't, at that point, understand the isolated documents that we had seen. If you see a handful of documents in isolation as you're going through tens or hundreds of thousands, you don't put the story together. You have to spot that there is something there, you have to look at it, as Mr Shaw did, you have to identify everything, draw it all together, and that, my Lord has seen, was done by 26 November, which was towards the end of the period of preparing our opening written submissions. So, we wrote it up, we added it to our opening written submissions, and my Lord knows they were filed and served on 15 December. My Lord has seen we set it out extensively. We footnoted every document on which we relied. That's still the case. There are no additional documents on which we rely. We held nothing back. We put all our cards on the table at that point in time. As your Lordship knows, we took the view that it wasn't necessary to amend because it was covered by the existing plea that the fifth and sixth defendants knew that others involved in LCF were involved in misappropriations.

My Lord will recall what happened. Mr Ledgister accepted in his submissions that we could rely on this material to attack Mr Careless's credibility and he accepted we could rely on it to undermine the positive case advanced by the fifth and sixth defendant, and your Lordship agreed with that assessment. So, the factual issue is part of these proceedings. We are entitled to cross-examine Mr Careless on these points, and that's the case whether we are permitted to amend or not.

We are entitled to make submissions on these points in written and oral closing submissions, again, whether permission to amend is granted or not.

Of course, what Mr Ledgister also submitted, as he explained on the first available opportunity in the trial timetable on which your Lordship could consider the point, was that we should formally amend if we were intending to rely on this point as part of a cause of action, as an ingredient of a cause of action, and your Lordship, of course, agreed with that submission. Your Lordship recognised that it was fairly close to what we plead already and that we could rely on it for other purposes, as I have mentioned, but your Lordship held that we should take the step of formally amending. Your Lordship decided those points on 25 March. We provided the text of the amendment on 26 March. It is said against us that we could have pre-empted your Lordship's decision by applying to amend on or shortly after 10 January, when the fifth and sixth defendants first made clear that they would take a pleading point, but that wouldn't have provided the fifth or sixth defendants with any greater degree of knowledge or understanding about what we intended to say or any additional period of notice in respect of those matters. What we intended to say, what we certainly will say, in any event, for the two permissible purposes about the Isle of Wight transaction had already been set out in detail in our written opening submissions on 15 December last year. As I say, we set out every piece of documentary evidence on which we intended to rely. The totality of that evidence about the transaction and the nature of Mr Careless's involvement had already been set out, and an application seeking permission to amend on 10 January wouldn't have put the fifth and sixth defendants in any more knowledgeable position. A formal application to amend at that time would have added nothing to the other side's understanding of what we intend to say and will say, in any event, on this point.

The other side say, "Well, if you had applied to amend at that time, we would have had more time to deal with it". First, they are going to have to deal with it in any event, because we rely on it to attack the credibility of Mr Careless and to challenge the positive case advanced by the fifth and sixth defendants. Secondly, it would be very surprising if the other side had been proceeding on the assumption that your Lordship would inevitably decide in their favour on the pleading point. They must have recognised that there was a risk that your Lordship might not. They certainly had the option of preparing for the eventuality of your Lordship deciding against them on the pleading point. So, we say we couldn't realistically have identified or raised the point at any earlier stage. Moving on to the question of prejudice, first, prejudice to the claimants if the amendment is not allowed. The prejudice to the claimants on being unable to rely on this as an ingredient of a cause of action is, we would say, obvious and significant. In our submission, these matters provide a very strong basis for an inference that Mr Careless, and Mr Russell-Murphy, for that matter, knew of LCF's fraudulent trading.

My learned friend says in paragraph 17 of his skeleton argument that the further particulars of knowledge contained in this amendment is not something without which the claimants' claim is bound to fail and not the only matter on which the claimants rely. In our submission, that's the wrong approach. But, in any event, if the fifth and sixth defendants thought that the point raised by the amendment was not going to play an important, or potentially important, role in determining the outcome of the case, presumably they wouldn't be resisting it. They would have said, well, it doesn't matter, we consent to it. So it is clear that the claimants would be prejudiced in the relevant sense if it is not permitted.

As regards prejudice to the defendants if the amendment is allowed, the basis on which the fifth and sixth defendants resist the amendment relates to disclosure. What they say is set out at <P12/5> at page 6. They say, in paragraph 20, that they have applied those key words, and, over the page, they say they have applied a date range -- this is paragraph 21 -- of 1 July 2018 onwards, and they say that that gives rise to 20,894 documents. Now, my Lord may recall Kingsley Napley referred, on 5 April, to 42,000 responsive documents, and my learned friend Mr Ledgister referred, on 10 April, to 19,000 responsive documents. The different numbers reflect the fact that they have been changing the search terms, and they make that clear in paragraph 19 on the left-hand page, in the final three lines:

"I note that Mr Ledgister referred to a figure of 19,000 documents ... This was not accurate as it was based on the results of some earlier searches." So they have been changing the search terms and, as a result, they have gone up from the 19,000 mentioned by Mr Ledgister to 20,894 now.

On the right-hand side, in paragraph 21, they say that they would have to review each of those 20,894 documents individually in order to be able to deal properly with the Isle of Wight amendment. They say, in the final two lines of the paragraph, that it would take in excess of 40 days just to carry out a first-level review, and that there would then need to be a second-level review.

My Lord, this is all completely unsustainable. First, the key words that they have identified are very broad, and some of them are bound to generate a very large number of false positives. If we look at the bottom of page 6, and perhaps it could be made bigger, the whole of paragraph 20. The first key word term that has been applied is "Isle of Wight". My Lord will know the Isle of Wight is a sizeable place, extending to about 94,000 acres of land. There are 141,000 people living there. It is unsurprising, in light of that, that a reasonable number of LCF's bondholders lived on the Isle of Wight. I will mention some names. My learned friend Mr Curry can check them in the pool of disclosed documents: Jean Rita Harris;

Nicholas John Henry; Priscilla Beattie; Catherine Cox. So using the search term "Isle of Wight" will return all documents relating to all bondholders who lived on the Isle of Wight, so all application forms, all emails, all correspondence, all spreadsheets containing contact details. Those are, of course, within the documents held by the fifth and sixth defendants because they were responsible for dealing with bondholders. Those are, of course, entirely irrelevant. They are what's known as false positives.

That's just the bondholders. But, of course, Surge's employees responded to communications from members of the public in respect of LCF's bonds by way of emails and web chats, and so on. Some members of the public who enquired about LCF's bonds but ultimately decided not to invest also lived on the Isle of Wight -- Della Lubeck; Anne Adams; Barry Bristow; Alison Hindle. You can find all these in Surge's disclosed documents by applying the term "Isle of Wight". My learned friend can, therefore, check these names. It comes from their existing disclosure. All these individuals lived on the Isle of Wight. These documents would be returned by the search term. They are all false positives. So it is not a sensible key word to choose, certainly not in isolation. You would have to combine it with something more pertinent, some other key word term that would reduce the number of false positives. Obviously, Kingsley Napley haven't done that. It might be said that they're not really interested, at this stage of the game, in reducing the number of hits. To the contrary, they might want to increase them. As regards (b) and (c), IOW and Brading Marsh, now this is different. This is potentially a bit more sensible. We have seen from the documents that the company involved was called IOW Eco Reserve. We have seen, as well, that Mr Careless and Mr Russell-Murphy referred in communications to the IOW deal. That's not something that's going to turn up in the addresses of LCF bondholders.

The land was in a place called Brading Marsh. That's a very specific location on the Isle of Wight. That's unlikely to generate false positives. But we haven't been told by Kingsley Napley how many hits have been generated by "IOW" or how many hits have been generated by "Brading Marsh". Kingsley Napley haven't provided any breakdown. I will come back to that point in due course.

The next is (d), "Prime". Again, that's far too broad. "Prime" is a commonly used word. It is used in day-to-day conversation all the time: prime time; prime rib; prime minister; in the prime of his life; prime real estate; a prime example; prime consideration; of prime importance; the prime concern; past its prime. I could go on. It is bound to produce a large number of false positives. If you wanted to be more sensible about it, then "Prime Resort Development" or just "Prime Resort" in inverted commas would be bound to eliminate a very substantial number of false positives and bring the number down.

(e) "View Property Group" and (f) "VPG". My Lord may recall View Property Group was the name of the property investment company set up by Mr Careless. It was involved in a large number of transactions and potential transactions, including in respect of land in Gold Lane, Peacehaven; Heslington House, 56 Richmond Road, Worthing; Sandy Lane, Crawley Down; Marlowe House, Hadlow Down; Marine Drive, Rottingdean. And there were, at minimum, seven, we think probably, maximum, nine SPVs that were incorporated as subsidiaries of View Property Group to deal with these various transactions and proposed transactions. The terms "View Property Group" and "VPG" will return every document relating to that company, including a large number of irrelevant documents. Every email or letter ever sent on its behalf, every document referring to it, we can see, if you apply that search term to Surge's disclosed documents, you get invoices addressed to it: invoices from estate agents; invoices from builders; invoices from other construction professionals -- again, Mr Curry can check all this -- invoices from a storage company; business card invoices; invoices from

Taxi Steve; annual returns; and accounting documents. All of which are false positives with no relevance. Again, my learned friend can check. If you apply "View Property Group" to the documents actually disclosed by the fifth and sixth defendants, you find every email that was sent by anyone where someone with a View Property Group email address was included in the distribution list, including, as I found out when I did a quick search of this last night, emails about Christmas Jumper Day; Sarah Trigg's 30th birthday drinks; Secret Santa; the Christmas cookie sale; Northern Tea Bags; and Keith running the London Marathon -- he's only £300 away from his target. My Lord may wonder why any of those have been disclosed by the fifth and sixth defendants and, I must say, it is a thought that's crossed our minds previously and there has been some correspondence about it. That's not relevant for present purposes. The point I'm making is that "View Property Group" is a term that results in a very large number of false positives. (g), "Eco Reserve". That's, again, a lot more sensible. The company was called IOW Eco Reserve. That will produce a limited number of hits and probably not many false positives. We don't know how many items Eco Reserve on its own returned because we haven't been told.

(h), "SPV5". Again, probably quite sensible. But you need to apply a suitable end date. I am going to come back to the point of the end date in due course. Because SPV5 is mentioned in a lot of documents from the Crown Court proceedings. So you need a suitable end date to exclude those.

(i), "5w/2 million" is far too nebulous. My Lord will recall LCF's marketing materials said, at the end of 2014, there were 5.2 million businesses in the UK, of which SMEs accounted for 99 per cent. So, if you apply the search term in (i), you get every document that included those words, every information memorandum attached to an email, and, on a family basis, you get the covering email to the prospective bondholder as well. You also get documents -- again, my learned friend can check this -- about Surge's bonus scheme referring to the group targets because 5 million was one of the staging posts in the bonus scheme. For (j), "2.5 w/2 million", the same applies. For (k), "Helicopter", again, that's far too broad. Mr Careless did buy a helicopter and Surge's disclosed documents include correspondence about insurance for the helicopter, correspondence with Sam, the helicopter pilot, including WhatsApp chats between Mr Careless and Pilot Sam. Then there are a lot of media reports postdating LCF's collapse.

Mr Careless sent them to people including Johnny Mercer MP and most of those media reports mention the fact that Mr Golding had a helicopter. Now, that's all going to be returned by this search term. Again, they are false positives. LCF's administrators' reports mention Mr Golding's helicopter. For example, we don't need to bring it up, it may not even be in the trial bundle, <SUR00119321-0001> and even, for example, by applying the search term "helicopter" to the documents, which the fifth and sixth defendants have disclosed, you find that someone called John White sent a message to Mr Careless with a link to an article in the Daily Mail about Kylie Minogue taking a helicopter flight to Cornwall. That's <SUR00121555-0001>.

So, we don't think that these are sensible key words. The sensible key words, as I said, would be a shorter, more targeted, list that would return far fewer false positives. Even then, you would want to run key words in combination, what are known as search threads, where you use connectors, like "and", "or", you can use brackets, you can use quotation marks, and you reduce the number of false positives in that way. You are likely to get this down to probably a few hundred documents. Certainly, if you remove the very broad key words which generate false positives, it is not going to be tens of thousands. It is hard to say because we haven't been given the data, but it is probably going to be less than a thousand, maybe a bit more than that. But, of course, this stands to reason. The period relating to the Isle of Wight transaction, as my Lord has seen, is a matter of months -- six months,

maybe seven at most. It is not going to have generated tens of thousands of documents. The suggestion that it might have done, if you just stand back and think about it, is obviously not right. I mentioned earlier that if this had been done properly, Kingsley Napley would have set this out in a table showing how many hits had been generated by each of these search terms, and we would no doubt have discovered, for the reasons that I have explained, that the vast bulk of the 20,000-plus documents to which they refer are coming from the very broad search terms which are extremely likely to generate false positives. They have not done that, and one can only assume that they have left it out because it wouldn't support their argument.

I mentioned earlier I would come back to the question of the end date. Before doing that, I should mention the start date. If we look at the next page, paragraph 21, they say they have used a start date of 1 July 2018. But it is clear from the documents that we have cited that Mr Careless's property company was only informed of the opportunity in respect of Brading Marsh on 20 July 2018. That's <SUR00119305-0001>. We don't need to bring it up, but my learned friend can check it. It is not clear why you'd take a start date some three weeks earlier than that unless you were not interested in bringing down the total number.

Similarly, as I said I would come back to it, there should be an end date. You would need to have an end date to try to exclude irrelevant documents. We would suggest 1 April 2019. The reason for that is that's -- maybe we can bring this one up, <SUR00119759-0001> at page 4. This is the email my Lord has seen from Mr Careless to someone called Peter Crawford at Northern Provident, where he sets out his account of the Isle of Wight transaction. That seems to us to be a sensible end date, and that would bring back a far lower number of documents.

If we could go back to <P12/5>, page 7, in paragraphs 21 to 22, what is said is that it would be necessary for Kingsley Napley to review each of the 28,894 documents individually, but that's not, of course, how the fifth and sixth defendants conducted their disclosure exercise. If we look at <P14/3/4/3> -- when we look at the trial bundle it is <P14/3/4/3>. In paragraphs 8 to 9, they explained they dealt with their disclosure exercise utilising data analytics technique referred to as "rapid analytic investigative review", which enables large numbers of documents to be reviewed very quickly. They explain the approach that was taken. If we look at <P14/3/4> at page 10, in (f) at the second paragraph, it is explained that OpenText, the outsourced e-disclosure provider, sampled and batched out sets of documents to Kingsley Napley for review. They considered that to be "the most reasonable and proportionate approach to take."

It is unclear why they would now need to adopt a radically different approach from the approach previously adopted. It is also unclear why they would need so much time.

If we go back to <P14/3/4> at page 2, at the end of paragraph 6, my Lord can see that their disclosure exercise involved reviewing 500,000 documents. If we go to the next page, at the top of the page, they explain that OpenText and Kingsley Napley had approximately one month to complete the disclosure exercise, to review those 500,000 documents. So they reviewed 500,000 documents in less than a month. We are now told it will take a month to review 20,000 documents. That just can't be right.

If they applied the same rate of review as they had done previously, then they would be able to review 20,000 documents, even if that was the right number, in less than a day and a half.

But that's all on the assumption that it's necessary or appropriate to perform this exercise at all. The reality, surely, is that the answers, if there be any, to the allegations made by the claimants are not waiting to be found somewhere in the midst of an impenetrable mass of documents. They are

uniquely within the knowledge of Mr Careless, who is readily able to give instructions to his lawyers and to prepare a short witness statement responding to the point. We don't accept that it is actually necessary or appropriate for this exercise to begin with a painstaking review of documentation by Kingsley Napley.

Mr Careless has previously considered this allegation. He has previously addressed it in the letter to Northern Provident, which came up on screen a moment ago, where he answered the allegations that had been made in the press. We have set out, as I said, all the documents on which we wish to rely. If he thinks that there is some part of the story or some piece of the jigsaw that is missing, then, of course, he can tell Kingsley Napley and they could potentially carry out some very targeted searches to identify the document that he says he's looking for.

But this is not a case where it is necessary for the exercise to begin by looking at the documents. That is obviously a point where there is inequality between the parties. For the claimants, as I said, we had no idea what was in any of these documents until we read them. Our clients were not involved in the underlying events. In respect of the Isle of Wight transaction, Mr Careless was. He was at the thick of it. He must be able to give instructions to Kingsley Napley on the point. It can't be right that he's unable to do so until Kingsley Napley have reviewed the documents and told him what's there.

That's why, as we set out in our skeleton argument, we do say that it seems the fifth and sixth defendants don't have a substantive answer to the matters contained in the amendment and are, instead, trying to argue there needs to be some enormous disclosure exercise before their clients can respond to it.

We don't think the expensive or time-consuming disclosure exercise described by Kingsley Napley is one which is, in reality, necessary or appropriate. It seems to be, really, constructed to bolster an argument. Finally, as we have --

MR JUSTICE MILES: Just on that point, obviously I'm listening to submissions at the moment and haven't reached any view, but if the amendment were to be allowed, am I right, then, in taking you to say that you would then not seek any further disclosure on this point?

MR ROBINS: No. We have set out everything on which we are --

MR JUSTICE MILES: Is that a "Yes"?

MR ROBINS: We would not seek any further disclosure.

MR JUSTICE MILES: Sorry, it was the way I asked the question. I'm not cross-examining you, sorry, but, yes, you would not --

MR ROBINS: No, we would not be --

MR JUSTICE MILES: It was the way I asked the question.

MR ROBINS: -- seeking further disclosure on this point. My Lord knows we have a separate point on privileged documents --

MR JUSTICE MILES: I understand that.

MR ROBINS: -- but not on this point.

MR JUSTICE MILES: Can I ask you this: on the issues for disclosure which were ordered, obviously there wasn't a specific issue about this, because it wasn't specifically identified. Are there any relevant issues for disclosure which relate, for example, to the general defence taken by these defendants that they always understood LCF's business to be bona fide? I don't know if I have quite summarised the defence right in that regard.

MR ROBINS: I can see Mr Shaw checking that. While he is doing that, can I make another point: there must be some disclosure issue, perhaps more than one, which, in practice, flags and returns documents relating to the Isle of Wight transaction because the claimants disclosed some of those documents, the fifth and sixth defendants disclosed some of those documents and the seventh and ninth defendants disclosed some of those documents. So, it is unlikely that something has gone wrong. You have got three parties before the court whose disclosure review has all thought that these documents that we have gathered together and on which we rely were returnable by the disclosure issues that the court has approved. That's a different point. I don't have an answer to my Lord's question. I can see Mr Shaw still looking at it. Could we perhaps come back to that, or would my Lord like to wait until we have an answer?

MR JUSTICE MILES: I know there are quite a lot of disclosure issues.

MR ROBINS: Mr Shaw is going to keep looking. The final point we make on prejudice is, to the extent that any narrow, carefully-targeted searches might be said to be necessary, such searches could, and should, have been conducted over the Easter vacation. My Lord knows that we provided the text of our amendment before the end of term. I stood up to make a point that it would be wrong for the fifth and sixth defendants to seek to rely on prejudice that resulted from them failing to take steps which were open to them over the Easter vacation, and we now do make that point. They can't rely on any suggestion that there's prejudice which could have been avoided by them taking the steps earlier to ensure that there was no disruption to the trial.

The final point I want to make relates to the interests of justice. We have made the point in our skeleton argument that not allowing the amendment would potentially create issues from the perspective of the interests of justice because the court could potentially find that it concludes what the claimants say about the transaction is correct. The court might conclude, on that basis, that Mr Careless is not a credible witness. The court might also decide, on the basis of the same evidence, that it should reject the positive case advanced by the fifth and sixth defendants. We say, to enable the court to hand down a consistent judgment with clear internal reasoning, it would be important to ensure that the overall result could be consistent with the conclusions that the court might reach on those matters on the facts. I'm not sure I have explained that point terribly well, but I think my Lord can see what I mean.

Subject to seeing what Mr Shaw is scribbling down, my Lord, those are my submissions, but may I just look at this? I'm going to have to look at that myself, I'm afraid. I can't read the handwriting.

Submissions by **MR LEDGISTER**

MR LEDGISTER: My Lord, a heavy burden lies upon a party seeking a particularly late amendment. They must provide a good explanation why the application was not made earlier and that the prospects of success on the amendment eclipse the interests of other parties in the litigation, as well as potentially those of court users more generally.

As I understand it, my Lord, it seems that the claimants are saying, yes --

MR JUSTICE MILES: Is that taken from any case?

MR LEDGISTER: That's taken from the White Book, my Lord. It is in our skeleton argument.

MR JUSTICE MILES: I saw that. But I'm just wondering whether it is based on decision.

MR LEDGISTER: My Lord, we are looking to find the -- I will have that for you shortly, my Lord. The heavy burden I refer to is one that should not be treated lightly. It is not simply a burden, it is a heavy burden. What the claimants appear to be saying is, yes, we received the material on which we could have identified the Isle of Wight issue as early as May 2023. Of course they needed time to consider it. But certainly by November, they were aware of it, counsel having identified it, and they put pen to paper in December in their written opening where the Isle of Wight point had been identified.

It seems they're saying, "We could have done it before today. We didn't do it before today. What's the big deal? What's the big deal?"

Well, it is quite a big deal, my Lord, and the reason we say that is because, as my Lord knows, they made an application to amend the particulars with regards to a number of points, and, like I said previously, the trial process is not a game. It is not a game. On behalf of the defence, we didn't object to a number of those points because, albeit we would have liked to have complained about them, and might have had good grounds to complain about them, the prejudice that would have occurred is such that we could have dealt with it and mitigated it because, in consideration of the case as a whole, those additional points have been enveloped and have been duly considered. Of course there is more work to be done, but it is not such that caused us such prejudice that the application shouldn't have been allowed, and that's why it wasn't the case that we rolled over, but that's why we consented to it. Mr Robins has helpfully, I would respectfully submit, in identifying the search terms, made the very point for me of the prejudice that we now face. He has helpfully sought to advise us as to how we should run our case in response to his late application: don't search "Isle of Wight", no need for that, because, whatever; don't search "Prime", let's refine it a little bit more because there are so many various different false positives that can come up. I sound like a game show: how many words go with the word "Prime". Of course I get that. I'm not being flippant here. The point I'm making here is we are now having to jump through hoops, dilute our application as to the paperwork and take shortcuts because it may throw up false positives. Well, with the greatest deal of respect, that's our problem and not one for the claimants to decide how we should run our case, particularly as they have been tardy in the service and amending their pleading.

They could have done it back in November, but they chose to take their chances.

They managed to successfully plead the other points. This clearly wasn't something that was that important to them because, had it been, they wouldn't have taken their chances.

They made the point that we were presumptuous, that, on the defence, we were presumptuous my Lord would rule in our favour and require them to perfect and amend their particulars. They say we were presumptuous on that. Well, we weren't presumptuous on that, we were just simply following the rules. When it comes to fraud, my Lord will well know, as will they, one has to be very careful about how the case is put. Specifically -- specifically -- the parties must ensure that the full particulars of any allegation of fraud, dishonesty, malice or illegality and where any inference of fraud or dishonesty is alleged, the facts, upon the basis of which the inference is alleged, have to be set out clearly. So it wasn't a case of us being presumptuous that my Lord will rule against the claimants, it was a case of us knowing that there is a specificity required when it comes to fraud allegations and the points must be properly pleaded. They simply haven't been.

Our point here is that the prejudice is such that we cannot properly meet it.

My Lord, the prejudice has been set out very clearly in the witness statement of William Christopher. He sets out the obstacle, the task ahead, that we are faced with in trying to deal with the Isle of Wight point, and it isn't something to be scoffed at or to be considered that we are making a mountain out of a molehill here. There is a lot of work to be done. The reason there is a lot of work to be done is because there are a number of documents to consider, and, as I say, we are being told now that we don't need to do a full search, let's dilute our search, let's reduce the search terms, let's not search "Prime", let's not bother about "Isle of Wight", let's just reduce it. "Brading Marsh", however, was considered to be sensible, and we are grateful for that, but even though it is an Isle of Wight deal, we shouldn't search that. How can that be right? This is exactly the prejudice we now face because time is short, resources are low, and they are low at this point in time because the claimants are late, without very good explanation. Their explanation is: we had it, we didn't look at it, you should have known about it anyway.

So, the prejudice is such that we now must --

MR JUSTICE MILES: Can I just explore with you this question about the disclosure exercise?

MR LEDGISTER: My Lord, yes.

MR JUSTICE MILES: The claimants aren't -- very often, in a case of this kind, it is the other party, it is the claimants, who don't have documents, who are pressing for a disclosure process to take place. The claimants here aren't actually asking for any disclosure, any further disclosure beyond that which has been given. What is your position in relation to that?

MR LEDGISTER: The point we are making is, we need to review the material. We need to review the material, material that we have not closely considered in respect of Isle of Wight and Brading Marsh and Prime, and so on and so forth. So irrespective of the disclosure process, this is a completely different matter which we are saying we need to review the material so we are fully aware of all documentation that sits behind this deal so we can take proper instructions and be properly prepared to meet the point as pleaded by the claimants in our defence. That's our point, my Lord.

MR JUSTICE MILES: So, are you saying that -- normally, there are two -- I mean, obviously, there are two kinds of documents or documents that can point two ways. Some are damaging to your case, to a party's case, some support the party's case. Is it your contention that the search -- the claimants aren't asking for documents which might damage your case or assist them. Is it your contention that a disclosure exercise is necessary -- is still necessary in those circumstances?

MR LEDGISTER: It is not a disclosure exercise, it is a research exercise. It is a research on behalf of the defence team to understand the material that sits behind this deal. Does my Lord follow?

MR JUSTICE MILES: I understand your submission. I'm just mulling it over.

MR LEDGISTER: My Lord, what we are saying is, we need to -- the solicitors in this trial need to review the material, to understand the material, take instructions on the material and be ready to deal with the point in trial.

What the claimants say -- well, it is a simple point --

MR JUSTICE MILES: Well, they do say that, but they also say that your client is already going to face cross-examination --

MR LEDGISTER: Absolutely, that's a different point.

MR JUSTICE MILES: -- on these transactions because, as I said in my ruling, this is quite an unusual case in which, although I held that they had not pleaded this as a particular of knowledge, the, as it were, closely-related allegation made in your pleadings is that your clients believed throughout that it was -- that LCF was a bona fide business, if I can put it that way. I can't remember the exact formulation. It might be worth seeing that.

But I think it is an accurate summary to say that your clients have alleged that they believed throughout that LCF was a bona fide business.

MR LEDGISTER: Correct, my Lord.

MR JUSTICE MILES: And you, when I heard argument on that point before, accepted that it would be possible for the claimants to cross-examine about that.

MR LEDGISTER: And still do, my Lord.

MR JUSTICE MILES: So, insofar as there's this what you call research process in relation to these transactions, is that something that you are not undertaking --

MR LEDGISTER: No.

MR JUSTICE MILES: -- in order to present your client's case?

MR LEDGISTER: Absolutely, my Lord, for this reason: as far as it goes to credibility, it is open season as far as we are concerned, and Mr Robins can ask whatever he wants of the witnesses, and are we going to undertake the task of reviewing all this material so that Mr Careless can answer Mr Robins? Well, in an ideal world, yes, but it is not absolutely essential, because, if that was simply the basis of allowing this material in, and only that basis, that's a million miles apart from the claimants being able to rely on that as a particular upon which they can suggest there is an allegation of fraud, dishonesty, malice --

MR JUSTICE MILES: It certainly is -- sorry.

MR LEDGISTER: You get my point.

MR JUSTICE MILES: I have already ruled on this as a matter of pleading in your favour. So I understand that there is a difference in that respect. But I also explained in my ruling that it was fairly closely related to your client's general defence that they believed at all times that the company was a bona fide one.

Now, if the claimants then say, "Well, look, Mr Careless, that's not true" -- and this isn't just as a matter of credit, but it goes to the substance of the case -- "because you knew all about this Isle of Wight transaction", are you saying, well, that's something where your team doesn't need to look at any more documents because they can deal with it anyway?

MR LEDGISTER: It is not a case of they don't need to, my Lord, in an ideal world, we would certainly want to, but we are in a position whereby we don't have the ability financially, the resource, to undertake this exercise as we would have done previously, by way of using OpenText and done it quite quickly. This now needs to be done manually. So, in reality, it simply wouldn't have happened. If, now, it's being pleaded or if my Lord was to allow the claimants' application, we will now have to review the material to properly enable Mr Careless to understand exactly what's being asked of him. Of course it will be the same questions, but we would respectfully submit that the point has now

been elevated somewhat, if it's being allowed in, in respect of the claimants' application. It is the same point, but it takes a completely different status, we respectfully submit.

Of course they would be entitled to cross-examine upon it. They will be entitled to use it for other purposes. But we would say now that they're seeking to amend the particulars of claim, and we would say without good reason, this takes on a different status to had it simply been a matter of cross-examination where they put the question and the answer is given. My Lord seems what confused about what I'm saying --

MR JUSTICE MILES: I'm not confused, I'm thinking.

MR LEDGISTER: Apologies.

MR JUSTICE MILES: I'm thinking about your submission. This is to do, ultimately, with a question of Mr Careless's knowledge. Is it necessary, for that purpose, to go beyond his emails or similar electronic texts or whatever it may be?

MR LEDGISTER: My Lord, I don't know, because we have not reviewed the material. That's one way of looking at it. We could simply look at the emails and say, "Well, it starts there and it ends there". But, again, we respectfully submit there is a balancing exercise. We are being now forced into a position whereby we have to make a call as to whether we do or we don't, whether we can or we can't, and we are saying that we shouldn't be in this position had the claimants served the material as and when they could have done.

If I can put it a different way, perhaps, my Lord, if the claimants didn't have this point, if they weren't able to successfully amend the pleadings with regards to this aspect of the Isle of Wight claim, are they robbed from doing what they wanted to do? They can still ask the questions, they can still cross-examine, they can still use it as a matter which goes to credibility. So, in our respectful submission, they are not prevented from doing what they need to do. If we are to meet their application and do a diligent, proper job, insofar as understanding the material behind it, there is more work to be done, and, my Lord, the White Book, and I will identify the exact passage, makes it quite clear that an important factor for the court to consider, when permission to amend is sought close to the trial date, is whether the amendment will put the parties on an unequal footing, and we would submit that, to allow it in now, the issues that my Lord has just asked me about is the very unequal footing that we say we should not be on as a result of the late amendment.

The unequal footing is this: we now have to cherry pick the material that we look at, we now have to decide, do we just rely on the emails or do we look at all the material that sits behind it, whilst the claimants have had the luxury of time -- albeit they have had a lot of documentation, a lot of material, to go through, but they're a better-resourced entity, they have had the ability to have got this before the court as early as November last year. They haven't done. But their late application has left us in the position where we clearly are not on an equal footing because I say we are having to cherry pick, dilute searches, dilute our approach. And where, had this been properly pleaded, we would have given it more attention, we would have considered it in a slightly different way, we would have undertaken the review of the material that we wanted, and it's not right, in my respectful submission, for the claimants to decide what we should and shouldn't do in the way we run our defence case. They run their case how they want to, we run it how we want to. Of course we can't simply create matters to consider which are not relevant, but these are clearly relevant matters. How the Isle of Wight cannot be considered, when it is an Isle of Wight deal, as a matter for searching is, in our respectful submission, simply not right. We must look at the material. We must consider the material. We must be able to know exactly what sits behind this as the claimants are now seeking to

amend their pleadings and we must meet it properly. We are not on an equal footing because we cannot do that: one, because the resources are no longer there -- as I say, we can't --

MR JUSTICE MILES: Is there evidence about the lack of resources?

MR LEDGISTER: I think it is in William Christopher's --

MR JUSTICE MILES: He says in general terms there's a ...

MR LEDGISTER: Yes, my Lord, I'm reminded, I think it is in Mr Clayman's statement he refers to the issue of OpenText -- on the disclosure point, Mr Clayman's statement. The position is I think he makes reference to OpenText, a debt being outstanding to them of £86,000 or something like that and, as such, we no longer have access to that resource. So we now need to rely on a manual -- forgive me, we have limited access to OpenText.

MR JUSTICE MILES: Is there any evidence that your client can't pay that money?

MR LEDGISTER: My Lord, yes -- not before the court currently, but it certainly can be produced quite easily. My Lord, until that evidence is produced, I can tell you exactly what the position is. My client is not in funds to settle that debt right now.

MR JUSTICE MILES: One thing the court can do, in these circumstances -- this is something you mentioned to me yesterday, I think it was, about timing -- is allow some time for these kind of exercises to take place. At the moment, I am not minded to think it will take as long as Mr Christopher suggests. It seems to me it is likely that there will be a substantial number of false positives. It seems to me that the period ought to be limited, and it seems to me that it is very unlikely to take that long to undertake this review exercise. I understand the submissions you're making about this being a distraction, and so on, but, in the end, the court has to undertake a sort of balancing exercise. If we were to stick with the existing date when Mr Careless was due to give evidence, which I think is --

MR LEDGISTER: Next week, Thursday, my Lord.

MR JUSTICE MILES: Or possibly even to consider putting it over until the following Monday, which would give another two working days, would that be sufficient to undertake this exercise, which is essentially a review exercise? It is not a full disclosure exercise, because the claimants aren't asking for that. They are not pressing for further documents. It would mean that you would have an opportunity, with your team, to review the documents, and it may be that some targeted searches would be appropriate, including of emails, of Mr Careless's own emails.

Would there be some mechanism for dealing with any prejudice that you say your client would suffer if something along those lines took place?

MR LEDGISTER: My Lord, I think, first, I should make it clear, the way that Mr Christopher has approached this, I think he's considered the worst-case scenario so as not to fall foul of any orders that the court may subsequently make, and, of course, if we were able to review the material, then clearly there's no prejudice because the prejudice I complain of is simply that we are unable to review it. So, if we can review it using the proper search terms and it can be done in time, of course, my Lord, we have dealt with the prejudice, like we would have done with the other points -- sorry, my Lord.

My Lord, I'm reminded that, of course, there is the review on the privilege that we have been ordered to undertake, and that's something which will take considerable time. So, the resource is limited. The workload is growing. And this is the extent of the prejudice, my Lord.

MR JUSTICE MILES: I'm not sure, at the moment, Mr Ledgister, that it's going to be particularly persuasive to refer to the other review because it seems to me that, from what I have seen so far, that is something of your own making.

MR LEDGISTER: Of our making.

MR JUSTICE MILES: It may be that -- and Kingsley Napley were under a separate duty to the court to carry out this process properly. I haven't, obviously, heard submissions on that yet, and I'm not jumping ahead, but, at least on one view, that is something that they are going to have to do and do quickly in order to make good what appears to be a previous failing on their part, I'm afraid.

MR LEDGISTER: My Lord, I think that's fair.

MR JUSTICE MILES: So, I'm not sure that that's something to really enter into the balance too much. It may be a resourcing point, it may be that that's something that Kingsley Napley will have to discuss with their client, but just looking at this part of it, and bearing in mind that, yes, this was a proposed transaction, the Isle of Wight transaction, but it didn't actually occur in the end, and there is a limited time span and the question is really do with Mr Careless's knowledge, what I suppose I'm asking is whether there's some sensible period of time which would give you a chance to review the documents and, in particular, his emails, and be in a position to fairly consider the case for him to put in a further witness statement and for you to be properly instructed in relation to it?

I accept that this is mid trial, but perhaps that's something that you could give a little bit of thought to over the next few minutes and see whether there's any sort of proposal in that regard?

MR LEDGISTER: Very well, my Lord.

MR JUSTICE MILES: We will take a break for five minutes. (3.30 pm)

(A short break)

(3.40 pm)

MR LEDGISTER: My Lord, I apologise for keeping you waiting. I wanted to get a definitive answer before I asked my Lord to come back to court.

My Lord, the position is this: if my Lord is against us -- my Lord has heard the application, I don't think I can really add much more to it -- clearly, the more time that's available to us to prepare, the better. There are three solicitors who have knowledge of this case, and they will be the ones undertaking the review, for obvious reasons. So, it is not something that we can just bring other new personnel into this case. So that's the issue we deal with.

If that's the position, my Lord, we will do the best we can with the amount of time we have. My Lord, I don't propose to rehearse what I have said already. Again, just to wrap it up, in summary, this prejudice, and we say this is the prejudice suffered, that we are now having to jump through hoops at the eleventh hour to dilute our application to the case in order to meet the late application of the claimants.

If my Lord is against us, of course we will do what we must. If I can assist you any further?

MR JUSTICE MILES: That's entirely fair. On the question that I asked Mr Robins about the disclosure that has already taken place, clearly some documents have been disclosed by your clients and, indeed, other defendants and the claimants about this transaction. So it appears that, in some broad sense, some of these documents were clearly regarded as -- in fact, not in a broad sense at all, just in a straightforward sense, some of the documents were regarded as relevant to the issues in the case. Are you able to say anything more about that?

MR LEDGISTER: Would my Lord mind if I let Mr Curry deal with that?

MR CURRY: Mr Shaw and I can perhaps sort of compare hypotheses on this one, but I suspect that -- I'm looking at <A1/3>, the consolidated disclosure review document. Issue 122 is likely to have captured --

MR JUSTICE MILES: Can I see what that says? Which page is that on?

MR ROBINS: 31. Oh, is this a different version? Sorry, I was looking at it somewhere else. 38.

MR CURRY: I'm only hypothesising, my Lord, because I can't know exactly what went through the minds of any of the parties' disclosure reviewers, but it is plausible that some of the Isle of Wight documents would have been caught by that issue for disclosure as tending to show knowledge of use of LCF's monies by the Surge defendants.

MR ROBINS: My Lord, I can say that is entirely in accordance with Mr Shaw's hypothesis and he was looking in particular at (i), (ii) and (vii).

MR CURRY: My Lord, it is probably fair to add that, of 41 course, that issue, phrased as it is, will not necessarily have captured documents that go to the wider context of the Isle of Wight transaction.

MR ROBINS: My Lord, that deals with the first point. The second -- my Lord mentioned it before we'd seen the cross-reference here. In the column "Reference to statement of case" next to issue 122, it refers to paragraph 5, subparagraph 9 of the fifth and sixth defendants' defence. That's at <B2/6>, page 6. It is precisely the paragraph to which your Lordship referred earlier:

"The Surge defendants acted in good faith in the honest and reasonable belief that Surge was providing outsourced marketing, technology and account management services to a respectful company operating a bona fide, lawful and legitimate business."

Which is, I think, the passage that your Lordship had in mind in an exchange with Mr Ledgister.

MR JUSTICE MILES: Which one is that?

MR ROBINS: 5(9).

MR JUSTICE MILES: Oh, the main bit at the top.

MR ROBINS: Yes.

MR JUSTICE MILES: Just give me a minute.

MR ROBINS: Building on Mr Curry's working assumption, which Mr Shaw shares, it may have been that the reviewers were acting on a combination of the wording of the issue and the cross-reference to this paragraph to conclude that the Isle of Wight documents that we have seen were relevant and disclosable.

Discussion re timetable

MR ROBINS: On timetabling, my Lord has heard that we oppose any unnecessary delays. Obviously, if your Lordship holds that some delay is necessary to avoid any element of prejudice that would otherwise be caused by permitting the amendment, I may be in slightly more difficulty resisting it. The one point that I would identify -- this is the wrong version. I think the right version is <A1/11> at page 2. The one point that I would attempt to insist on is that we don't in any way cause problems regarding the experts. I think I mentioned to my Lord before it's been quite difficult to pin them down. They are busy professionals. They have other commitments in their diaries. We have currently got the Surge fee experts in on 13 and 14 May, and then Mr Watson on The Hill and The Beach, on 20 May. I don't, however, anticipate there being any difficulty because my Lord will see that there was already a gap in the timetable before the experts for -- well, it was a gap caused, essentially, by Mr Sedgwick deciding not to attend court and Mr Hume-Kendall settling and the timetable being compressed. But we decided to use it for preparation of closing submissions.

Obviously, there is a bit of a buffer that should hopefully ensure that we don't need to interfere with the dates for expert witnesses.

MR JUSTICE MILES: Sorry, this is an updated version which is what you are asking for; is that right? This is what you are now asking for?

MR ROBINS: Sorry, I hadn't noticed.

MR JUSTICE MILES: This is not the one --

MR ROBINS: I see now, the buffer that I was referring to is only created by moving Mr Careless. Can we go back to the previous version? I'm so sorry. I was given that cross-reference. So there is no buffer.

MR JUSTICE MILES: So this is where we are at the moment.

MR ROBINS: This is where we are now. Yes, I'm so sorry. I was given the wrong --

MR JUSTICE MILES: But this is with Mr Sedgwick actually starting his evidence today, but not, and then -- because today has been taken up on this and Mr Thomson's evidence. Just looking at this, if, for the sake of argument -- and I put it no higher. Where are we now? It is the 18th. If I -- I know you're against this, but I'm just looking at it. If it went back for Mr Careless to start on the 29th, which is 11 days away --

MR ROBINS: We could potentially sit on Friday, the 10th, to complete Kerry Venn's evidence and not have to move the experts.

MR JUSTICE MILES: That's on the basis that Mr --

MR ROBINS: Week 12 would then be Mr Careless.

MR JUSTICE MILES: I see.

MR ROBINS: Week 13 would then be Kerry Venn, but we would need to sit on the Friday to complete it. Week 14, we would have the experts and we wouldn't need to move them. It is being whispered it would still be a four-day week because of the bank holiday.

MR JUSTICE MILES: I can see that. That would then leave the experts where they are.

MR ROBINS: Yes. Subject to anything further your Lordship has, I don't have any further submissions.

MR LEDGISTER: Sorry, my Lord, if I can, unfortunately, put a spanner in the works, in respect of Kerry Venn, the assumption here would be that she would continue into the Friday -- or not the assumption, but certainly the suggestion is she would continue into Friday, 10 May. My Lord, I would be making the application that we stick to the timetable as made yesterday.

So no problem at all with regards the 7th, 8th and 9th, but there is a problem for Ms Venn on the 10th and it comes back to the cattery. She is fine for the 2nd.

MR JUSTICE MILES: My only reason for raising that possibility is, obviously, that it gives an extra two working days -- if I do decide to allow the amendments -- for Mr Careless and for the research that you say you would like to undertake. It is difficult to see quite how it works unless he starts on the Thursday.

MR LEDGISTER: That's an issue, my Lord. Of course, we would welcome more time, for the reasons I have already set out, but I would have been making the application that we stick to the timetable because of the reasons I gave yesterday, and they are real reasons. She does -- there is a regulation that requires a qualified person, and that qualified person has been made available for the 2nd, 7th, 8th and 9th. Clearly, it is a difficult position we find ourselves in.

MR JUSTICE MILES: Let me ask Mr Robins another question: there is a balancing exercise going on here, Mr Robins, as you will understand. I have got to balance a number of factors.

MR ROBINS: Yes.

MR JUSTICE MILES: Would you be able to trim your cross-examination of both of the witnesses? You've got them for eight days at the moment.

MR ROBINS: I could trim my cross-examination of Mrs Venn, particularly if we could perhaps start at 10.00 instead of 10.30. With Mr Careless, it is much more difficult because, as my Lord knows, there is really quite a lot to cover with him. I don't realistically see how I could compress that.

MR JUSTICE MILES: No, I'm not suggesting that. I'm saying if you take them together.

MR ROBINS: Yes, if we could -- I could shave a bit off Mrs Venn and, if there is any chance of maybe a few earlier starts to get a few extra half hours in, that would assist as well.

I won't suggest sitting later because that's difficult for witnesses as well. It is a long day.

MR JUSTICE MILES: It is a long day whether you start earlier or end later, in my experience. It is quite a long day for witnesses.

MR ROBINS: Yes, fair enough.

MR JUSTICE MILES: I just want to make a couple of notes. (3.55 pm)

(Ruling extracted for approval)

(4.47 pm)

Housekeeping

MR ROBINS: My Lord, two points. First, in terms of consequential directions on this application, and given the time, in the hope of saying something which should be immediately capable of agreement,

we would propose that we serve the re-amended particulars of claim tomorrow, the amended defence dealing with this amendment and any evidence dealing with this amendment be filed and served by 4.00 pm next Thursday, the 25th. That doesn't give us much time to take account of it before we start Mr Careless's cross-examination, but we recognise that your Lordship has said that, to alleviate the prejudice, Mr Careless should have, effectively, as long as possible before he starts on the 29th, and it seems to us that that's a workable date. So 4.00 pm on the 25th. That only gives us one clear business day to digest it and take account of it. That's the first point.

The second is that I think what your Lordship has said probably deals by a side wind with the next matter relating to the privilege review, because the terms of the order had been agreed, save as to the deadline. The order, if we could bring it up, is --

MR JUSTICE MILES: Let's come back to that. Let's deal with this point first and come back to that.

MR LEDGISTER: My Lord, as my Lord might recall, those instructing me are following the transcript and they had asked for 4.00 pm on Friday, the 26th, which is one day after. I do appreciate that Mr Robins will need time, so those are my instructions.

MR JUSTICE MILES: I'm going to say Friday, the 26th, Mr Robins. I've no doubt, because you always do, you will be working on this case over the weekend, and also Mr Careless is scheduled for several days of cross-examination, and so I'm anxious to give as much time as possible for this matter to be dealt with.

MR ROBINS: My Lord, that is understood, and yes. The next matter -- I think we can now deal with it very quickly --

MR JUSTICE MILES: Do we need to deal with costs?

MR ROBINS: Sorry, did I not say costs reserved? That was accepted on the other amendment --

MR LEDGISTER: I think it was.

MR ROBINS: I think the same would apply to this.

MR JUSTICE MILES: Are you happy with that, Mr Ledgister?

MR LEDGISTER: My Lord, yes.

MR JUSTICE MILES: That's helpful, thank you.

MR ROBINS: I'm grateful. So, the next matter, the wording of the order was entirely agreed, save as to the deadline and the order is at <P14/2/3>, at page 2, for the operative paragraphs. Sorry, the next page, page 3, I should have said. It is that the solicitors for the fifth and sixth defendants shall review all documents coded as relevant to the issues set out in the consolidated disclosure review document where such documents (1) have been withheld from disclosure or production on the basis that they are privileged or potentially privileged; and (2) have not previously been reviewed by the solicitors for the fifth and sixth defendants in order to determine whether the fifth and sixth defendants are entitled to so withhold them on grounds of privilege.

My Lord, just to explain, three points on that. First, my Lord has seen the wording referring to "documents coded as relevant". Obviously, we are not concerned with documents which have been coded as irrelevant.

Secondly, it is documents which have been withheld from disclosure or production. We understand there are some documents which we haven't even been told about; in other words, they haven't been disclosed to us. There are other documents which have been disclosed in that sense but which have been withheld from production. We have had a placeholder, effectively, saying "Privileged". So, in either case, where we haven't seen the actual document, it would fall within the scope of the review to the extent that it hasn't previously been reviewed for privilege.

The third point is that it is documents which have been held on the basis they are privileged or potentially privileged. As my Lord has seen, there are some documents, which haven't been reviewed, where they have been withheld on the basis they are potentially privileged. Obviously, we are concerned with those documents, it is not simply those which have been withheld on the basis they are privileged. So those are the three points of explanation.

The only point that wasn't agreed was the deadline of 4.00 pm on Monday, the 22nd. Mr Curry had said that Kingsley Napley would require a week. In his skeleton argument, he made clear that that's a week of working days. He's not talking about working at the weekends. In other words, five business days. Mr Curry has also very helpfully explained that the review started this morning, so five business days -- Thursday, Friday, Monday, Tuesday, Wednesday, we would get a deadline instead of 4.00 pm next Wednesday, the 24th. That would be entirely acceptable to us, subject to one caveat, which is that any documents which are found to be not privileged and which should be disclosed and/or produced are provided on a daily rolling basis. Instead of waiting to the end and giving them to us, it would be incredibly helpful if we could get them on a daily rolling basis. That is something that we would ask to be included in the order if the deadline is to be 4.00 pm on Wednesday.

Tuesday this week, in Mr Clayman's fifth statement -- in fact, I think it might have been served almost midnight on the previous day, the 21st, we were told that Kingsley Napley have found an additional 51 documents which have been withheld on grounds of privilege, which are not privileged, which they should hand over. But we still haven't been given those documents. It is really not very satisfactory. So, we ask for an order for the daily rolling disclosure and production, so we are actually seeing this in real time and not having to wait until next Wednesday. Subject to that caveat, I think what I'm proposing, that gives Kingsley Napley what they have said through Mr Curry that they would require. I hope that short-circuits the need to have any debate.

MR CURRY: My Lord, I have just been sent an email by one of those instructing me saying he is not sure what my learned friend Mr Robins -- whether what my learned friend Mr Robins is asking for is practical.

MR JUSTICE MILES: Which bit? The rolling?

MR CURRY: I suspect it is the rolling bit. As a matter of principle, my Lord, I can't see any objection to that, but there may be questions of practicality as to how these documents are actually produced and extracted from the platform that they're currently on. I simply don't know enough about technicalities of that. Of course, in an ideal world, it shouldn't be a problem. And, as I say, in principle, there can't be any objection to providing disclosure on a rolling basis. But Mr Clayman has suggested to me there may be practical difficulties with it, albeit it is a suggestion he has only just had the opportunity to read in the transcript, as he is, in fact, engaged in the process of reviewing documents. So I can't give you a definitive answer on that.

But, as I say, as a matter of principle, there can't be any objection to that.

Those instructing me are reviewing the documents at the moment. They are going at a reasonably fair rate. Given the time, I will spare your Lordship the maths I have done, but they think that it will take them until about Thursday to do it, not Wednesday.

MR JUSTICE MILES: I think what I'm going to say is Wednesday, 4.00 pm, and that they must do it on a rolling basis to the extent that it's practical to do so.

MR CURRY: I'm grateful.

MR JUSTICE MILES: I can't, at the moment, see why it shouldn't be practical to do so. So, obviously --

MR ROBINS: No, exactly. I don't want to give them a get-out clause.

MR JUSTICE MILES: -- it will only -- and, obviously, your solicitors will understand this, but it will only be -- that is only a proviso to the extent it is genuinely impractical to do so.

MR ROBINS: Can we add the word "genuinely" to the order?

MR JUSTICE MILES: No. "Genuinely" is just an adverb, it doesn't add anything. You will understand what I'm saying there, that it must be a real impracticality --

MR CURRY: My Lord, I understand.

MR JUSTICE MILES: -- rather than something which is just inconvenient. At the moment, I find it very difficult to see how it could be impractical in that sense, but I will agree to that going in the order.

MR ROBINS: I'm grateful, my Lord. In which case, we would ask your Lordship to make the order in the form you just saw with those changes.

MR JUSTICE MILES: If you can provide my clerk with a further version --

MR ROBINS: Yes, absolutely.

MR JUSTICE MILES: -- then that will be done. So the upshot of all of that is that there will be, now, something of a gap in the trial.

I wanted just to say -- is Mr Sedgwick -- yes. Is there a way of Mr Sedgwick being able to speak?

MR SEDGEWICK: My Lord, can you hear me?

MR JUSTICE MILES: Thank you, Mr Sedgwick. Mr Sedgwick, obviously, I was informed of your decision not to give evidence. You are not represented, obviously, in this case, although you are a solicitor. I think it is important that you understand that where a party chooses not to give evidence, a submission may be made by the opposing party that inferences should be drawn against that party from the decision not to give evidence. Of course, the question whether an inference should be drawn will be a matter, then, of decision by the court. It is not automatic. But I just thought that it was right to bring that to your attention if you were not already aware of it.

MR SEDGEWICK: Thank you, my Lord. Yes, I am aware and do understand the point.

MR JUSTICE MILES: Thank you. Does that affect your decision in any way, Mr Sedgwick, or have you made a firm decision?

MR SEDGEWICK: The decision I have made was based on my analysis of the evidence that has been presented by the claimants and my defence, and I don't see that it is necessary for me to actually provide any further evidence.

MR JUSTICE MILES: Right. Okay, thank you for that.

MR SEDGEWICK: Thank you very much, my Lord.

MR JUSTICE MILES: Thank you, Mr Sedgwick. Right. So, we will now adjourn. Thank you all. (5.00 pm)

(The hearing was adjourned to Monday, 29 April 2024 at 10.30 am)

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