Claim No BL-2020-001343

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (CHD) AND INSOLVENCY AND COMPANIES LIST (CHD)

B E T W E E N:

(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 INVESTMENT LIMITED
(10) HELEN HUME-KENDALL

Defendants

THIRD WITNESS STATEMENT OF MICHAEL ANDREW THOMSON

I, **MICHAEL ANDREW THOMSON** of [redacted] Company Director of London Capital & Finance, **DO SAY AS FOLLOWS:**

1. I am the First Defendant in these proceedings.

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2. The facts and matters set out in this witness statement are either within my own knowledge, in which case they are true, or are based on information derived from others or from documents, in which case I identify the source and believe them to be true.

3. This witness statement was prepared for me by my solicitors following meetings and telephone and video calls with them. My instructions to them were given largely from memory without reference to documents. They found some of the documents and various key dates from the parties' disclosure and public-source documents such as the Gloster Report. The documents which I myself referred to are set out in a schedule served with this witness statement. To that list, I add my personal bank statements, which I reviewed for the purpose of preparing the scheduled exhibited at "B" to "E".

Background

4. I was born on 2 March 1973. I attended school in Ramsgate and the University of Middlesborough, where I attained the degree of BA Hons in Marketing and Economics.

5. Initially, I worked in finance and was employed, successively, by City Financial Partners Limited, an appointed representative of Lincoln National, and St James's Place, formerly J A Rothschild Assurance.

6. I then, in the early 2000s, commenced a career in banking, starting with Nat West Private Banking before moving, later, to Bristol & West and HBOS, where I became head of the Business Lending Unit. I was then headhunted to join RBS, initially as an associate director and then as a relationship director at its Charing Cross Branch. I then moved to RBS' Tunbridge Wells Branch in the latter role. I was successful and, I believe, well-regarded. I believe that I was one of the best paid bankers at my level in the country at that time.

7. I broke off, at one point and spent nearly 3 years as the general manager of a construction firm, Marchbanks (Technical Services) Limited, which was based in

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Sandwich and undertook a range of projects from property developments to the restoration of medieval churches.

8. I came away from banking with the perception, formed during the recession of 2008-9, that banks did not generally treat most of their customers well. Many people who worked in the sector had no experience of running a business and did not see it as part of their job to acquire knowledge by listening to their customers. The result was that many good businesses went to the wall because of the inflexibility of their bankers. The perception was that it was better for a business to go bust with a defined loss to the bank rather than for the bank to take a calculated risk by extending credit in the hope of helping the owners save the business.

9. I take as an example the accountancy firm, Oliver Clive & Co, who later became accountants to LCF. The owners ran a good, successful and profitable professional services practice, which took several hits during that recession when their customers did not pay. Had I not exercised my discretion to help them with their cash flow and get them through these reverses, that business would have folded.

10. It was through my position at RBS that I met Simon Hume-Kendall. I believe that we were co-judges in some South-East awards. In any event, we met and started talking. It was only later that I discovered that he was a customer of the bank and, although his relationship manager was more junior than I was, I was able to take an interest in his banking, which I did. I became aware that he had a long and successful business history, having held board-level appointments in several major companies and having developed expertise in buying distressed businesses, running them for a time and then selling them on at a profit.

Counties Bank

11. In the latter half of 2012, Simon and I became involved in a project to set up a counties bank which was to be owned and financed by three county councils, Kent, Essex and East Sussex. He was already involved and introduced me to the leaders of two of the councils. The idea, which excited me, was for the councils to finance the bank, by providing start-up capital of £750,000 each and then a further £10

Source: Mouseinthecourt.co.uk

million a year for the next three years. The bank would have offices in council-owned properties and would focus on lending to local businesses, promoting growth locally and generating extra revenue for local services. The project, which was wholly unpaid, ran very nearly to completion and launch. I handed in my resignation at RBS in January 2013 only for Kent and Essex to pull out, within a matter of a few weeks, admitting that they did not have the money required.

12. Incidentally, the company that eventually became LCF was set up in 2012 as the corporate vehicle to be used for this project. It was originally called South Eastern Counties Finance Limited and later changed its name to Sales Aid (Finance) England ('SAFE').

Lakeview, The Hill and The Beach and Paradise Beach

13. Having resigned from my position at RBS, I found myself in a position in which my intended main focus, the counties bank project, had just evaporated. My recollection is that, prior to that, I had intended to become involved in several other of projects in which Simon was also involved, from the point of view of assisting with financing. In the event, those projects came to occupy the whole of my time.

14. Lakeview Country Club was a substantial holiday resort close to Bodmin in Cornwall. It was, or had the potential to become, the largest holiday resort in Cornwall. Contracts had been exchanged for its sale but the purchasers had not been able to complete. The sellers had forfeited their deposits and put the property back on the market. Simon and his business partner, Spencer Golding, had set up a company to acquire it, Lakeview Country Club Limited ("LCCL"). I forget the precise details of the shareholders (which do not matter for present purposes). Simon's wife, Helen, held approximately 25%. Spencer Golding was to have held approximately 70% but, it turned out, he was subject to a bankruptcy restrictions order and I was asked to hold shares in my name on trust for him. I was allotted 5% for my involvement in the project. I became a director.

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15. My role was to be a part of the team that negotiated the terms of the acquisition, which were complex, to run the resort, as its general manager, while it was re-furbished and to arrange the re-furbishment. Particular challenges were posed by the facts that the planning permission had lapsed and the main power lines for Cornwall ran on pylons across the site.

16. In the course of this work (which was demanding – I spent 2 weeks in every 3 living in Cornwall), I brought in Katherine Simpson, who ran her own company, JDS HR and later became a director of LCF. Her previous experience included working for substantial companies such as Serco as well as running JDS HR, a successful HR consultancy firm in Kent. The resort had a large staff and so I contracted out the HR function to JDS HR. She was highly competent and oversaw the process of transferring all staff contracts to the new company and setting up the appropriate HR procedures. I retained an award-winning, multi-disciplinary practice called Calford Seaden LLP, who were known to me from my time with RBS, to take the project from planning through to the final refurb/build. In due course, the re-application for planning permission was granted and the work commenced. I was able to solve the problem caused by the pylons by the fact that no wayleave existed and, when the power went down during a storm, the relevant authorities found that they had no right of entry. A successful negotiation ensued and the pylons were taken down and the power lines laid underground across the site.

17. Following the acquisition, the further finance required for the refurbishment was to be raised through the issuance of a mini-bond to the public. This was to be overseen by Hypa Asset Management, who would use their distribution network of IFAs. I mention this because it was my first experience of a bond being used in this way. We interviewed several City firms of solicitors, including Lewis Silkin and Mishcon. We appointed Lewis Silkin and worked with them. That was the beginning of that relationship, which endured throughout the LCF period. In the event, though, the bond was not as successful as had been hoped. It generated only a fraction of the projected £30 million with the result that the Lakeview project remained under-financed throughout.

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18. During this period, LCCL also acquired rights in two properties in the Dominican Republic, known, respectively as "The Hill" and "The Beach". Those properties were held in a company called Sanctuary International PCC, which was brought into the group. The circumstances surrounding these properties were similar to Lakeview in that there was a development site, plans to build and disenfranchised property investors who had paid off plan deposits on units that were to be developed. I was involved in the planning and financing of this project but whereas, in relation to Lakeview, I conducted negotiations with the disenfranchised investors, on this occasion Simon did that and took a "roadshow" up and down the country, presenting our plans. I never knew the terms on which the properties were acquired save that I believe, in general terms, that no money changed hands.

19. Similarly, Simon made a deal in relation to Paradise Beach, which was a development site for a holiday resort in the Cape Verde Islands. I arranged for Savills to undertake the valuation and I met the seller to obtain information to provide to Savills. That involved making a working financial model of the properties at the resort and their estimated values. But, apart from that, I had no real involvement in this project.

20. At some point in, I think, 2014, Simon revived his interest in the oil and gas sector. Discussions took place, in which I was involved, which led to the formation of London Oil & Gas Limited as a vehicle for investment into various, primarily, North Sea ventures, t which he was introduced by his contacts at BP.

21. Each one of these ventures needed finance. It had been planned to raise £30 million for Lakeview through the Hypa bond but that had not performed as expected. Accordingly, Simon and Spencer brought in John Russell-Murphy, who was, apparently, a connection of Spencer Golding and who wrote a bond, which would be issued by SAFE. Everyone had some input into the document. John then introduced his clients to the bond and funds were raised over several months. I was told that he was an ex-Rothschilds financial adviser and that he had a network of clients and IFAs that he worked with. I have read in one of the documents within the current proceedings that he attended meetings with bondholders as part of this

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process. I do not know whether he did or not. I never attended any such meetings. My recollection is that SAFE started to lend to Sanctuary and/or its parent, International Resorts Group towards the end of 2103 and continued lending through to July 2015. I believe that the funds have been fully repaid.

Exit

22. It is suggested by the Claimants in these proceedings that Simon and Helen, Spencer Golding, John Russell-Murphy and, later, Elten Barker and I were and are all close friends and associates. That is completely and utterly untrue. For example, I believe that I actually met Simon socially only once during the entire LCF period and that was at a dinner attended by the entire board of IOG and at which I attended only for the first course because I had to rush off and do something else.

23. Of course, we were, for a period of time, business associates and colleagues and we got along as such. But, though I have the greatest respect for Simon and Helen as successful business people (and I knew the others much less well), I did not find their way of doing business at all sympathetic. There was too much uncertainty and tension. Maybe it was their personal style. Maybe it was simply inherent in the kind of business they did. Either way, it was not my way of doing business. So, in mid-2015, I decided to leave.

24. I discussed this with Simon, Elten and the others and we entered into two written agreements, which were signed on 15 July 2015: a memorandum of understanding and a share purchase agreement. By the former, it was agreed that I would withdraw from the businesses we had set up or developed together. I would retain/be considered to have a shareholding of 5% in each of them but would take no part whatsoever in running the business and would, if it was ever appropriate, vote my 5% shareholding as directed by the others. By the latter, I agreed to sell my interests to Simon and Elten for a price reflected the realised value of the businesses over the next 5 years, capped at £5 million. The businesses were set out in the schedule by reference to the companies which owned them. Any new

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companies which took over or became connected with those businesses, for example, as part of a re-structuring, were also included.

25. Shortly, after that, on 27 July 2015, LCCL was sold to a newly incorporated holding company, owned by Simon and Elten. I played no part in that because I had already exited on 15 July. I have read in the Particulars of Claim that the Claimants are concerned that there are a number of different sale and purchase agreements relating to LCCL bearing successive dates and with increasing sums payable by way of consideration. I think that I saw the first and the last of these but not the intermediate ones. I accepted Simon's explanation that the consideration should increase as the value of the assets increased but until there was money to pay out the consideration, I did not regard these matters as particularly relevant to me. By then, I was focussed on LCF.

26. In principle, I played no further part in these businesses from 15 July 2015. In practice, there was a bit of overlap on both sides of that date. I started work on my new project slightly beforehand and I carried tidying up a few matters relating to the old businesses for a few weeks afterwards. But, apart from that, it was a real termination and I ceased to be involved in these businesses in which Simon was also involved per the terms of the termination agreement.

27. I had taken the decision to use the company incorporated for the counties bank project, SAFE, which was transferred to me at this point, and to trade it as an asset-based lender. My recollection is that I took that decision first and the decision how to raise the money only later and after taking professional advice. As I have explained above, I perceived a gap in the lending market not filled by banks. My earlier experiences at RBS had been reinforced by what I had seen in the last few years. Talented business people with good ideas were unable to thrive because of the unwillingness of the banks to lend. My plan was to lend to businesses on the security of their assets and to take a realistic commercial view of the resources they needed in order to thrive. Naturally, I had in the forefront of my mind the business with which I had been associated over the last 3 years.

28. Since I was not able to realise cash immediately from my interest in my previous businesses (part of the problem, of course) and walk away with a pay-out in my

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pocket, I negotiated an arrangement by which Simon and the others continued to provide me with support in a manner which was both useful to me and achievable for them, namely that small payments on account of my entitlement when they could; that they let me continue to use the offices for a while; and that they let me take Katie Maddock with me as LCF's first employee.

29. Katie had worked within the group for several years and was a very bright and able administrator. It was just the two of us at this point. Katie dealt with the administrative part while I ran around setting everything else up. Katie and I did everything in the early days until I could bring other people on. My previous business partners helped me out to some degree but it was mainly high-level type support for a new business. Nothing more than that. They did not play any part in ownership of or decision-making at LCF at all. They were no longer my business partners. By about the end of 2015, I had reached a point where I did not need any further support and was able to hire others to build the business with me.

LCF

30. Immediately following the concluding of my exit terms in July 2015, I set out my new project, which involved setting up LCF. It is alleged against me in the Particulars of Claim that I set it up, from the outset, to defraud the public, i.e. as a "Ponzi Scheme". I did no such thing. I am a law-abiding citizen and I have an extended family to support. I would never set up a business for the purpose of defrauding other people and I believe that it will be apparent from this witness statement that I did not do so.

31. I have attempted to re-trace my thoughts as they were at the beginning of the LCF story. I would have been assisted in doing so by my black leather-covered strategy notebook, which I kept since the time of the counties bank project and which was on my desk in my office on the day of the FCA intervention. It disappeared and has never been traced, notwithstanding persistent enquiries of the FCA, which have been made by successive solicitors. I believe that it is held either by the FCA

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or by the SFO but that, in all probability, they do not know they have it, which is why it has not been produced. It was my habit to make strategic notes in this notebook (which is why a single notebook lasted for a period between 5 and 6 years). If it can be recovered, it will show my thought process as it evolved. For the present, I will do my best from memory.

32. The principal strands of my concept for LCF were the following:

(1) <u>Name</u>: I devised the name. I favour names which make it clear what the business does rather than, for example, classical names (Cicero etc), which sound great but fail to communicate what is on offer. The use of the name "London" had nothing whatever to do with Simon's businesses but was purely geographic. I checked at Companies House and was surprised that the name was available.

(2) <u>Lending</u>: In my time at RBS (in particular) and in my time working with Simon and the others in their businesses, I had seen a relatively large number of good, viable and profitable businesses failed by their banks either because no or inadequate facilities were advanced or because the facilities which were advanced were too restrictive. I believed that an asset-based lending model would confer real benefits on businesses like that and, at the same time, make reliable returns to funders. I determined that LCF would lend to businesses against the security of assets and charge only an arrangement fee (which was set at 2%) and a relatively low marginal interest (1.75%) plus the cost of funds (precisely calculated, as I explain below). I instinctively set the LTV ratio at 75% because that was the figure which we had used at the bank because it was considered safe. It would be highly unusual for a property or similar asset to drop in value by more than 25%. I had in mind the possibility of lending to the businesses in which I had recently worked at this stage, because I knew them from the inside and considered them to be sound though cash-starved, but I anticipated making loans to a range of businesses, depending on what approaches we received from brokers.

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(3) Funding: Obviously, I had in mind the idea of issuing bonds because I had seen that done, twice, in connection with Lakeview. I did not know, however, whether it would be possible to do that here until I had taken advice. I did consider creating a "crowd-funding", peer-to-peer, platform but, having considered a lot of promotional material, I decided against it. First, it struck me that people could put up exaggerated or misleading proposals for funding and attract investment on a false premise. I took the view that the level of due diligence and oversight carried out, for example, by a bank was appropriate to safeguard investors. Second, I read that Funding Circle, one of the longest established crowd-funding platforms, had seen, at that point in August 2015, only 2% of the sums loaned out actually repaid.

(4) Distribution: I determined at an early stage that funding would only be attracted online. Based on early discussions with Steven Davidson, the senior partner of Oliver Clive & Co, who I knew from my time at RBS, I also determined that it would be better for me, easier and ultimately cheaper, to outsource the investor-facing part of the operation to a business that would take full responsibility for the process, including all compliance requirements, documentation and handling money until it was paid over to LCF at completion of an investment. The investor-facing part of the business would have to combine two attributes: it would need to be extremely clear and, perhaps slightly contradictory, it would have to build in better-than-industry-standard suitability thresholds to avoid the situation arising where, to take a stereotype, the vulnerable and the elderly put at risk money they could not afford to lose.

(5) Security Trustee: LCF was a principal and not a broker sitting between investors and borrowers. It follows that the money raised by the issue of bonds was LCF's money and not money held, for example, in a client account on behalf of investors. However, I had had experience of dealing with disenfranchised investors in connection, primarily, with Lakeview but also, more indirectly, with the project in the Dominican Republic, To avoid that situation, I wanted to set up a structure in which, if LCF was in trouble, there would be an entity which could act for the bond holders so that they could speak

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with one voice and not be subject to the depredations of rapacious insolvency office-holders.

Implementation

33. I believe that those were the ideas which I either had in mind right at the outset or formed very early on following conversations with the guys at Oliver Clive & Co. I then set out implementing my ideas, which I did as follows:

(1) Lewis Silkin. I interviewed firms of solicitors to give me advice on regulatory matters and to write the investment documents, namely the brochure, the information memorandum and the bond. I also needed advice on the website and general points related to implementation. I selected the team at Lewis Silkin led by Graham Reid, over alternatives such as Mishcon, with whom I also spoke at that time and who I eventually appointed as my personal lawyers. I had, of course, worked with Lewis Silkin before in relation to the Hypa bond.

(2) Buss Murton. I knew Buss Murton very well because they were a well-regarded practice based in Tunbridge Wells. Simon used them a lot and Robert Sedgwick, who had been a partner there before he hit regulatory problems, had prepared my exit agreement in July. I appointed them to prepare and oversee the execution of the lending documentation. I dealt principally with Alex Lee and his team. In the very early stages for a short period, Buss Murton also collected bond-holder monies and held them, pending completion, in their client account.

(3) Sentient Capital. I needed an authorised firm to approve and take responsibility for all the investor-facing documents, which would constitute a "financial promotion" under the Financial Services and Markets Act 2000 (which included IM's, Brochures, any advertising and the company website). I interviewed several City firms but settled on Sentient Capital. I worked with two partners there and their then compliance officer, Floris Huisamen, known

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as "Kobus", who joined LCF as a director on 1 July 2016. Kobus' CV was impressive. He was a qualified lawyer in South Africa and a qualified compliance officer in the UK.

(4) Surge. I decided to outsource the distribution and related compliance function. I interviewed 3 companies: Surge, who are based in Brighton; Black Swan, who were based in London; and a third company in Manchester whose name I have forgotten. Their proposed charges were all in the range 21-25% of funds raised, which appeared, therefore, to be the industry norm. My rough calculations suggested that the cost of doing what these companies would do but doing it in-house would start off at 30-40% and then reduce, over time, to about 22%. That, of course, took no account of the length of time it would take to set up the operation from scratch, which would be considerable. I therefore decided to appoint Surge, both because I was impressed by their MD, Paul Careless, and because they were local. Surge charged 25%.

(5) GCEN. I was advised by both Lewis Silkin and Buss Murton that I would need a firm to hold bond-holder monies for the period between their receipt and the completion and issuance of the bond. The alternative was to apply for the relevant permission so that LCF could hold the money. My preference was to keep bond-holders' money in the control of a separate company until they were released to LCF. As before, I interviewed several companies and eventually chose Global Currency Exchange Network ("GCEN"), who provided this escrow service for a fee of 0.5% of funds processed.

(6) GMP. I regarded it as a particularly strong selling point that LCF would charge borrowers no more than an arrangement fee of 2% and a marginal interest rate of no more than 1.75% plus cost of funds. For that reason, the cost of funds had to be calculated very precisely and so I determined, at an early stage, that it would be necessary to have internal systems which linked loans with the particular bonds which financed them. That would be necessary because bonds of different durations had different interest rates (1-year bonds had a scarcely economic coupon of 3.9%; 2-year bonds carried 6.5%; 3-year bonds carried 8%). For that reason, there would have to be a back-office system which tracked

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the performance of loans against the need to pay out to bond-holders on the bonds which seeded each particular loan. Initially (and, in fact, throughout LCF's active existence), this was done by Kattie Maddock and her team, using complex Excel spreadsheets. In 2016, I found a firm which owned a bespoke software package, which apparently could do this. This software went under the name "Global Management Platform" ("GMP"), which I have, in my mind, associated with the name of its owner (though I think that, in fact, the company had a different name). I purchased GMP and we set it up internally but did not have the confidence to abandon Katie's Excel spreadsheets until GMP had run error-free for 12 months. In the event, that never happened, which means that for most of the period of LCF's active existence, it had two back-office reconciliation systems running in parallel.

<u>The Bonds</u>

34. In October 2015, we applied to "refresh" LCF's consumer credit license (which had been obtained back in 2012). My layman's understanding was that this was necessary because the FCA had taken over responsibility for regulating licensed firms from the OFT. In any event, we made the application.

35. Initially, we simply re-branded the existing SAFE bonds under LCF's name. Surge started off promoting those. In the next few months, I had new bonds (including the brochures and information memoranda) written by Lewis Silkin and approved by Sentient Capital. The new bonds were Series 3 to 8. I was advised that it would be possible and perfectly legitimate to have a single bond with multiple options but I took the view that that might be confusing for the public and opted, instead, to have, initially, separate bonds of 1, 2 and 3 years each with, as I have mentioned, different interest rates (3.9%, 6.5% and 8% respectively). That was considerably simpler and cut out a lot of legal wording.

36. I understand that the bond documentation per se (including the brochure and information memoranda) is not criticised by the Claimants and so I will not

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comment on the documentation further in this witness statement. In any case, I am not a lawyer and so am not competent to comment. In any event, I relied on the advice given by Lewis Silkin and Sentient Capital.

37. I appointed Surge, as I have mentioned, to handle all aspects of distribution, including building the website and handling all aspects of marketing and publicity (which "drove traffic" to the website), handling applications to subscribe for bonds made by members of the public, compliance and other matters up to the point at which a bond was issued and the money released to LCF. They did all of that for their 25%. To be clear, so far as compliance was concerned, they did not produce their own compliance function but followed the guidance provided by Kobus, initially at Sentient Capital and later from LCF, after he had joined. In due course, that guidance would be set out in a compliance manual which Kobus prepared and issued to Surge and GCEN.

38. Initially, my agreement with Surge was purely oral but it was later documented. I am aware that it has been suggested that the document is a fabrication. It is not. I received a document which bore a signature apparently on behalf of Surge and I counter-signed it. In any event, the suggestion appears to go nowhere because LCF and Surge each conducted themselves in accordance with the terms of the agreement and did so without any real problems.

39. In brief, the automated application process, which operated through the website, comprised the following phases:

(1) Suitability. An applicant was taken through several questions relating, in general terms, to their means and the source of the funds they proposed to invest in order to assess suitability. Essentially, the process was one of elimination in that if an applicant "failed" a question, they were, ultimately, unable to proceed with the application. The "failure" might result in a call with a member of the Surge team or it might result simply in the applicant being unable to proceed at all.

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(2) Documentation. If (and only if) an applicant passed the suitability questions, they were able to access the brochure, the information memorandum and the bond instrument. Before the applicant could proceed further, he or she would have to tick a box, confirming that they had read the documentation and understood it.

(3) Application Form. If, at that stage, the applicant wished to proceed, they would have to complete an application form. The form would require them to confirm certain of the answers they had given to the suitability questions. It would also require them to upload certain documents for the purpose of KYC and AML checks and, in certain cases, to verify some of the information given in response to the suitability questions. All applicants had to confirm that they had read and understood the brochure, the information memorandum and the bond instrument.

(4) Call. If the application form flagged any issues electronically, then a call would take place with a member of the Surge team at that stage.

(5) Bond. The bond instrument would be sent electronically or in the post for the applicant's signature. In some cases, I understand that the bond might be sent out before any call. In such a case, it would not be proceeded with, obviously, until after any call had been completed.

(6) Payment. At that point, the application would be provided with bank details in order that payment of the sum to be invested could be made. The money would be sent to an account controlled by GCEN, which had its own compliance responsibilities and procedures.

(7) Completion. If GCEN was satisfied, then the bond would be signed electronically for LCF and posted out to the applicant and the money would be released by GCEN to LCF.

40. Essentially, the whole of the process I have just described was handled by Surge and GCEN.

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41. LCF's only involvement was to respond to any specific enquiries which Surge made of us in relation to particular applications and to exercise general compliance oversight in the form of sample checks.

42. Initially, that function was performed by Katie in her capacity as MLRO. Later, after he joined, Kobus was responsible in his capacity as Head of Compliance. Kobus created a compliance manual which was common to the LCF, Surge and GCEN teams. Naturally, all calls with members of the public were recorded. Katie and later Kobus had access to call recordings for the Surge team and they, or rather their teams, conducted frequent random checks. They monitored the performance of individual Surge employees and, if appropriate, they could pull a Surge team member off regular duties for either specific training, complete re-training or disciplinary action up to and including dismissal. In addition, they frequently attended Surge's offices to participate in training sessions. GCEN monitored their own calls, internally. LCF's calls were not recorded or monitored.

43. Separately, Katie and Kobus had access to all documentation and carried random checks on that too. Kobus, initially at Sentient Capital and then as Head of Compliance at LCF, had to sign off all documentation, including, obviously, financial promotions.

44. Behind the scenes, I kept an eye on the operation of Surge and the system which we had set up and suggested improvements from time to time.

45. In relation to the suitability questions, I was relatively heavily involved at the outset. I decided to place the primary responsibility for this with GCEN rather than Surge who were, obviously, more focussed on "sales". GCEN had an existing compliance department that monitored their operations. GCEN already had a standard set of triggers, particularly relating to age, source of funds and perceived vulnerability. Those triggers would, if activated, require a higher degree of information or interaction by the GCEN team.

46. In framing the suitability criteria, we consulted FSMA and the related legislation and applied the wording we found there verbatim, i.e. the FCA's own wording, so that our thresholds were those set out in the legislation or stronger. We found that

Source: Mouseinthecourt.co.uk

more complaints from members of the public related to the suitability part of the process than anything else but that showed to me that, even though it was onerous for people to get through, it was, nevertheless, doing its job.

47. Age. GCEN called a certain percentage of applicants above a certain age. I instructed them to lower that age threshold and to introduce a second threshold above which all applicants received a call, not just a percentage of them. GCEN told me that no client of theirs had ever issued those instructions before as the result would mean a greater number of compliance calls which would slow the process on onboarding investors. I was happy to accept this as I considered that the greater level of checking was worth the delay.

48. Source of Funds. GCEN offered both fixed and cumulative triggers in relation to source of funds. In other words, they would raise source of funds enquiries (over and above the standard question in the application form) if an applicant wanted to invest more than a certain amount and that could operate either per investment or cumulatively across all investments for that applicant. My perception was that the fixed threshold was relatively useless in that an applicant who wanted to buy 5 bonds at £5,000 each might not be treated, for the purposes of the fixed trigger, as someone who was about to invest £25,000, though that was the reality. I instructed GCEN to apply the cumulative trigger and to lower the threshold so that more applicants would receive source of funds enquiries. Again the result of this would mean a greater number of compliance calls which would slow the process on onboarding investors. I was happy to accept this as I considered that the greater level of checking was worth the delay

49. In addition, if applicant classified themselves as HNW investors, they were automatically asked to provide documentary evidence to justify HNW status. Further, if an applicant categorised themselves as a self-certified sophisticated investor, they had to make a declaration that this was an accurate statement of their status and that they had experience of dealing in certain types of investment.

50. Vulnerability. I instructed GCEN to devise vulnerability triggers, which they did, and to call every applicant who raised a vulnerability trigger. If the applicant did

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not "pass" the compliance call, that application was rejected and any funds which had been sent would be returned. This would not only result in a delay in onboarding investors but would also stop some investors from being allowed to continue with their application. I was happy to accept this as I considered it better that we made sure the vulnerable had an added layer of oversight. I recall one case where we turned down an investor on the grounds of vulnerability but she insisted on proceeding and threatened to sue LCF under the Disability Discrimination Act if we did not allow her to proceed with her application. In the face of that threat, we allowed her to do so.

51. In addition to their work on the website, Surge was also responsible for all of LCF's social media channels and had sole access to all social media accounts and profiles. Once again, Katie and then Kobus had oversight and no posts or advertising should have been made live without their approval. LCF's branding and the design and layout of the various website pages and documents which formed a part of the application process were developed and updated by Surge, who had in-house designers and technical experts who created all brand related documents and imagery. Before any changes to the brand were to go live, Surge had to seek approval from Kobus. Once everything was approved, Surge had sole responsibility for all promotion and advertising. The main focus of this work, as I understand it, was on development of the website, generating activity on social media channels and search engine optimisation.

52. At some point (I am not sure when or in what capacity), John Russell-Murphy appeared to become part of the Surge operation. When I attended Surge's offices for meetings, I met him there on a number of occasions. He dealt with any particularly tricky or large applicants as well as overseeing the onboarding/facilitation team. He was, I believe, more familiar than most with the parameters within which we operated because, of course, he had been involved with the Lakeview bond financing process, which had been undertaken through LCF (when it was SAFE) before I acquired it in 2015 and so before it became LCF. He had had some prior involvement with Surge too.

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53. In any event, following a short period in which we used a re-branded version of the bond written by John Russell-Murphy, the first of the new-type bonds issued under my stewardship of LCF were launched in November 2015 (Series 3, 4, 5 and 7) and December 2015 (Series 6).

54. In the first quarter of 2016, the FCA made contact and had, clearly from that correspondence, had a fairly close look at us. In a letter dated 18 January, the FCA raised concerns over our website. On 29 January, we replied, having made certain changes to the website. On 15 February, the FCA replied by e-mail, setting out a further residual concern. On 7 March, having made a further change to the website, we e-mailed back setting out the change we had made. On 10 March, the FCA sent an e-mail, confirming that they were satisfied and the mater seemed to rest there.

55. There was further correspondence in September 2016, this time directed to Sentient Capital with LCF in copy. Once again, the FCA's concerns related to the website. They were, so far as we could tell, satisfactorily addressed. During this round of communications, I called the FCA myself and discussed the website issues with them directly.

56. Then, on 14 October 2016, having recruited Kobus from Sentient Capital, we submitted an application for our own corporate finance permissions, which, if granted, would enable us to approve our own financial promotions. The application included an application for permission to hold client money, which we did not need at that time and which, when we received some push-back, we withdrew. Evidently, the application received active consideration because there were numerous questions, which we answered over the next few months. Eventually, the application was approved in June 2017. To be absolutely sure of our ground, we checked with the FCA what changes we should make in the light of this development and acted on their advice, which included exactly what we could say about our regulated status on our website and where it could appear. From that point, the relevant regulatory wording appeared on the website stating that LCF was regulated by the FCA (rather than simply regulated for credit broking services which the FCA had directed LCF to state on the website previously).

Source: Mouseinthecourt.co.uk

57. There was further correspondence with the FCA about the website in August. But, again, their concerns were addressed, as they confirmed in writing, to their satisfaction.

58. In short, we interacted with the regulator in a manner which, I believe, was appropriate. We always complied promptly and precisely and I do not believe that any complaint could be made (or is made in these proceedings) about the entire financial promotion part of the operation. Of course, in relation to the website, we could not make the changes ourselves. The website URL was owned by Surge who also held the passwords. The changes to the website were, therefore, always made by Surge but would need the approval of the compliance team at LCF.

The Loans

59. I turn now to the lending side of the operation. I understand that this is really the focus of the Claimants' case against the Defendants. In essence, they say that the money which LCF raised was misappropriated by the Defendants, that this was my intention from the start (i.e. that LCF's business was set up with the intention that the Defendants would misappropriate the money) and that the loan documentation was created to disguise the misappropriations which were taking place.

60. I understand that last allegation to be an allegation that the loans that we made were not genuine loans at all but that the money was paid away subject to no legal obligation on the part of the recipients ever to repay it. I find that allegation totally and utterly mystifying. I may be criticised, I am sure, for making errors of judgment. No-one is perfect. But the suggestion that I simply gave away LCF's money, which it had raised from bond-holders, to the other Defendants or some of them is absurd. There is no earthly reason why anyone would do that, it is not even suggested that I gained greatly from doing so – at least not as greatly as the other Defendants who received the money, on the Claimants' case, gratis.

Source: Mouseinthecourt.co.uk

61. The reality, of course, is that the money was loaned out and that the loan documentation is perfectly genuine and reflects the transactions into which the parties entered. The terms on which the money was loaned and the evaluative judgments which were made as an asset-based lender beforehand reflected the terms of the mandate given to LCF by the bonds.

62. Following the initial period in 2015 where we used documentation prepared by John Russell-Murphy and others, I had the loan and security documentation prepared by Alex Lee and his team at Buss Murton. I am not aware that any criticism is made of it per se and so I will not attempt to comment on the drafting. Because the loans were substantial and because the documentation had to be tailored, to some extent, to suit the transaction, I decided against using a standard-form but retained Buss Murton to handle each individual loan transaction, using the standard-form documentation which they had prepared and I had approved at the outset, but tailoring it as required.

63. My usual practice was that I would meet Alex face to face to sign the documentation for each loan. That meeting would either be at his office in Tunbridge Wells or, if it was more convenient, at some other location, possibly the borrower's office. I would sign the documents but not date them. That had been my practice since my days in the bank (as the bank's back office team would date the documents prior to drawing down funds) and I saw no reason to depart from it. The documents would be dated at completion but I would not normally be present at completion or involved in the process of dating the documents in any way.

64. I am aware that there are allegations that loan documents were back-dated. I have no knowledge of this whatsoever (for the reasons set out in the previous paragraph) and no reason to believe that it could be true save, potentially, in relation to one or, possibly, two documents, which I will mention now. The second LOG loan (if I may call it that for shorthand – I will deal with each loan in turn in more detail below) was advanced against a side letter. Later, it was decided that the side letter should be replaced, retrospectively, with a fuller form of agreement and that was

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done. Something similar may have happened with the loan in favour of L&TD in August 2015 (though I cannot now recall precisely).

65. I understand that a document would normally be dated with its true date but expressed, in the text, to apply, by agreement between the parties, retrospectively from an earlier date. Equally, where a document is replacing an earlier document by agreement between all the parties, I can see that it would be acceptable to date the new document with the date of the earlier document if all parties agreed and no-one was deceived. Whether or not I am right about that, certainly the second LOG loan agreement was prepared by Alex Lee at Buss Murton but I do not believe that he was involved in its execution.

66. It is said against me that the loans made by LCF were not only uncommercial but so uncommercial as to render the entire business of LCF unviable, which feeds into the Claimants' allegation that the business was set up as a Ponzi Scheme in the first place. I both reject that suggestion and regard it as unsustainable and will explain why.

67. The structure was that LCF passed on to its borrowers the entire cost of funds and charged an arrangement fee of 2% and a marginal interest rate of 1.75%. The borrower also reimbursed LCF's legal expenses (i.e. Buss Murton's fee for drawing up the loan and security documentation). The cost of borrowing compromised (1) the coupon paid to bond-holders, which ranged from 3.79% to 8% depending on the term of the bond, (2) the 25% paid to Surge and (3) the 0.5% paid to GCEN. LCF made no separate charge for its overhead expenses, which were covered out of the arrangement fee and the interest, leaving a profit. These sums were deducted from the gross loan on drawdown and so were re-couped at source. The total deductions were, therefore, in the region of 32-33.5%. That is, in my experience, on the high side for a commercial loan but certainly well within the range of what non-status commercial lenders normally charge. However, it has to be seen in its proper context.

68. First, Lewis Silkin advised that the term of the loans should be no longer than the term of the longest bond (i.e. 3 years). So each loan within a facility was for 3

Source: Mouseinthecourt.co.uk

years. But that did not prevent renewals or roll-overs. Indeed, that was expected. So when the cost of borrowing was amortised over the actual/anticipated term of the loan, at its fullest extent, the 32-33.5% range came down significantly.

69. Second, while it is true that some of the bonds which seeded a loan would mature prior to the expiry of the term of the loan, that would not necessarily generate an additional charge which would be passed on to the borrow. LCF had good retention rates with its bond-holders. LCF, not Surge, sent bond-holders notifications that their bonds were about to mature on 3 months, 2 months, 1 month and 2 weeks, seeking their instructions. All a bond holder had to do was to write or email their decision and it would be actioned. Naturally, there was no pressure on a bondholder to keep their funds with LCF. Many took up our invitation to renew and, if they did so, that did not generate any further charge from Surge or GCEN because they were not involved in the transaction (because there was no bond-holder's money to move).

70. So while there would be additional charges if a matured bond had to be replaced by a brand new bond, the general tendency would be for the cost of borrowing to come down if the loan were renewed or rolled-over and the cost of borrowing were amortised across the duration of the loan. I have prepared a schedule showing the APR on a hypothetical LCF loan of £100,000. The schedule is now produced to me marked "A". Over 5 years, the APR is 14.5%. Over 10 years, the APR is 11.75%. Over 15 years, the APR is 10.83%. These APRs compare very favourably with other products commercially available in the market. During my time at RBS, most of the business loans I wrote were for 15 years and so, naturally, I thought in terms of loans of that duration when I was running LCF.

71. There was, obviously, a possibility that borrowers would wish to finance the 2% arrangement fee which we charged on the renewal of a loan (bearing in mind that there might be a number of loans within a facility). Obviously, in my worked example at Schedule A, the renewal fee was only £2,000 and no-one would seek to finance that. However, on a loan of £5-25 million, obviously the arrangement fee would be a sizeable figure and it was feasible that borrowers would seek to finance it. To illustrate the APR on loans to finance the renewal fees, I have added

Source: Mouseinthecourt.co.uk

further figures to Schedule A, which shows that the APR on the first renewal of a 1loan which would, ultimately, run for a 15-year term would be 11.29%. The APR on the second renewal fee would be 12.06%. The APR on the third renewal fee would be 13.58%. The APR on the fourth renewal fee would be 18.17%. Obviously, these APRs were higher each time because there was less of the 15-year terms remaining over which to amortise them.

The LCF Back Office

72. Having out-sourced the entire funding-raising part of the operation (save for the compliance oversight of Katie and then Kobus), what remained in the LCF back-office was (1) the processing of applications for loans and (2) the tracking of the performance of loans to ensure that there was always sufficient money in hand to meet obligations to bond-holders (whether redemptions or interest payments).

73. LCF's bond and loan back-office system was initially designed around Microsoft Excel, as I have explained above. Throughout the operational lifetime of LCF, Katie Maddock used Excel spreadsheet to monitor the performance of each loan and the requirement to service or redeem the bonds which had been used to seed it. She did so extremely accurately and both PWC and Ernst & Young, as auditors, found, when they checked her calculations that they were correct to within a few pounds.

74. To prevent defaults, I had had Buss Murton write into the loan documentation that if LCF as lender needed to recover money early from a borrower to pay a bond holder whose money had been used to seed that particular loan, it had the contractual right to do so. Naturally, we did not expect the borrower to produce money at the drop of a hat but it gave us the contractual right to substitute a new bond for the existing bond in relation to that loan to avoid a default. This was simply cashflow management as LCF had a commitment to its borrowers to provide funds for a specific length of time but it also had a commitment to its bond holders to repay funds at the end of the term of the bond if the bond holder wished to withdraw their funds. The clause in the loan agreement allowed LCF the flexibility to manage the situation. It is suggested that this is "Ponzi" like activity

Source: Mouseinthecourt.co.uk

but it is not. While in the bank I and colleagues provided many development loans where a borrower needed time to realise the value of their assets to repay the borrowing. Before the assets could be monetised, the only method of enabling the borrower to meet its borrowing commitments was to enable the borrower to borrow further funds to meet these commitments, subject to having sufficient headroom in the facility and sufficient security. I believe this activity is still practised in banks to this day at significantly higher loan to value ratios than those used by LCF. Rather than anything sinister, LCF simply allowed its borrowers to use their facilities to meet their obligations within the terms of the facility. It was LCF's job to manage the cashflow between bonds of differing lengths and loans of fixed terms, which we did. Obviously, it would have been quite different if LCF used money provided by new bond-holders to pay out commitments to existing bond-holders because it had insufficient capital to do so otherwise. But we never did that. On the contrary, we managed the loan book to ensure that we never had to. If a borrower lacked liquidity but had the capacity to borrow more, we looked at that and were prepared to make further advances, which could be used to pay interest, provided that the security was available at no more than 75% LTV.

75. As I have explained, I wanted to move to a fully automated system. After at least one false start (where we bought a software package which was sold on the basis that it would do the job but did not), I lighted on GMP. After some bespoke additions to GMP were commissioned, we ran that alongside the spreadsheets from the second half of 2016 and planned to do so fault-free for a year before having the confidence to discontinue the spreadsheets. In the event, we never reached that point. However, for the latter part of LCF's operational existence, we have both the spreadsheets and the GMP records to show which bonds seeded which loans and the performance of the loans in terms of their producing money to pay bond holders. The GMP system, of course, linked to the Surge and GCEN systems to produce a fully automated system, which showed how every bond was applied and how every loan performed. That system was the day-to-day responsibility of Katherine, Kobus, Katie and Kevin Maddison of GMP, who joined the board in 2017.

Source: Mouseinthecourt.co.uk

The Security Trustee

76. In October 2015, I set up Global Security Trustee Limited ("GSTL") to provide the "security trustee" function I have mentioned above. I interviewed various companies for the role but they were either exorbitantly expensive or did not offer the service I wanted, which would only be relevant if LCF hit problems.

77. In the event, I incorporated GSTL and asked Robert Sedgwick if he would take charge of it. The idea was that it would represent bond-holders if LCF hit problem. Unless and until that happened, there was nothing for it to do. It did not hold security from borrowers on behalf of bond-holders because, as I have mentioned above, LCF was not a broker. LCF acted as principal and so, just as much as the money subscribed by bond-holders became LCF's money when it was handed over by GCEN, repayments by borrowers were also LCF's money, not bond-holders' money. For that reason, I considered that it would be inappropriate to vest the security in the bond-holders by having a security trustee in that sense. My idea was that Robert would give the bond-holders the ability to speak and act with one voice should that ever become relevant.

78. Primarily, this was to protect bond-holders from greedy office-holders (of the kind I had seen in Lakeview and the Dominican Republic projects). But, in the event, the administrators of LCF simply dismissed GSTL and the bond-holders' interests were subordinated to the self-interest of the office-holders, precisely the situation I had tried to avoid.

London Capital Marketing

79. In 2016, I set up London Capital Marketing Limited ("LCM") to be the company sitting between LCF and the companies or networks that would distribute LCF's bonds to IFA networks and other agencies, i.e. wholesale rather than retail (which was covered by Surge). I did this on the recommendation of Kevin Maddison as

Source: Mouseinthecourt.co.uk

he had set up corporate distribution networks for some very large companies such as Aviva.

80. Additionally, from a point in 2017 LCM dealt with all renewals and rollovers for LCF existing bonds. It provided a back-office facility for that purpose. As I have already mentioned, no money moved in that situation and so it was not appropriate to involve Surge or GCEN, both of which would charge a commission. LCM contacted bond holders at intervals before redemption, set out their options and asked what they wanted to do at the end of the term of their bond. If there was no response from the bondholder to the first letter, LCM would send another letter and then, if there was still no response, make a call. I did not want there to be any pressure on a bondholder not to withdraw their funds at the end of their bond's term. On the contrary, it was our job to make it as simple as possible for them to do so. In actual fact, we had good rates of retention.

Development of the Business and Further Products

81. From late 2016, I became less involved in the day-to-day running of the business and more involved in strategic development and the evolution of new products. In particular, I wanted to issue a listed bond in Malta and regulated bonds in the UK and to develop a network of regulated distributors. I only dealt with the day-to-day matters when one of the other directors (Kobus, Kevin or Katherine) or one of the managers asked for my input. The other directors together with Katie and the middle managers took care of managing the IT back office, HR, risk and compliance, managing the loan and bond books and any other day-to-day issues that arose. I attended all the meetings with LCF's lawyers and was accompanied by Kevin and Kobus as required (Kevin for his regulated distribution input and Kobus for his compliance input). I generally only attended the office once or twice a week as the loans and bonds, once they were set up, were managed by the back-office team (in terms of both communication and administration).

82. By mid-2017, the company employed a staff of about 8. By mid-2018, that number had increased to about 16.

Source: Mouseinthecourt.co.uk

83. I mention all this to illustrate the proposition that, far from being set up as a Ponzi Scheme with no real business but merely a front to disguise large-scale misappropriations, LCF was set up as a proper, legitimate business and that, as soon as we had found our feet and begun to expand rapidly, we started engaging with regulators in at least two different jurisdictions and with the tax authorities.

The Malta Bond

84. In 2016, I received approaches from discretionary fund managers, who wanted to explore the possibility of their holding LCF bonds in their portfolios. I met them for discussions, the outcome of which was that it would be too expensive for them to hold an unregulated asset. I was reluctant to pass up on the opportunity to develop the business and raised the matter with Lewis Silkin, who advised, in due course, that it would be possible to set up a regulated bond in Malta, which was within the EU but cheaper in which to operate than many other EU jurisdictions. I ascertained that DFMs would find that attractive and decided to go ahead with a £100 million bond listed on the Malta Stock Exchange. I set up a Maltese company, retained a Maltese corporate finance adviser (Zeta) and instructed Lewis Silkin to draft the bond, which they did. I engaged with the Maltese regulator and stock exchange, who gave me "soft" pre-approval, which I took to be a green light to proceed. I found the authorities in Malta extremely receptive.

85. In 2017, the application was submitted and approved. In the event, I aborted the project after the bond had been approved – only because, in mid-2017, the FCA extended MiFID III to DFMs, who no longer found the bond attractive as they would, I believe, have found themselves subject to greater capital adequacy requirements if they held investments of this type. It was, to say the least, unfortunate that this change in the rules rendered commercially unviable a product which we had spent the best part of a year and £200,000 developing.

The ORB Bond

Source: Mouseinthecourt.co.uk

86. I turned next to the possibility of issuing a bond listed on the London Stock Exchange's Order Book for Retail Bonds ("ORB") as part of a range of regulated corporate finance services LCF might provide to other medium sized businesses as well as moving out of the unregulated bond market for LCF's own fund raising. I had discussed this with the DFMs and IFAs with whom I was in contact. They were enthusiastic. Lewis Silkin advised that it could be done. They warned me that it would be a long drawn out and expensive endeavour and was normally a course only taken by much larger businesses than LCF. They recommended an umbrella bond, i.e. a bond with a headline overall limit, which could be split up into smaller sub-bonds with different terms and interest rates (as LCF already had and which had proved attractive). This would enable LCF to tailor bond offerings to the specific needs of different sectors as well as have an allocation it could offer, via a corporate finance advisory service, to medium sized businesses if they had a specific funding need.

87. Much of my time in the second half of 2017 and all of 2018 was taken up with developing the ORB bond. I had numerous meetings with IFAs, the DFMs and pension funds they dealt with, and with Lewis Silkin, who liaised extensively with the FCA. I was assisted by Kevin Maddison and Eloise Wade. Kevin had previously developed successful fundraising networks for substantial financial institutions such as Aviva. Eloise was responsible for the day-to-day interactions between LCF and the regulated entities it was interacting with and would have headed up the department had the ORB bond had been launched. Kobus also assisted when anything compliance-related had to be dealt with. My plan was that, by 2019, LCF would only issue regulated bonds. Ultimately, LCF decided to have a master agent responsible for distributing the regulated sub-bonds and chose LGBR Capital and its sister company, Opus Capital. They had a successful track record in distributing financial products to their established network of over 1,000 IFA firms as well as fund managers and pension funds. They carried out their due diligence on LCF and were content to proceed. In addition, we engaged with Campden Wealth, a membership organisation for family offices. Pending launch, LGBR and Campden Wealth canvased their networks as to the possibility of distributing bespoke LCF mini-bonds. However, in the event, we did not reach the

Source: Mouseinthecourt.co.uk

point at which all parties were satisfied that the scheme was going to work as the family offices we were introduced to preferred to lend directly to businesses rather than providing LCF with capital to on-lend.

88. In the meantime, I was informed by Lewis Silkin, I believe, in around November 2018, that the FCA had indicated that they would approve the umbrella bond subject to sight of the 2017/18 audited accounts, which were due to be filed by mid-December 2018. Clearly, the FCA intervention prevented this project from reaching fruition. But we had, by then, spent about £500,000 getting it to that point.

89. It has been suggested that LCF only applied for corporate finance permissions to create a "halo" effect but never intended to make use of them. That suggestion is wholly incorrect. It will be seen from the above that we came close to launching a listed bond in Malta in 2017 and pulled out only because of the application of MiFID III to DFMs and that we came very close to launching a regulated bond listed on the LSE in late 2018 and would have gone on to do so but for the actions of the FCA. In addition, I intended to issue a second listed bond on ORB in 2019, which would have been the receptacle to enable existing bond-holders to migrate their bonds into to a regulated and listed product.

90. I also planned to create our own secondary market in LCF bonds so that retail investors could sell their bonds early and retail investors had the option to buy into a bond that was part way through its life at a higher coupon than would be available if they bought a new bond for the same duration. This struck me an exciting project because it would enable retail investors to go through us in relation to our bonds rather than buying and selling via institutions that dealt with ORB. I was aware that LCF, or indeed LCM if we chose to use that company, was likely to need additional permissions to provide this service and had envisaged offering a matching service and charging a small fee. In essence, an existing bondholder who wanted to sell could list their bond and any prospective investor could view the list and purchase directly from the bond holder with LCF or LCM managing the administration in between. After that, I had plans to develop a service to write bonds for medium and large companies and to move into other markets.

Source: Mouseinthecourt.co.uk

HMRC and Withholding Tax

91. My understanding is that most bonds include an express stipulation that the investors' taxation is their own affair that they must deal with it themselves by filing a self-assessment tax return. My research suggested that that was not the correct way of dealing with tax due on an investment. I therefore set up LCF bonds to comply with withholding tax regulations and withhold basic rate tax and pay it over to HMRC by way of a quarterly CT61 tax return.

92. Some bond holders took exception to this and accused us of stealing their money and reported us to the police. Others threatened court proceedings. Apparently, HMRC advised bond-holders, both in recorded messages and in writing to individual bond-holders, that we should pay out the first £1,000 gross. That was wrong and, after more than 6 months of communicating with HMRC informing them of the mis-information their advice line was giving out, HMRC acknowledged that we were taking the correct course of action and we were able to pass this confirmation onto our bondholders.

ISA Manager Permission

93. Mid-way through 2017, I learned through Surge (and I cannot recall whether it was from Paul Careless directly or, indirectly, through Kobus or Katie) that some investors wanted us to offer ISAs or Innovative Finance ISAs (IFISAs) to our customers in connection with the bonds so that the bonds could be held within an ISA wrapper. I looked into this and decided that, because of the regulatory framework, it would be better to provide this service in-house rather than out-source it. We therefore engaged with the relevant HMRC department to obtain an ISA manager permission.

Source: Mouseinthecourt.co.uk

94. Initially, this was done through LCM. However, it transpired that LCM was not able to be an ISA manager because it did not offer its own ISAs. We then applied using LCF. HMRC reviewed all the promotional materials and the website (I believe HRMC confirmed in an email on 14 November that they had reviewed LCF's website) before approving our application. They knew that we offered bonds that were non-transferable but had a fixed term as this was confirmed in emails and during telephone calls.

95. It has been suggested by the Claimants and the FCA that LCF's IFISAs were not compliant and that LCF's bonds could not be held in an ISA wrapper. HMRC set out in their guidance note for ISA managers (I think, from memory, in section 9 of the guidance note) and that for non-cash IFISAs, specifically addressing the issue of withdrawal and transferability, that if the underlying product held in the IFISA had a fixed term, then the terms and conditions of the underlying product stood before the withdrawal and transferability rights provided via the ISA regulations. It is only when the underlying product comes out of the fixed term that the general ISA withdrawal and transferability terms become applicable. So in terms of LCF's IFISAs, when an investor put their funds in, they were immediately in a fixed term so, according to HMRC's guidance notes, the terms of LCF's bond stood before the ISA terms in relation to withdrawal and transferability. Only when LCF's IFISAs were outside of their fixed term did the general ISA provisions become applicable. But, as soon as the LCF IFISAs were outside of their fixed term by virtue of the underlying bond coming to the end of its term, the obligation on the bond was immediately converted into cash, which would then have complied with HMRC's ISA regulations.

96. In any event, as I have mentioned, HMRC approved our application in November 2017 and LCF offered its first ISA's shortly after that.

TISA Membership

97. TISA is a leading ISA association in the UK. In late 2017, we engaged with TISA and, as part of our standard training and continued professional development, all LCF staff were trained by TISA to deal with any requests for information that had

Source: Mouseinthecourt.co.uk

anything to do with ISAs. We did that before LCF launched its ISA offering to ensure that our staff were fully compliant. We then continued to utilise TISA throughout the entire period LCF offered ISAs. TISA attended our offices on numerous occasions. There is an e-mail correspondence confirming the training but this seem to have not been disclosed by the parties. I was involved in organising and setting this up but Kobus, Katie and Eloise were the main people driving it. I mostly gave directions to them. TISA did not raise any concerns about our products.

London Loan Brokerage Limited and London Private Equity Limited

98. I formed these companies, for name protection purchase, in November 2017 and June 2018 respectively. I mention them now simply for the purpose of explaining that they were never used but the names do indicate my intended direction of travel in terms of names and branding and that I also wanted to set up brokerage and advisory services.

99. I will now, in the remainder of this statement, set out a history of the loans that we made and then deal with the audits, the matter of my own remuneration and the payments I received and the FCA intervention which closed down the business.

The Loans

100. Over the period of July 2015 to 10 December 2018, LCF provided loan facilities to the following companies:

i. Leisure & Tourism Developments ('L&TD')
ii. Waterside Villages Limited
iii. Waterside Support Limited
iv. Costa Property Holdings Limited
v. Costa Support Limited

Source: Mouseinthecourt.co.uk

vi. Colina Property Holdings Limited

vii. Colina Support Limited

viii. LPE Support Limited

ix. CV Resorts Limited

x. Cape Verde Support Limited

xi. London Oil & Gas Limited ('LOG')

xii. FS Equestrian Services Limited ('FSES')

xiii. London Financial Group Limited ('LFG')

xiv. Express Charters Limited

xv. Spencer Golding t/a Home Farm Equestrian Centre

101. Each loan was to a separate business backed by security, independently valued and to an LTV ratio not exceeding 75% per the terms of the documentation issued to the public. No complaint is made, as I understand it, as to the quality of the loan and security documentation. The Claimants' complaint in these proceedings, as I understand it, arises from the fact that I knew the people concerned with the borrowers and had my 5% carried interest in them (though, as I have explained, I played no part in their affairs whatsoever). But, as I have explained above and will explain in more detail below, it was explained in the information memoranda that sources of borrowers would include the directors' personal contacts. Moreover, any possible conflict was appropriately handled by my declaring my interest and stepping back from LCF's internal risk committee processes. But, had it not been for the fact that LCF expanded so quickly and the fact that I knew the people behind the borrowers, I do not believe that the FCA would have intervened or that these proceedings would ever have been brought. The question, therefore, seems to go simply to the bona fides of the loan transactions.

102. My attitude to this question, before I ever knew that I would have to justify myself in court, was that, rather than compete with every other unregulated lender for the best opportunities, it made sense for LCF to lend to these businesses initially as I knew them and I had a "foot in the door" to secure their lending business. I knew that they required funding. It seemed to me that I could build LCF using my existing contacts in the first instance and then expand by generating new contacts. Put that way, it strikes me that that is the way any new business starts – such a

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business gets going on the back of the directors' existing contacts and if it prospers in the early stages, the book of contacts expands and growth becomes exponential. Of course, with the benefit of hindsight, I can see that I can be criticised for not diversifying the loan-book more but, having said that, LCF only had 3 years' trading and I hope that it will be seen from the evidence I have already given that I had launched an ISA business and had plans, which were at a very advanced stage, to develop a corporate finance business, both of which would have generated a legion of new opportunities to lend money outside my existing circle of contacts.

103. While LCF's initial borrowers were sourced from my contacts, LCF's other directors also attended meetings with me. They were aware of my involvement with the companies and directors to which LCF was lending. This information was entered into LCF's conflicts register. Anti-money laundering and 'know your client' checks were carried out on the companies to which LCF lent as well as on the connected individuals.

104. Going back to my mindset in the period 2015-18, our lending decisions were all based on the value and quality of the security. The people were of secondary importance. Moreover, I endeavoured to build a board of directors that could support the business. In addition to the Katherine, Kevin and Kobus 2 other board members were also brought on. These appointments did not last long as one. Martin Binks was not really able to offer the time commitment he initially indicated that he was able to and the second, Michael Baldwin, had a personal issue and wanted to retire. If it is suggested that, principally, Katherine, Kobus and Kevin were, in some way, in thrall to me and did exactly what I said, that would be very wide of the mark. There were vigorous debates and disagreements and, of course, having effected the introductions, in relation to prospective borrowers where I knew the principals, I stepped back and let my fellow directors get on with it, which they did. In particular, I declared my prior associations to my fellow directors and those interests were recorded in the conflicts register. It was Kobus's job as head of compliance to maintain and update the register. As part of its governance process, LCF had a risk committee comprising of Kobus and Katherine. Their job was to look at all risks that could impact LCF, which included

Source: Mouseinthecourt.co.uk

the lending LCF undertook against the assets it lent against. I know that they kept records of the risk committee meetings but I did not participate in those discussions and did not see the documentation. Evidently, they decided that they were satisfied with the risks. The risk committee was empowered to halt any loans if it considered there was a need to do so.

105. As an example, I recall both Kobus and Katherine meeting the board of directors of LOG independently without my being there. That meeting took place in mid-2018. They were, evidently, satisfied because they would have told me if they were not. In fact, they came back with the idea of a debt for equity swap, namely that LCF would convert some of its receivables for equity in either or both of LOG and IOG. I looked into the idea but it did not proceed.

106. In terms of the process, LCF conducted checks on each of the companies to ensure they were properly constituted and could carry out the business they were purporting to carry out. As to the people who ran the businesses, LCF undertook background checks via Smartsearch (an online KYC tool that was used by the back-office team). We also reviewed CVs and had meetings with them. We continued to have meetings with our borrowers during the life of the loans. As to the security, we proceeded on the basis of independent valuations and asset appraisals. In my experience, from my banking days, we carried out the same level of due diligence as any asset-based lender but not as much as a bank, which would be contemplating a broad, more complex relationship with its customer and a different type of lending. Ultimately, it was the assets and their developing value that we were concerned with. In that sense, our loans were very similar to property development loans where the value of the security can be expected to increase over the lifetime of the loan and further tranches are permitted to be drawn down over that period.

107. In terms of the purpose of the loans, they were all specified simply to be "for corporate purposes". The Claimants complain about this. By way of example, they complain that LCF made a loan to Spencer Golding's equestrian business but that he used the money to buy a helicopter. In making that complaint, they mistake the nature of asset-based lending. The security was in the equine stock. That security

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was still there. It was immaterial to LCF how the money was used, provided that it was used for corporate purpose. Had Mr Golding improperly withdrawn the money and used it for his personal purposes then we would have had something to say about that there was no indication that anything of that sort was happening (and, indeed, it was not) as we were provided with stock appraisals that showed an increasing volume and value of stock. But, in many ways, I was happier that he used it to acquire a valuable tangible asset than if he had used it to fund business expansion without acquiring further tangible assets which could form the basis of our security.

108. On the subject of helicopters, LCF's parent company, London Financial Group Limited, acquired one. That made it possible for me to attend meetings all over the country in a single day. Viewed in the context of the value of my time, that made sense. Complaint is made that bond-holders' money was used. Once again, that complaint is mistaken. Bonder-holders' money became the company's money at completion and it was up to the board to decide how to deploy it. Obviously, the bulk of it was used to make loans per the terms of the documentation issued to the public. But when it came to running costs, which were mainly funded from profits, it was for the board to decide how best to deploy the available resources. The purchase of a helicopter was a perfectly legitimate board decision as was the decision, in 2018, to buy a replacement engine. Regrettably, the administrators appear to have lacked the requisite experience and failed to realise more than the cost of the replacement engine for the helicopter and the two engines.

109. I will now comment on each of the loans in turn:

<u>Loan to Leisure & Tourism Developments Limited ("L&TD") - £25 million, 27 August 2015</u>

110. L&TD was the parent company of all Simon Hume-Kendall's and Elten Barker's resort property businesses at that time. LCF extended a loan facility of £25 million to L&TD in August 2015 and permitted draw down of its first loan within the facility on or around the end of August 2015. The loan was secured, directly and indirectly, on all the properties held in the subsidiary companies of L&TD, namely Lakeview, "The Hill" and "The Beach" and Paradise Beach, all of which had

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valuations, the sum total of which more than adequately covered the facility. The initial loan documentation completed in August 2015. I am, presently, unable to locate it but I do not believe LCF would have advanced this loan without documentation. I believe that the loan document used was similar to the document used by SAFE in 2013 to lend to one of L&TD's subsidiary companies but, as I have mentioned, I do not, presently, have the document to confirm this. I am aware that documentation was put place for L&TD subsidiary companies such as the debenture over International Resorts Group (IRG) in July 2015 and so it is my belief that LCF did enter into agreements at the time but now some 8 years later they cannot be located. There is a later loan agreement in favour of L&TD, again for £25m dated 27 August 2015 and in addition there is a debenture registered against the company on 17 May 2016. I believe that LCF and its borrowers opted to replace the documents entered into in August 2015 with a new suite of documents prepared by Buss Morton at a later date.

111. I am aware that there are allegations of dishonest back-dating. I do not know whether those allegations relate to this document. With the benefit of hindsight, I can see that it might have been better to date the documents with their true dates and to provide in the text that each took effect from an earlier date. Suffice to say that all the parties agreed to the documents in the form in which they were executed and that no-one was deceived. Personally, I believe that the point leads nowhere because, ultimately, LCF benefitted from having a more robust set of documents in place.

112. LCF kept track of the value of L&TD's security by being provided with periodic third-party valuations of Lakeview (or Waterside as it became known), the development sites in the Dominican Republic and the part-built resort of Paradise Beach in the Cape Verde Islands.

113. LCF continued to lend to L&TD through 2016 and kept a record of the increasing valuations of the assets held in L&TD subsidiaries. The L&TD loan profile shows the last valuation update was on 13 December 2016 with total valued assets of £108 million against a loan balance of £24.4 million. Contrary to the Claimants' characterisation of LCF providing sham loans to sham companies, LCF took its

Source: Mouseinthecourt.co.uk

lending obligations seriously and acted responsibly. For example, LCF sent a default letter to L&TD on 5 December 2016, pointing out that as L&TD had not filed its statutory accounts, it was in default of its loan agreement and requiring the company to rectify the default by filing its accounts within 21 days or face the termination of the loan facility and enforcement against the security to recover the sum outstanding. In my view, this is not the action of a sham lender. On the contrary, it is the action of a responsible lender rightly enforcing the terms and conditions of the loan it has made.

114. The loan to L&TD continued into 2017, the last drawing being in April 2017. At this point the loan had reached some £41 million, some £16 million over the facility agreement put in place in 2016 (but with effect from August 2015). I cannot find documentation in the files I have available to me by which the increase in the facility limit was authorised. However I do not believe that we would have allowed a borrower to overdraw its facility. I believe that the facility limit was increased in December 2016 when L&TD neared its loan limit and that the relevant documentation would have been with the loan files in LCF's offices.

Loan to Spencer Golding - £2 million, 20 November 2015

115. I was aware that Spencer held a considerable shareholding in all of the companies I used to be associated with, which, based on the valuations and appraisals I was seeing through the other loans LCF made, was a valuable asset. He approached me and requested that I consider advancing a stocking loan for his equestrian business. As the loan would be to him, so was personal and as such LCF would have recourse to all of his assets, including his shareholdings, we consented to his request and advanced a stocking loan, secured primarily against the stock of horses he purchased but also, by virtue of it being a personal loan, on all his other assets, which were worth considerably more than the facility advanced.

Source: Mouseinthecourt.co.uk

Loan to LOG - £20 million/£25 million, 15 March 2016

116. I had worked on the projects LOG eventually became involved with prior to setting up LCF and so, when LCF was approached to provide a loan facility, I was already aware of some of the detail. Prior to lending we met with not only LOG's directors, who had considerable experience in the oil and gas sector as well as the financial sector, but also IOG's directors as it would be LOG's share of IOG's assets which would underpin the loan. IOG is AIM-listed company. IOG's board presented the assets it owned and was developing together with their plans and current and future valuations and cashflows as well as the competent person's report (CPR) for each asset and the appraisals. IOG used ERC Equipoise for its CPRs. It is a well-respected multi-national provider of this expertise in the oil and gas sector. CPRs set out what are considered (a) proven assets and (b) probable and (c) possible assets. The proven assets are the most valuable as the likelihood of realising the assets is far higher that the possible assets. In addition to detailing the extent of the assets the CPRs also provided values of these assets. The appraisals of the assets owned by IOG and, through its various relationships, LOG, were considerable and given that the asset appraisals and valuations provided to us were also used for regulatory reporting requirements for the London Stock Market, we considered the values attributable to the IOG assets to be robust and good security for the loans advanced to LOG. In addition to the CPRs, LOG had Lewis Silkin conduct due diligence on all of IOG's agreements and licences which ran to some 800 pages and covered the loans LOG entered into with IOG, all licences IOG held, all warranties, resolutions, board minutes, certificates, permits and licences. The comprehensive review which Lewis Silkin prepared, together with the CPRs, which were updated over the years, and the regulatory updates to the Stock Market and the financial reporting from IOG's NOMAD Fincap and the quarterly meetings held with LOG's and IOG's board meant LCF was constantly updated on the value of LOG's main assets. That information and process underpinned LCF's continued lending to LOG.

117. I am aware that LOG loaned funds to other companies, including IOG, for other ventures. That was LOG's business and not ours. If LOG used the money to generate a return in this way to create further asset value and, ultimately, replace

Source: Mouseinthecourt.co.uk

the cash asset with a receivable, that was perfectly acceptable to us and well within the “corporate purposes” wording in our loan documentation.

118. LCF offered LOG a facility early in 2016, I believe in March, and permitted the first drawing the same month, I will call this loan facility “LOG 1”. In or around August 2017 LOG neared the facility limit and, as the valuation of LOG’s assets, particularly its investment in IOG, continued to climb, supported by regular asset updates, regulatory filings and financial updates, LCF increased the facility limit to I believe £50 million by a side letter on the same terms as the original loan. Sometime later, it was decided that a more robust document should be put in place to replace the side letter. I will call this LOG 2. I believe that when this document was signed, as it was replacing the side letter, it was dated the same date as the side letter. With hindsight, the document should have been dated with the actual date and explained in the text that, by agreement of the parties, it was replacing an earlier document and took effect from the date of the earlier document. But Alex Lee prepared the document on the former basis and it was signed on behalf of all the parties on that basis. Everyone agreed. No-one was misled. Presently, I cannot find a copy of the side letter nor can I find one in the disclosed material.

119. Shortly after LOG 2 was signed Buss Murton commenced drafting the third LOG facility as it was envisaged that borrowings would exceed the LOG 2 limit. I instructed Alex Lee of Buss Murton to liaise directly with LOG and their internal legal team and financial officers to agree a new loan document. I will call this LOG 3. I recall that Simon was fully involved with these negotiations as well. The Claimant has accused LCF of providing sham loans but the negotiations with LOG for the LOG 3 facility were far from friendly and I remember Alex Lee telling me that on a number of occasions they had become distinctly adversarial and were taking a considerable amount of time. However, LOG 3 was eventually agreed and put in place

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Loan to Express Charters Limited - £1 million, 25 January 2017

120. This loan did not proceed and was never drawn. Instead LCF's parent company, London Financial Group, used the same funds to acquire the helicopter mentioned in paragraph 108 above.

Loan to Colina Support Limited - £5.5 million / 7.5 million, 29 April 2017
Loan to Cape Verde Support Limited - £7 million, 29 April 2017
Loan to Costa Support Limited - £7 million, 29 April 2017
Loan to Atlantic Petroleum Support Limited - £16.4 million, 29 April 2017
Loan to Waterside Support Limited - £5 million, 29 April 2017

121. I will deal with these loans compendiously because they all arose out of the same event. In April 2017, there was a management buy-out of L&TD's holding company by which a company called Elysian Resorts Group acquired the shares. For reasons arising out of the parties' commercial negotiations (to which I was not privy and which were never explained to me), the underlying property assets were transferred into newly-incorporated subsidiaries of Elysian. The debt owed by L&TD to LCF, which stood at about £41 million, was to be split and, as to £25 million, novated in segments determined by valuations of the underlying property assets to new companies (named after the property-owning companies but with the word "Support" in the corporate names). Those companies would be retained by Simon Hume-Kendall et al through a holding entity, LG LLP. The remainder of the debt, £16 million, would be novated to a company called Atlantic Petroleum Support Limited, which I believe became LPE Support Limited (and was also, I believe, owned by LG LLP). The loan was guaranteed by London Power Corporation, a company within LG LLP's group, and secured by debentures on the new property-holding companies. I believe this structure was driven by Elysian (presumably, because its owners wanted to sell on, which is what they did, in fact do). The debt was to be repaid by the sellers upon receipt by them of deferred consideration for the shares.

122. From my perspective on behalf of LCF, the corporate re-structure made little difference. I was solely concerned with the value of the underlying property assets

Source: Mouseinthecourt.co.uk

and with ensuring that LCF was, at least, no less well-secured than it had been previously. That was achieved and I was satisfied and instructed Buss Murton to prepare the documentation.

123. In other words, these loans were not new lending by LCF but simply the re-structuring of existing debt to suit the borrower at no cost or detriment to LCF. The Support companies had no assets but that did not matter because they had the benefit of security over the property assets now owned, ultimately, by Elysian. The position of LCF was no better and no worse after this re-structure. LCF's legal costs were paid by its borrowers who recovered the money (I assume) from the sellers.

Loan to CV Resorts Limited - £20 million, 12 May 2017
Loan to Colina Property Holdings Limited - £20 million, 12 May 2017
Loan to Costa Property Holdings Limited - £20 million, 12 May 2017
Loan to Waterside Villages PLC - £20 million, 12 May 2017

124. I will, again, deal with these loans compendiously. They were a part of the Elysian sale and purchase but were transacted 2 weeks later. These were new loans to the newly-incorporated property-owning companies, now owned by Elysian. They were made to enable payment of continuing development costs and some of the deferred consideration and against the security of the properties. They were supported by valuations showing that the respective values of the property assets had continued to increase but bearing in mind that the Support company loans were already secured against the first slice of the properties.

125. Shortly after that, in November 2017, Elysian sold on to a company called Prime Resort Development for, I believe, a profit in the region of £2.5 million. Because Simon et al had not received all of their deferred consideration, they took back the Cape Verde property asset but transferred the Waterside, Colina and Costa Support companies to Prime.

126. The Prime transaction involved no further lending (in fact there was a debt reduction of £1.5 million - £500k in each of Costa Support and CV Resorts

Source: Mouseinthecourt.co.uk

Support, £300k in Colina Support and £200k in Waterside Support). From my point of view, the only feature of the transaction that affected LCF was that the 3 of the Support companies were no longer owned by people I knew. That did not matter, however, because LCF still had security over the underlying property assets. From Simon's point of view, as I understood it, Prime took over the responsibility from Elysian for paying his deferred consideration under the Elysian sale and purchase.

Loan to River Lodge Equestrian Centre UK Limited - £10 million/£20 million, 9 October 2017

127. River Lodge Equestrian Centre (RLEC) took over the equestrian business from Spencer Golding as a sole trader (including the loan which LCF had made to him as a sole trader) and was run by international-level equestrian sports people who had a history of buying, improving and selling sport horses. We were aware that Spencer remained a backer of the business and held a portion of the company but I do not know the specifics. LCF had an all assets charge over RLEC's assets in the UK and a charge on the assets of the subsidiary company in Ireland. The assets of both were primarily the stock of performance horses. LCF was provided with stock lists showing an increasing number and value of performance horses held by the company and we formed the view that the stock was more than sufficient cover for the loans provided.

128. Over 2017 and 2018 RLEC created a significant profile in the performance horse market and we believed that, taking into account its profile and the increasing value of its stock list, it was being successful in its endeavours.

Audits

129. It is a striking fact that LCF received a completely clean audit report in each of the 2 years in which it operated where an audit was completed: the year to 31 April 2016 (in which the audit was undertaken by PWC) and the year to 31 April 2017 (in which the audit was undertaken by E&Y). In the next year, to 31 April 2018,

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the audit was also to have been undertaken by E&Y but, while it was substantially complete and would have been signed off, again, with a completely clean audit report, that did not happen, in the event, because of the FCA intervention and the subsequent administration.

130. I am aware, at least to some extent, of the work which the auditors undertook because they shared their progress on a high-level basis with me at the outset and throughout the process. However, I wish to adduce evidence from the respective audit partners at PWC and E&Y so that they can explain to the court what they did and what they found and have applied for permission to serve witness summaries instead of witness statements in respect of their evidence. Provided that permission is given, I will serve witness summonses ahead of the trial.

131. For the present, I can say, from the information which the respective audit partners and their colleagues provided to me, that they had unfettered access to our bond book, our loan book, all security and valuation documents, our bank statements and the spreadsheets and software we used to monitor loan performance and to ensure that we had enough money coming in from borrowers to ensure that we could meet our obligations to bond-holders. In particular, they checked the valuations of security assets which we had obtained and satisfied themselves that the assumptions we had made and the inferences we had drawn were reasonable. Indeed, they were, apparently, so confident with the valuation documents provided they included their own estimate of the value of the assets LCF held as security against its loans in their audit report. On the auditors' own estimate, LCF's loans were well secured.

132. Moreover, they each built their own model to ensure that the business was apparently viable so that they could sign off on the "going concern" basis, which they did. I remember having conversations with both firms of auditors regarding LCF's charges for borrowing as, when viewed over the short term, those charges appeared to be high. I talked them through the methodology I have set out in paragraphs 67 to 70 above. Both sets of auditors and Oliver Clive & Co said that the model LCF was using was innovative and that the ultimate cost of borrowing

Source: Mouseinthecourt.co.uk

was not too far adrift from other mainstream lenders in the market to be competitive.

133. Moreover, they checked to ensure that we were making the correct returns to bond-holders and that we were doing so, properly, from borrower repayments and not simply by recruiting more bond-holders, which is the allegation made against us, i.e. that LCF was set up as a Ponzi Scheme. Doing so properly included substituting a new bond for an old bond where a bond which had, notionally, been used to seed a loan, had expired. To be clear, the notion of "seeding" did not mean that bond-holder money was used to make loans. As previously explained, the money ceased to belong to bond-holders on completion of the relevant bond transaction. However, we had a commitment to borrowers to pass on the precise cost of borrowing and so we had to keep track of which bond, as I have put it "notionally", seeded each loan so that the cost of borrowing calculation could be carried out strictly accurately, as indeed it was.

134. Had the auditors found that the business was inherently unviable, as the Claimants allege, whether because its borrowers lacked the requisite substance to repay or because the business model was fundamentally flawed or because I was, personally, drawing out too much money, they would have been unable to sign audit reports which stated that the accounts were true and fair and that the business was a going concern.

135. Naturally, I took comfort from the fact that they did sign those reports and I take comfort from it now because it tends to undermine the case asserted against me. In particular, I relied on my fellow directors, Kobus and Katherine, and senior staff such as Katie to do their jobs properly in LCF's back office. I did not check their work personally. I trusted them. I was, therefore, fortified in the levels of trust I reposed when two firms of auditors of the stature of PWC and E&Y confirmed, as they did, that their calculations matched my colleagues' calculations almost exactly, within a few pounds, and that there was no issue whatsoever with either audit. Moreover, this was not a case, either, where either auditor raised any concerns internally which did not make it into the final set of accounts because the

Source: Mouseinthecourt.co.uk

concerns had been resolved in some way. Neither firm of auditors raised any concerns whatsoever.

136. In order to undertake their task, the audit team came down to our offices and spent weeks with us going through everything. When they needed to spot check specific details of a bondholder, they traced the individual and their funds and checked the information held about that person. If the money was then used to partially fund a loan to a particular company, they checked where the money went. They also had a look at the loan and security documentation for the company that they were checking to see if everything was recorded correctly. If they saw any discrepancy, they made sure that they identified and resolved any of those. I was not involved in the process as this was a task of Kobus and Katherine and the back-office team but I was kept informed so that I understood what the process was and how it was progressing.

137. LCF's accountants, Oliver Clive & Co, also had the same unfettered access to all of LCF's financials and documents. They were the ones who prepared and filed the company's tax returns, produced the company's monthly management accounts and reconciliations, produced the company's figures for its regulated reporting, processed the company's payroll and monitored my use of the director's loan account. There was never any suggestion made to me by Oliver Clive & Co that there was anything wrong – whether in relation to the bonds, the loans or the security or the basic business model or its implementation,

138. If, as is now alleged, LCF had been carrying out anything other than the business it purported to be carrying out and the loan and security documentation was simply a front for massive misappropriation, it would have been extremely easy for LCF's accountants and auditors to identify it. Had they done so, they would have had a professional duty to report it. That they did not do so, so it appears to me to undermine the case now asserted against me.

Source: Mouseinthecourt.co.uk

FCA Intervention

139. On 10 December 2018, the FCA carried out a "raid" on LCF's offices. I have seen elsewhere that it has been described as an "unannounced visit". I choose the word "raid" because it involved a very large team, including armed police, and was conducted with great hostility throughout. They brought with them a "first supervisory notice", which effectively closed us down by requiring us to withdraw all our financial products immediately. They also brought an authority, which entitled them to require the production of information and documents. However, in the event, they did not wait for us to produce the information and documents on the list. Instead, they proceeded to ransack the office, taking all LCF's books and records from the office in a single day. They turned the office upside down and left it in a mess.

140. On the day of the raid, I was on a shooting trip in Wales with two of my sons. I had to leave them with the shooting party and get myself to the office as quickly as I could.

141. In the days which followed, the position was extremely confused and it was far from clear what the basis of the FCA's action actually was. I have always been struck by the disparity between what appeared to be a number of regulatory concerns relating, primarily to ISAs (which could, presumably, have been resolved very easily, as previous concerns had been) and the heavy-handed and, essentially, final nature of what happened, without any prior warning, on the day of the raid.

142. The lack of clarity was not helped by the fact that the supervisory notice was concerned with ISAs and bonds whereas the information and document request also included information and documents relating to our loan book,

143. The people I dealt with were relatively lightly informed. For example, they were, apparently, unaware that we were in the process of concluding the writing of a regulated bond that would be listed on ORB or that we had had extensive dealings with the regulator on that subject. Indeed, I recall that it was Lewis Silkin who made them aware of this at a subsequent meeting at Lewis Silkin's office at which

Source: Mouseinthecourt.co.uk

my personal lawyers, Peters &Peters, were also present. They had, evidently, not read any of our documentation and, indeed, during the raid told me that they had only looked at the front page of our website and gone no further.

144. During the raid I was informed that the FCA had access to the National Crime Database and that the database had linked LCF to an organised criminal group (or "OCG"). Their news flawed me at the time as LCF had never had nor ever would have had any links to criminality. On reflection, however, I think I can see how a link may have been created. In late 2017 or early 2018, Surge discovered a "phishing" scam into LCF. Surge's systems enabled them to pick this up in half an hour and only three bond-holders were effected. One bondholder transferred, I think, £25k to an account controlled by the fraudsters. Entirely voluntarily, LCF made this bond-holder whole by the end of the same day out of LCF profits.

145. Kobus reported the issue to the City of London Police who dealt with such matters. LCF and Surge worked with the police giving them access to our bank accounts and email system so they could trace the funds and the source of the IP etc. Kobus kept up to date with the investigation and was told that due to LCF's and Surge's swift action the police were able to uncover a previously unknown international criminal gang. After about 6 months, we saw an article in The Times that reported that a previously unknown international criminal gang had been uncovered and that gang had undertaking phishing scams on various financial institution and preyed on vulnerable people pressuring them into using their bank accounts to split the funds up over numerous accounts and eventually send the funds overseas. Kobus contacted the City of London Police to enquire if this was the gang that LCF had uncovered and he was told that it was. So I can see how LCF could have been linked to a criminal gang as LCF was the entity that first reported it. I can also say that since the raid on LCF I have never been questioned about being part of an international organised phishing crime ring and I believe that the FCA made a enormous error of judgement and acted rashly in raiding LCF in the way they did and by using armed police to enter the office. I place the blame for the collapse of LCF and entire resulting fallout at the feet of the FCA.

Source: Mouseinthecourt.co.uk

146. In short, the raid happened. I have never understood the legal basis for what happened. They served the supervisory notice and the second notice which required the production of information and documents. But rather than afford us an opportunity to comply, they entered our office with armed police and proceeded to ransack the place and take what they wanted. Their authority to do that has never been explained to me and I strongly suspect that they exceeded their powers and that the conduct of the raid was unlawful.

147. As far as I am aware, the FCA then continued its investigation but we heard from them only sporadically. On one particular occasion, there was a tribunal hearing, which was concerned with the legality of the first supervisory notice. On the day of the hearing, the FCA notified Lewis Silkin that the tribunal was hearing the matter at midday. That amounted to about 2 hours' notice. I was unable to get to the hearing (I live in Sussex, more than 2 hours away). Even our lawyers at Lewis Silkin could not get there. Written representations were prepared and submitted to the FCA but I do not think that that paper was even presented to the tribunal, which simply decided that because LCF's bonds were not transferrable, they could not be held within an IFISA as they breached the withdrawal and transferability terms without hearing our submissions to the contrary.

Administration

148. The company's business had been suspended by the FCA but it still had liabilities. Oliver Clive & Co were instructed to investigate and report to the board, which they did. They concluded that LCF was cash-flow insolvent and should be put into administration as there was a chance that the company could recover. Importantly, they confirmed, in a letter to the directors, that the only reason why LCF was insolvent was due to the intervention by the FCA. Immediately prior to the intervention, it had not been insolvent.

149. On Oliver Clive & Co's recommendation, we approached Smith & Williamson as potential administrators. At a meeting also attended by the board, Lewis Silkin,

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Mishcon and Oliver Clive & Co, they said that the administration would take approximately 4 years and that there would be a payment holiday period of 6 to 12 months to steady the ship and the loans, if they had not already been repaid, would be brought in over that period and that the cost of a solvent wind-down would in the region of £500,000.

150. At the same meeting, the administrators also informed those present that the FCA had no jurisdiction over LCF's ISA business and should not have taken the steps it did in respect of that business.

151. Once the administrators were appointed, they and their solicitors, Mishcon de Reya, told us that they were going to appeal the decision made by the tribunal but they did not do so. My then solicitors, Peters & Peters, told Mishcon that I would appeal if they did not. But Mishcon fobbed them off. They did not appeal and they prevented us from doing so.

152. To my surprise, the administrators appeared to be inexperienced in the field of oil and gas in particular. In January or February 2019, the two lead administrators, Finbarr O'Connell and Colin Hardman, asked me, as we were about to go into a meeting with LOG, whether the CPRs in relation to IOG's oil and gas assets had been prepared by LCF. Had they had any relevant experience, they would have known, as I did, that, in that field, a CPR is a highly regulated document prepared by a third-party professional.

153. Further, I recollect that LCF was due to receive a £40 million loan redemption from LOG when a company called CalTech, which was owned by Warren Buffett, bought into IOG. My understanding is that, in the event, LCF received less than half of the amount following the involvement of the administrators.

154. Generally, the Administrators acted irresponsibly, in my view, by issuing reports to the public which encouraged people to believe that LCF was set up as a "Ponzi Scheme" and that the assets LCF held as security for its loans were worthless. This reckless commentary simply made their task as administrators more difficult and would, no doubt, have had a significant downward impact on asset values, when

Source: Mouseinthecourt.co.uk

the assets came to be sold, and, I believe, contributed to the reduced amount received from CalTech. Additionally, I am aware that shortly after this announcement Prime lost several third-party funders who they were engaging with to try and refinance the loans due to LCF.

155. Finally, I would say that I believe that the administrators have contributed the process by which I have been made a scapegoat for the collapse of LCF and that this has engendered very considerable prejudice against me as well as public hostility. For example, their solicitor, Mr Mike Stubbs of Mishcon told me that I should not attend the first meeting with bond-holders because I was in a poor state, mentally, and because directors seldom attended such meetings and were not expected to do so. I would have attended but, acting on Mr Stubbs' advice, I refrained from doing so. I was told afterwards by my then lawyers, Peters & Peters, that they arranged for an empty chair to be placed at the top table with my name on it and made pejorative remarks about me when bond-holders asked why I was not present.

Remuneration and Receipts

156. Finally, I will deal with my remuneration from LCF and other payments which I received, which the Claimants have simply lumped together and described as misappropriations.

157. I did not have an employment contract with LCF. Because it was my own company (I was and remain the sole shareholder), I drew money out and paid money in over the year. Those entries were booked to my director's loan account and the net balance was declared as income at the end of the financial year. For that reason, I filed a self-employed person's tax return, which was prepared for me by my personal accountant, Stephen Davidson at Oliver Clive & Co, who had acted for me since my days at RBS. I drew at the rate of £20,000 per month, increasing to £25,000 in February 2018 (when I entered into a written consultancy agreement with the company). I paid myself £10,000 in the period from 15 July to 31

Source: Mouseinthecourt.co.uk

December 2015, £242,700 in the calendar year 2016, £200,000 in the calendar year 2017 and £275,000 in the calendar year 2018.

158. I have prepared a schedule of my drawings from LCF, which is produced to me marked "B". That schedule shows the drawing I have mentioned above, plus a further £10,000, which was paid to me in January 2019 by the FCA as they had control of LCF bank accounts at the time. It also shows, at the bottom, that I paid £40,775 to LCCL in August 2015 to clear my director's loan account. That was why I only drew £10,000 from LCF for the rest of that calendar year.

159. The schedule also shows 3 payments I made to LCF. The first one, which was £650,000, was pass-through. The company funded a payment for one of my property purchases and I reimbursed the money. The second was the onward payment of £384,000, which I had borrowed from Spencer Golding and which I paid to LCF as a loan to fund the purchase of a horse transporter, which was a corporate asset used at equestrian events sponsored by LCF which was sold by the administrators for a third of its value. I informed the administrators that I had been approached by the manufacturers, Sovereign Horseboxes, to buy to vehicle for £300k. I later found out that the administrators had sold the vehicle via their agent SIA for £100k. I repaid Spencer but, so far as I can recall, I was not repaid by LCF. The third payment was a loan of £111,348.19, which I made when LCF was short of cash in August 2016. That loan has not been repaid.

160. I was paid my Christmas bonuses from LCF through a company called Media GPS Limited ("Media GPS"), which belonged to my father. I did that for two reasons: first, to help my father; second, because I intended that that company would be vehicle I would use after I had sold LCF and I wanted it to have a financial history rather than be a brand new, previously unused vehicle at that stage. I set the level of everyone else's Christmas bonus but I delegated the setting of the level of mine to Katie Maddock, who decided that I should be paid £100,000 in 2016 and £175,000 in 2017. On both occasions, it was paid to Media GPS and the bulk of it (all but £3,000) was paid to me from that company.

Source: Mouseinthecourt.co.uk

161. I have prepared a schedule of the payments I received from Media GPS in respect of Christmas bonuses. It is produced to me marked "C" and shows that I received £272,000 of the £275,000 paid to Media GPS in respect of bonuses.

162. I carried two consultancy projects: one for GCEN (who wanted to expand their business by working for other firms like LCF); another for Surge, who paid me to help one of their clients, Blackmore, and generally assist with appraising other potential bond-related opportunities. The majority of the work was with Blackmore, the business of which related to property development finance. GCEN paid me direct into my personal bank account. Surge paid me through Media GPS.

163. I have prepared a schedule of the payments in respect of my consultancy earnings. It is produced to me marked "D". It shows that I was paid £68,804 by GCEN and £374,000 by Surge.

164. In addition to the above, I received money from various of Simon & Elten's companies on account of my 5% carried interest under the 2015 exit documentation. The sums were reasonably substantial because those businesses had done well but they were not paid from LCF and had nothing to do with my remuneration.

165. Some of the SPA payments were made through GCEN on behalf of LOG in the second half of 2018. The only treason for this that was mentioned to me was that LOG was moving their banking from Metro to Barclays and, for that reason, found it convenient to make these payments through GCEN (which was, after all, a payment processing company).

166. Generally, the payments simply arrived. I did not chase them and, while I was, sometimes, told in advance that the money was coming, frequently I knew nothing about it until the money landed in my account. The payments came from different companies controlled by Simon and his colleagues. I was never told why the payments were made by the particular companies by which they were made.

167. I have prepared a schedule of the payments which I received in respect of my 5% carried interest. It is produced to me marked "E". As will be seen from that

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schedule, I received £1,698,596 from GCEN on behalf of LOG and £2,820,731.90 from various companies direct into my account. That made a total of £4,519,327.90, which was within the £5 million ceiling stipulated in the 2015 SPA. But for the events which occurred in December 2018, I would have taken up the matter of the shortfall with Simon to ensure that I received the full £5 million. In the event, I did not.

168. In addition to the above, I received £30,000 from LCM for my work on the company set up and developing a network of regulated distributers.

169. In addition to the above payments, I should record that I was made 3 personal loans by Spencer Golding, both in connection with my property purchases. The first was a loan of £900,000 which was made to me in August 2017 to enable me to buy Blackden Cottage, which I sold approximately 2 years later. This loan has not been repaid.

170. The second was a loan of £750,000, which assisted my purchase of Clarklye Farm Barn in October 2018. That loan has been repaid in full.

171. The third was a loan of £384,000, which I have mentioned above and which was paid to my father's bank account because I had initially intended it as a surprise for my wife. In the event, the money was transferred from my father's bank account to LCF's account. LCF used the money to purchase a large horse lorry that it ran because we sponsored numerous equestrian events. We had big stands at these events. We had a very large presence, and the lorry was sign-written. The lorry provided accommodation and transported horses for our sponsored riders. When I transferred the funds to LCF, the amount was booked to my director's loan account. The administrators sold the horse lorry for a third of the price paid for it at what I believe to be a substantial under-value. I repaid Spencer but have not recovered the money from LCF.

172. I see from the Particulars of Claim that I am alleged to have misappropriated the sum of £5,278,727.95. I am not aware that a breakdown of this figure was provided prior to the arrival of Schedule 2 to the (non-admitted) neutral statement of agreed facts, where it is broken down – though, to my surprise, I see that none of the

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money is said to have been taken directly from LCF itself. I assume that it follows from that omission that my drawings from LCF are not said to be misappropriations, which suggests that it is accepted, at least in relation to these payments, that LCF had a legitimate business and that I am entitled to my remuneration for my part in running it. In that case, I assume that the claim that the Christmas bonuses were misappropriations will now be dropped.

173. I have explained each of the payments making up the sum of £5,278,727.95 above but, for clarity, I will summarise my position in relation to each category in the order in which they are set out in the (non-agreed) neutral statement.

GCEN - £1,698,596

174. These were payments on account of my 5% carried interest arising from the 2015 SPA. See paragraphs 142 and 144 above and Schedule E.

L&TD - £991,361.11

175. These were payments on account of my 5% carried interest arising from the 2015 SPA. See paragraphs 143 and 144 above and Schedule E.

LCM - £30,000

176. This was remuneration for my work for LCM. See paragraph 145 above.

LG LLP - £882,000

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177. These were payments on account of my 5% carried interest arising from the 2015 SPA. See paragraphs 143 and 144 above and Schedule E.

<u>LP Consultants - £195,000</u>

178. <u>I believe that these payments may have been mis-characterised by the Claimants. I cannot see any payments from LP Consultants in my bank statements.</u>

<u>LPC - £315,000</u>

179. These were payments on account of my 5% carried interest arising from the 2015 SPA. See paragraphs 143 and 144 above and Schedule E.

<u>Media GPS - £573,020.84</u>

180. These payments were a combination of Christmas bonuses from LFC and consultancy earnings from Surge. See paragraphs 137-140 above and Schedules C and D. In fact, the sum total is the larger sum of £646,000.

<u>Sands Equity - £593,750</u>

181. These were payments on account of my 5% carried interest arising from the 2015 SPA. See paragraphs 143 and 144 above and Schedule E.

<u>The Gloster Report</u>

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182. On 22 May 2019, the Treasury directed the FCA to conduct an investigation into its regulation of LCF, which it did by appointing Dame Elizabeth Gloster to carry out the work. She produced her report on 23 November 2020. Certain minor changes were, apparently, made to it and the final report is dated 10 December 2020.

183. My reaction to the report is that Dame Elizabeth was instructed to answer a hypothetical question. Her investigation assumed (without making any finding) that the business of LCF was fraudulent and then set about deciding what the FCA could have done to prevent the fraud. For that reason (no doubt), the report is replete with derogatory references to LCF. For example, in the executive summary (Chapter 2), she states that the FCA's failings made it possible for LCF "to use its authorised status to promote risky, and potentially fraudulent, non-regulated investment products to unsophisticated retail investors … [and] to present an unjustified imprimatur of respectability to the market".

184. In the course of trying to answer the hypothetical question she was set (or which she set herself), Dame Elizabeth sought to identify various "red flags" which, had the FCA been more alert, it might be expected to have noticed. Had it done so, Dame Elizabeth opines, it would have closed LCF down at an earlier date and mitigated losses to bond-holders.

185. Consistent with that approach, Dame Elizabeth set out at paragraph 7.4 on page 13 a list of the sources of evidence received by her investigation. Significantly, it does not include me or any member of the management of staff of LCF. Had I been asked to do so, I would have assisted her with various matters

186. I am aware, of course, that Dame Elizabeth's report has no evidential status in these proceedings whatsoever and is no more than the opinion of her and her team. Indeed, I am advised that it is inadmissible in these proceedings. However, I feel that the Court may be assisted to know my brief reaction to it (a comprehensive commentary being wholly inappropriate and, in any event, impractical within the

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confines of this witness statement). I do not intend, by mentioning it here, to agree that it be introduced in evidence.

187. In that context, I make the following observations:

(1) Dame Elizabeth recognised that LCF's bond and loan businesses were wholly unregulated and that LCF required no permissions to carry them on.

(2) She recognised that where LCF did require permissions was (a) for the approval of its financial promotions, (b) as an ISA manager. Both of those permissions were obtained. Before they were obtained, LCF relied on Sentient Capital to approve its financial promotions and had not developed an ISA business.

(3) She identified a number of matters which she described as "red flags". One was that LCF applied for permissions it did not use (because we disclosed in a 2016 business plan which we submitted to the FCA that we made £0 from regulated activities). I am not sure which permissions she had in mind because we needed and used our consumer credit licence and we needed and used our corporate finance permissions. Maybe she had in mind our 2018 application for permission to give investment advice to retail clients. If so, she was not aware that we intended to expand into that area of activity in 2019, as I have explained. It strikes me as unfair to criticise LCF for applying for and obtaining the regulatory permissions it needed to run its business, albeit that that business was, as the law then stood, mainly an unregulated one.

(4) Further supposed "red flags" set out in paragraph 6.4 of Chapter 10 include: (a) LCF's rapid growth, (b) LCF's having "repeatedly breached [the] financial promotions rules", (c) allegations from third parties that LCF was engaged in fraud, (d) the proposition that mini-bonds "carried particular risks for consumers" and (e) LCF's using mini-bonds in an "unusual" way. I do not believe that our interaction with the regulator in 2016 and 2017 can properly or fairly be characterised as arising from "repeated breach". I imagine that the regulator writes to many firms about their websites, requesting adjustments, without holding them in breach. As for the other so-called "red flags" none of them tends to support the allegation that LCF's business was a fraud. On the

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contrary, mini bonds are a permitted form of fund-raising instrument under the EU Prospectus Directive. Moreover, in the light of that, I do not consider that our use of them was "unusual".

(5) Dame Elizabeth stated that LCF's business model was "highly unusual in that it had access to the 'badge' of FCA authorisation … but operated at a level of risk wholly different from the norm for corporate finance advisory firms". That may have been so but what Dame Elizabeth describes as "access" was in fact a legal requirement. Moreover, LCF never held itself out as a "corporate finance advisory firm". This was its aspiration in 2019 but it first had to conclude the issue of its ORB bond. In the event, it was never given the opportunity to do so.

(6) Dame Elizabeth accepted that there was "a lacuna in the way in which ISAs were regulated" (Paragraph 2.1 of Chapter 13). The lacuna was that HMRC approved firms (as it approved LCF) but not products and the FCA did not consider itself responsible for LCF's ISAs. So no-one looked at LCF's ISAs until the sequence of events which led to the raid in 2018. Dame Elizabeth's investigation took the view that they were not compliant but no-one had ever received submissions from LCF or its advisers to the contrary effect. My reaction to this is that had there been a problem with the ISA product, we would have rectified it, as we rectified everything else. But no-one gave us that opportunity at the time. No-one has done so subsequently.

(7) Finally (for the purposes of this witness statement), Dame Elizabeth determined that there was a basis for believing that LCF was unable to meet its financial commitments for the next 12 months without recruiting further bond-holders and using their money for that purpose. In making that determination, she was heavily dependent on a report prepared for her investigation by a firm of accountants, StoneTurn, which is at Appendix 11. StoneTurn concluded that "LCF did not have sufficient current assets and liquidity to meet its liabilities in the following 12-month period as they fell due". In consequence, LCF "would have been in the position of having to continually raise significant funds from either issuing further bonds or other external sources of funding".

Source: Mouseinthecourt.co.uk

StoneTurn accepted that one source of liquidity was its expanding loan book – but they undermined the credibility of that by saying: "It is unclear why, with LCF reporting such low loan to secured assets ratios, borrowers … would be prepared to accept such high costs and terms of borrowing". A footnote refers to "interest rates potentially in excess of 29%, arrangement fees of 2% and between 10% and 25.5% of the amounts advanced are deducted". My answer to this is set out at paragraphs 67 to 70 above, which was accepted by both LCF auditors and accountants. The intention was that borrowers would borrow, based on my prior banking experience, for on average 15 years or more so that, evened out across the term, the APR was in the region of 10%. Neither Dame Elizabeth nor StoneTurn appreciated this or, apparently, received any evidence from anyone who did. They simply assumed that the loans would be held for very short periods which is a false assumption. If I had been asked, I would have confirmed exactly what I explained in paragraphs 67 to 70 above.

The State of the Assets Now

188. Because of the hostility which was engendered in the immediate aftermath of the intervention and the administration and, of course, the existence of these adversarial proceedings, I have been shut out of the administration process and have little knowledge of what has gone on.

189. However, I will set out here what I know of the state of the underlying assets now. I have gleaned this information from public source materials.

190. Lakeview has been sold. The administrators mishandled the sale from start to finish. The property was listed for sale with a small local agent with an asking price of approximately £6 million, which was a gross under valuation. It sold for a price of approximately £12 million but, in my view, had the administrators done their jobs properly it would have been marketed very differently with an asking price considerably higher than the price for which it eventually sold.

191. The properties in the Dominican Republic have not been sold, so far as I am aware.

Source: Mouseinthecourt.co.uk

192. The property in the Cape Verde Islands had a rather chequered history which is not the administrators' fault. My understanding is that Simon Hulme Kendall, who took the property back at the time of the sale to Prime but later took the decision to abort the acquisition for a reason concerned with a defect in title which came to light very late in the day. He offered alternative security but I do not know what came of that proposal.

193. IOG has gone into administration. It appears, from public source material, that the reason for the insolvency was mismanagement. On that basis, the assets still exist and are, presumably, still subject to security in favour of LCF. Properly handled, that should enable the administrators to recover full value in respect of the LOG loans.

194. So far as RLEC is concerned, but I understand that the administrators are working out the position with those concerned with the company, including Spencer Golding.

Conclusion

195. It will be seen from the above that it is my position that I have done nothing wrong. I am not saying that I did everything perfectly or that I never made a mistake. But I did not set out to defraud anyone and I do not believe that I have incurred any liability to the Claimants, whether as set out in their Particulars of Claim or at all.

196. In particular, I derived the original concept for LCF's business from my experience in banking at a fairly senior level with RBS. I applied the experience I had gained, particularly on the lending side, assessing the value of the borrowers' underlying assets from professional valuations; setting a conservative LTV ratio (consistent with that applied by RBS and, in my experience, many other banks); relying on competent solicitors to prepare bespoke lending documentation; setting up a risk committee internally, which was independent of me; declaring my person interest, prudentially, even though, as I have explained, it was a purely passive interest.

Source: Mouseinthecourt.co.uk

197. Similarly, on the fund-raising side (though I appreciate that the main thrust of the case against me relates to lending), I took and acted on the advice of highly competent solicitors; I caused LCF to retain Sentient Capital to approve the early documentation and then a highly competent and well-qualified compliance officer to do the same thing internally when LCF had the relevant permissions; I ensured that LCF complied, promptly and carefully, with all requirements imposed by the regulator; I looked into expansion and, in particular, moving wholly into the regulated market as soon as I felt that that was a practical possibility.

198. Standing back, I have the impression that the FCA panicked when they realised the scale of the funds coming in through Surge and the kind of loans we were making, which were, clearly, not the sort of loans they were expecting. They seem to have expected to find a "typical" loan book, comprised lots of small loans to SMEs. But that was not my experience. Nor how I thought that LCF could occupy a vacant space in the market and make a lot of money. That is why I set LCF to make a small number of large loans on, as I and my fellow directors considered, bankable assets such as large resort developments and oil and gas fields in the North Sea. If the FCA was expecting to find loans to SMEs in the region of £500,000 to £1 million each, that was pure prejudice on their part. There was no reason whatsoever why LCF should not make the rather more ambitious loans it did. But rather than explore that with us, the FCA took peremptory and irreversible action. They did not even, seemingly, first draw together all the information they had about LCF. Had they done so, they would have appreciated that we had been in touch with them extensively in relation to the proposed regulated bond and that we planned to diversify the range of services offered, particularly in the regulated market. Had they come and spoken to us, I would have told them that. Instead, they carried out their raid and put in motion a sequence of events which immediately destroyed the business and led, seemingly inevitably, to the position in which we are now.

199. That position is untenable because the case against me is that I gave the money away to my mates. I did not. Firstly, they were not my mates. Secondly, had I ever entertained such a crazy plan, I would, surely, have kept more of the money for

Source: Mouseinthecourt.co.uk

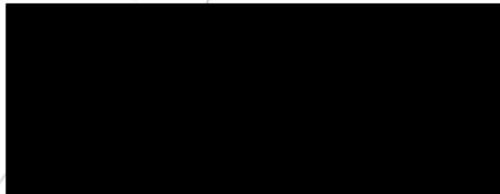
myself. Thirdly, it is, in my view, highly improbable that I would have taken the pains I did to ensure that everything was done properly, as PWC and E&Y found had been done when they came to audit us.

200. In short, 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.

201. I therefore ask the Court to dismiss this claim.

Statement of Truth

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes or causes to be made a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed: 

Name: Michael Andrew Thomson

Date: 24 November 2023

Position: First Defendant

Source: Mouseinthecourt.co.uk

Confirmation of Compliance

I understand that the purpose of this witness statement is to set out matters of fact of which I have personal knowledge.

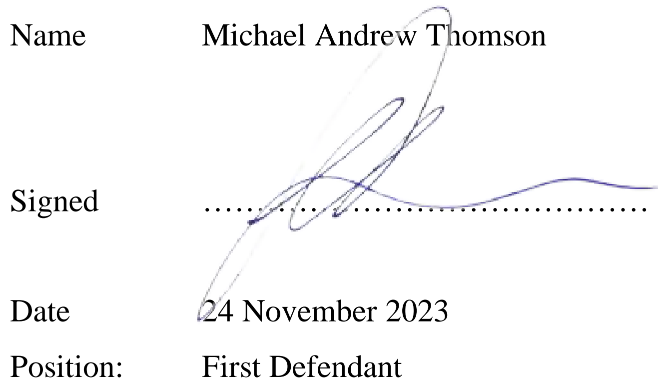
I understand that it is not my function to argue the case, either generally or on particular points, or to take the court through the documents in the case.

This witness statement sets out only my personal knowledge and recollection, in my own words.

On points that I understand to be important in the case, I have stated honestly (a) how well I recall matters and (b) whether my memory has been refreshed by considering documents, if so how and when.

I have not been asked or encouraged by anyone to include in this statement anything that is not my own account, to the best of my ability and recollection, of events I witnessed or matters of which I have personal knowledge.

Name Michael Andrew Thomson



Signed ……………………………………………

Date 24 November 2023

Position: First Defendant

Source: Mouseinthecourt.co.uk

Confirmation of Compliance

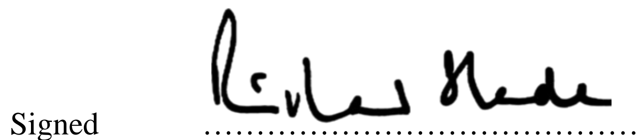
I hereby certify that:

1. I am the relevant legal representative within the meaning of Practice Direction 57AC.

2. I am satisfied that the purpose and proper content of trial witness statements, and proper practice in relation to their preparation, including the witness confirmation required by paragraph 4.1 of Practice Direction 57AC, have been discussed with and explained to Michael Andrew Thomson.

3. I believe this trial witness statement complies with Practice Direction 57AC and paragraphs 18.1 and 18.2 of Practice Direction 32, and that it has been prepared in accordance with the Statement of Best Practice contained in the Appendix to Practice Direction 57AC.

Name Richard John Slade



Signed ……………………………………

Position Solicitor

Date 24 November 2023

Source: Mouseinthecourt.co.uk