

IN THE HIGH COURT OF JUSTICE
BUSINESS & PROPERTY COURTS
OF ENGLAND AND WALES
BUSINESS LIST (ChD)

BL-2020-001343

BETWEEN:

- (1) LONDON CAPITAL & FINANCE PLC (IN ADMINISTRATION)
(2) FINBARR O'CONNELL, ADAM STEPHENS, HENRY SHINNERS, COLIN HARDMAN AND GEOFFREY ROWLEY (JOINT ADMINISTRATORS OF LONDON CAPITAL & FINANCE PLC (IN ADMINISTRATION))
(3) LONDON OIL & GAS LIMITED (IN ADMINISTRATION)
(4) FINBARR O'CONNELL, ADAM STEPHENS, COLIN HARDMAN AND LANE BEDNASH (JOINT ADMINISTRATORS OF LONDON OIL & GAS LIMITED (IN ADMINISTRATION))

Claimants

- and -

- (1) MICHAEL ANDREW THOMSON
~~(2) SIMON HUME-KENDALL~~
~~(3) ELTEN BARKER~~
(4) SPENCER GOLDING
(5) PAUL CARELESS
(6) SURGE FINANCIAL LIMITED
(7) JOHN RUSSELL-MURPHY
(8) ROBERT SEDGWICK
(9) GROSVENOR PARK INTELLIGENT INVESTMENTS LIMITED
~~(10) HELEN HUME-KENDALL~~

Defendants

Transcript of proceedings made to the court on

Day 31 - Thursday, 2 May 2024

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

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

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

Elten Barker (D3) settled and is not appearing

Spencer Golding (D4) is debarred from defending the claim

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

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

Robert Sedgwick (D8) appears in person

Thursday, 2 May 2024 (10.30 am)

MR PAUL JAMES CARELESS (continued)

MR JUSTICE MILES: Just before you start, Mr Robins, I gather you're struggling with the sound?

THE STENOGRAPHER: It would certainly make my job extremely difficult, my Lord.

MR JUSTICE MILES: Well, I could only just hear you saying that. And I imagine Mr Ledgister would struggle?

MR LEDGISTER: Absolutely, my Lord. I struggle without the contraption at the back, let alone trying to compete -- Mr Careless's voice trying to carry over here.

MR JUSTICE MILES: Yes.

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

MR ROBINS: Mr Careless, do you remember seeing LCF's management accounts for the year ended 30 April 2017?

A. I don't remember it.

Q. Could we have a look at <SUR00126207-0001>. You can see, at the top of the page, John Russell-Murphy is emailing you, 20 June 2017, saying:

"Please see attached the latest set of draft accounts, Andy has asked me not to share this with anyone at the moment."

If John sent you the accounts, do you think you probably looked at them?

A. I wasn't particularly one for looking at detailed documents. I would leave that to other people. So possibly not.

Q. Can we look at the attachment, <MDR00091092>, please. On page 2 -- sorry, the next page or the page after. That page, here we are [page 3]. We see, highlighted in yellow, Mr Thomson has given a value of secured assets in the sum of £189,450,000. Do you see that?

A. Yes, sir.

Q. If you had opened it and had looked at that and seen it highlighted in yellow, you would have thought, wouldn't you, "Well, that's a bit odd, he told us a figure of £215 million, which has been told to members of the public, advertised in the newspapers. Why on earth has it gone down?" That's what you would have thought if you had looked at this, isn't it?

A. I presume so, yes. I mean, it does say "floating". Doesn't "floating" suggest that things might -- but, yeah, I presume -- I don't remember the document, though, sir.

Q. Can we look at page 8, please. It might be internal page 8. Let's have a look. No, this is the right one. Do you see "Profit for the period/year", right at the bottom?

A. Yes.

Q. For the year ended 30 April 2017, it's £164,260?

A. Yes.

Q. Now, you would have been aware, wouldn't you, that Surge was making a lot more profit than that?

A. Yes.

Q. You would have probably been aware, wouldn't you, that, on average, Surge had made more profit than that every 25 days in the year ending 31 January 2017?

A. Yes.

Q. By this point, by the time you see this, June 2017, Surge would have been making even more, wouldn't it?

A. Possibly. Yes, I would say it would be.

Q. If you had looked at this, this would have rung alarm bells, wouldn't it? You would have been thinking to yourself, why on earth would Mr Thomson be giving away so much of the profit to Surge?

A. I can't agree with that. I mean, I don't -- I mean -- sorry, was this a PricewaterhouseCooper one or is this --

Q. This is management accounts?

A. Okay. It wouldn't have alarmed me. I would have been awaiting an audit at this time from an auditor and, as I said to you yesterday, if that audit had have come back, you know, with qualifications saying it didn't have any security or otherwise, then of course that would have changed things. But I sort of, at that stage, sort of -- it was a case of -- it seemed fine.

Q. It seemed fine. You would have probably sent this to Mark Partridge to get his take, wouldn't you?

A. Yes.

Q. Do you think he told you it seemed fine?

A. I don't think Mark Partridge would have said it's fine, or indeed said it was fine, until after the audits.

Q. Do you remember what he said?

A. I don't imagine.

Q. If we look at <SUR00127978-0001>, please. If we zoom in at the top, he tells you and John Russell-Murphy: "Not sure how he can afford a helicopter out of these accounts."

So you knew Mr Thomson had bought a helicopter?

A. Yes.

Q. Given that you had always had an interest in buying a helicopter yourself, you knew how much a helicopter could cost?

A. Yes. I've been involved in helicopters since I sold Money Expert back in 2007, both leasing them and owning them. So I'm fully across the numbers of that, yes.

Q. So you understood Mark was saying that he couldn't afford a helicopter out of these accounts?

A. Yes, I do.

Q. So, it would have been obvious to you that something else was going on, wouldn't it?

A. No, I still don't accept that characterisation. I don't automatically think, when -- I just don't think people are fraudsters until it's proven. I was -- I would have waited until the audit has come through. So he's mentioning PwC, I notice, in this, because obviously that must mean they are currently conducting their own audit at this stage.

Q. You've had the PwC audit and then Mr Thomson replaces PwC.

A. So these management accounts are after the PwC audit then, Mr Robins. That's the way I understand it.

Q. That's right. We saw that yesterday. But it would have been obvious that something was going on if he's running a business, it's not generating much profit, he's buying a helicopter. You must have thought to yourself, "Where on earth is he getting his money from?".

A. Can I give you a brief bit of context on that? When I first met these people together in the barn where they all were, they were wealthy. I mean, people have already mentioned he had 40 million quid, there were Rolls Royces and various other things I've mentioned. These weren't --

Q. You're saying these people and their companies were LCF's primary borrowers. Did you not think maybe they're getting this money for these Rolls Royces and helicopters from LCF?

A. That was the very first meeting when I noted these things. Kerry and I both remarked on it, how well off these people were, and that gave us some comfort. I'm talking collectively, all of them. I'm not sure about Simon -- Andy. But it just didn't -- you know, I'm dealing with these people who worked at -- all these people I'm being introduced to worked at Goldman Sachs and were all rich and -- I don't know. It just didn't ring the bell that it does clearly now.

Q. Then Mark says:

"£0.5 million interest -- what is he charging 2 per cent????????? The model obviously has lots of fees, looks wrong to me though ..."

Your accountant telling you that the management accounts look wrong cannot have been reassuring, can it?

A. I think it's important that we balance this all with all the emails that Mark -- when Mark Partridge says that things are right, which he does, and in person and in emails that we haven't seen yet, then of course -- you know, a "Well done" or "This is great" from Mark is equivalent to fireworks from anybody else. I don't even understand the last bit of it at all, to be honest.

Q. You didn't ask any follow-up questions, did you?

A. Of Mark?

Q. Of Mark or Andy?

A. We would have asked Andy through Mark and myself and Kerry, predominantly, many times, to update us on the security figure, so I don't think that's a fair --

Q. But in terms of my question, is the answer yes or no?

A. To this particular email?

Q. Yes. You didn't ask any follow-up questions?

A. I couldn't tell you if he did, or if I did, or if Kerry did.

Q. You didn't want to do anything that would jeopardise the 25 per cent commissions, did you?

A. We're talking about three audits. We are talking about PricewaterhouseCoopers, Ernst & Young, Ernst & Young. After this -- I mean, we have looked at -- yeah, for three days -- we have danced on a pinhead for, like, a six-month period and we raised 10 million. When the 240 million was raised, we had much better quality audits.

Q. I just want to point out the date again. We are at June 2017?

A. This would reflect -- I presume it is the accounts for the previous 12 months. Unless there's a cash flow forecast or something. The point I'm making is, they have gone through a start-up phase. People don't start bonds, Mr Robins, with -- often with much more headroom -- they don't have hundreds of millions. They might have 5 million or 10 million and then they invest into the -- the loans and the entities in which they're doing and, of course, that then provides the sort of cover, is the way I sort of --

Q. Can we look at <MDR00098992>, please. At the bottom of page 1, you can see Mark emails Andy, 27 July 2017: "We had a board meeting yesterday and wondered if there was any update on the value of your security figure as you indicated in June. Also any update on how the audit is coming along and when the accounts are likely to be signed off."

You have explained to us that Mark didn't have much of an opinion of Andy; he thought he spoke "the usual BS", "almost certainly crap". Mark sending an email like this would not indicate that he was actually going to trust or rely on Mr Thomson's answer, was he?

A. This would have been one of many emails that Mark would have asked for updates. I mean, you can see how cynical Mark Partridge is. That's his job. He's obviously -- you know, he's doing his best to sort of get on top of it. I can't read anything more into that, really, than him asking Andy for an update on the security figure, which I presume, based on this date, is post PwC or --

Q. You and Mark both knew that Mr Thomson's response to an enquiry like this was likely to be "the usual BS", didn't you?

A. Well, it could well have been, "Wait for the audit". We have had a few of those, I think, somewhere.

Q. Do you agree that, at your request, Mark was creating a paper trail to ensure that there were superficial enquiries on file that you could rely on if anything went wrong?

A. Well, no. Mark is doing his job. Most of this is me -- no, I don't agree with that.

Q. Do you agree that asking Mr Thomson a question like this isn't due diligence, is it? You knew he was a liar?

A. I agree with that. It is not due diligence. But we are the marketing agency. I mean, how we are being held responsible for ensuring the security of our client is there, anyway, is remarkable. The audits are the truth. Everything else is potentially management accounts. I don't know how that works, but, you know, I wouldn't presume the management accounts to be as good as -- as good a quality as an audit.

Q. Mr Thomson doesn't respond for a month, but when he does it's at <SUR00141030-0001>. You can see he says in the middle of the page:

"The current value of the assets we hold charges over as security totals £247.6m ... Ernst & Young will be reviewing the details ..."

At the top of the page, Kerry emails you and John Russell-Murphy and Jo Baldock to say: "I am really interested to know what the security comprises and how many loans are currently issued." Do you accept none of you knew, at this point, the truth as to what the security comprised or how many loans were issued?

A. Not if Kerry is writing that. But didn't we have that number previously in an email yesterday that you said, which was 120, I think? If memory serves me right. But, yes, I agree, we wanted to know an update on that.

Q. Well, you didn't know what the security comprised or how many loans were actually issued, did you?

A. No.

Q. So, when Kerry emailed saying, "Missing piece of Ponzi jigsaw" and said you needed information about security and the borrowers, you had never actually obtained that information, had you?

A. Can I see the actual email below it, please, Mr Robins?

Q. I don't think it will help you answer my question. Would you like me to repeat the question?

A. I think the answer is no, to your question. I think we would have relied on the information in the audit as our main source of confirmation.

Q. You hadn't obtained what Kerry had described as the, "Missing piece of the 'is it a Ponzi?' jigsaw", had you?

A. I assume you're referring to an email you might be about to show me.

Q. We saw it yesterday.

A. Right. I mean, we are asking questions, we are trying to -- I know you think we're just asking them for your benefit, but we don't -- people aren't going to invest in a product without any security. I mean, it is just as simple as that.

Q. Andy says --

A. I don't even know how to begin to answer that question when the presumption of it is -- I don't agree with.

Q. When Andy says something like this, you would agree that you can't necessarily rely on what he's saying, can you?

A. But didn't -- I'm not -- didn't we at some point see that number was actually correct, Mr Robins, yesterday, for example?

Q. I don't believe we did --

A. I seem to recognise --

Q. -- but my question is, when Andy says something like this, you knew at the time you couldn't necessarily rely on what he was saying as the truth, could you?

A. I don't agree with that. That number there, for example, I seem to recognise that number, or very close to that number, in the Ernst & Young audit.

Q. Had you seen the Ernst & Young audit by 29 August 2017?

A. No, sir.

Q. So, on that date, when Andy said something like that, you would have thought, "Sometimes he speaks BS, crap, we can't necessarily rely on this". That's what you would have thought, isn't it?

A. No, but, in the Ernst & Young audit, what, it didn't say --

Q. Had you seen the Ernst & Young audit on the 29th --

A. No, but I presumed they were going to check that number. No, I had not. I just took it on -- perhaps that was --

Q. Given that it's Andy, you thought it might be untrue?

A. No.

Q. You thought, "It might be untrue, but we will find out if he manages to get a signed set of accounts from Ernst & Young"?

A. Well, technically, yes, I think that is true. I would have believed that. Yes, I would have waited for that.

Q. Can we look at <MDR00098993>, please. This is the same day. Jo emails Surge -- sorry, Chris Mason to say: "Andy has now confirmed the assets figure is £247.6m can you let the AMs know ... Tech are sorting the changes on the website."

Then <MDR00098994>. Craig emails the account managers:

"Andy has now confirmed the assets figure is £247.6m, this is alongside the £78.5m in loans. This is a 31.8 per cent LTV. I will update the email templates this evening ..."

You agree you didn't wait for the audited accounts. You went immediately to start telling the public about what the unreliable Mr Thomson had said?

A. Mr Robins, there might be a bit of a sort of large chunk missing from this, which is -- he hasn't really been mentioned much in the trial, but Kobus, who was Andy's sort of compliance chap, who was our connection to ensure that, you know, the website and the things we said and everything else, he often -- I mean, he was -- I'm hoping, and I'm presuming, that he was involved some way in signing some of this off, and I'm not sure what evidence we have to --

Q. Let's go back to that email, because I hadn't spotted that. <SUR00141030-0001>. I'm sorry if I've got that wrong. No, he's not involved, is he? You didn't have any basis for thinking he'd signed this off. This had come from Mr Thomson to Mark to you to Steve, without copying Kobus.

A. I mean, that's obviously true, but he was in our -- you know, he was intrinsically involved in -- you know, you can ask any of the -- you know, any of the account managers would say -- and Jo, of course, would deal with him a lot. He would have had -- there was a compliance register, he listened to the calls, he would cherrypick them, he'd take them to their offices, people would have to do training, they were retrained if they got it wrong. I can't believe he wasn't involved in this. I know he's not on the email chain, but perhaps on the other side of -- from that, I'm not seeing it.

Q. It comes from Mr Thomson, who you know to be unreliable. My question is, you had no hesitation in using it, using information from him, to increase bond sales to members of the public?

A. The last -- that number did come true, Mr Robins. I'm certain of it. I'm sure it was 260 that Ernst & Young said in their audit.

Q. You said, a moment ago, "We would have waited for the accounts" --

A. Yes, I did.

Q. -- but you didn't wait for the accounts?

A. I stand corrected. I can see your point. It is a fair point. I mean, I -- I mean, perhaps I can suggest to you this way, then, that if Ernst & Young had come back with their audit, whenever that was published, the first audit they did, and it was not £247 million, or there or thereabouts, of course that would have been a much bigger -- a different proposition. But, I mean, it wasn't.

Q. We will come on to Ernst & Young's audit in due course, but, first, we'll look at <SUR00127756-0001>, please. Kerry emails Jo Baldock, John, you and Vicki. Was Vicki Bennett your assistant?

A. Yes.

Q. I don't think we have seen her name in the emails much before this. When did she start working for you?

A. She was my assistant at Money Expert back from 2005. She was my longstanding -- she worked in my accounts department back then.

Q. So when did she come back to start working for you at Surge?

A. I'm afraid I couldn't tell you quite exactly when.

Q. But do you think 2015, 2016 or 2017?

A. I would say more likely 2017.

Q. Thanks. Kerry says to you:

"Based on information from Kobus, I doubt Andy has started the process to get an ISA. To have an ISA, you must have first a retail prospectus bond. You place the retail bond in an ISA wrapper.

"I don't know why he hasn't done this yet because it's the next obvious step. I suspect that the validation process required to get through the UKLA might scrutinise his loan book and possibly that's why he hasn't done it yet."

You and Kerry thought that Andy wouldn't want anyone scrutinising his loan book, didn't you?

A. I don't recall reading this. I have some memory of the ISA sort of situation because it kind of started and went all the way through, but I don't remember this particular email. And, you know, Kerry was another great one for the detail and she would have been looking at all the potential sort of issues with it, and this was something she was very focused on.

Q. You knew why he didn't want anyone to scrutinise his loan book, didn't you?

A. I mean, I presumed, and indeed have now recognised, that his loan book was scrutinised by two of the largest auditors in the world, Mr Robins, and two City lawyers.

Q. You didn't think at the time, August 2017, he hadn't taken the next obvious step because someone might scrutinise his loan book. You knew why he didn't want anyone to scrutinise his loan book, didn't you?

A. I mean, I think you, again, might be conflating fraud with the regulatory technical stuff. I don't know. But my view on this email and that specific sentence is, we -- at this time, when this happened, we have got City lawyers who have been in since 2015, an auditor, PwC, all of whom demonstrably have seen more than we have -- loan books, people, everything. I mean, we have -- you know, as I said yesterday, we have to have some -- we can say what we like, but we have to wait for the facts, we have to let things be worked on by the professionals who he has engaged with. We are the marketing agency. I mean, I keep saying that. But it's not our -- it's not what we do. I mean, we try our best to assist --

Q. Did you and Kerry think that Andy probably didn't want anyone to scrutinise his loan book?

A. She says it, and possibly. But that doesn't necessarily make it nefarious.

Q. What's the answer to the question?

A. Possibly, is my answer. And indeed it's what Kerry's answer is -- what Kerry writes.

Q. Can we look at <SUR00141995-0001>, please. If we look at the next page, we can see, on the right-hand side, LCF has been featured in the Daily Mail. George Carlo, top right, thinks "great bit of exposure". That's the most obvious thing to think, isn't it, if the company you're in charge of promoting is featured in a mass-market newspaper?

A. At this period of time, you would have noted Wellesley, which were on TV --

Q. What's the answer to my question?

A. No, it's not. Wellesley, a competitor, who went on TV, a bond, was brought down by the regulator for, you know, about seven months, stopping inflows because of its exposure on TV.

Q. George thinks "great bit of exposure". He's happy, the head of investment is happy to see the publicity, isn't he?

A. Our head of investment. Fair enough. I can see why he likes it. But we didn't want LCF to be in the same situation as Blackmore, Wellesley and all the others, where --

Q. You didn't want LCF to be scrutinised, did you?

A. They were being scrutinised, Mr Robins, by the best City lawyers --

Q. You didn't want them to be scrutinised, did you? Look at the top left. Mark says:

"Great publicity. Is it good sticking head above the parapet?????"

You say:

"We didn't ask to do it."

You did not want LCF to be scrutinised, did you?

A. I did not want LCF to be on national newspapers, no; I didn't want them to be in the TV, no. Because I thought it would stop their inflows while they went through an investigation, like their

competitors, like people -- Blackmore, whom we were working for, and I think, during this period of time --

Q. What would stop if --

A. -- that is when Blackmore had stopped.

Q. What would stop if LCF's inflows stopped?

A. Well -- you mean my fee?

Q. You didn't want scrutiny that could bring an end to the 25 per cent commissions, did you?

A. I had been working in this environment, the regulatory environment, for ten years, since Money Expert in sort of 2004 at this point, maybe 12 years. Regulators -- not every time they come through is with a boot through the door. It is a little bit more nuanced than that. Often, it is just a letter saying, "Can you explain some things?", and you have to go back. That can take a long period of time and, during that, they often stop the inflows. They did it with Blackmore, they did it with Wellesley. From my view, it is a regulatory risk to put mass marketing out on national press when it's not necessary. I mean, you would get -- the other thing you will get is a lot -- we do a lot of reputational management, as I was mentioning yesterday. You get a lot of people just go online and say terrible things about you online, because the more --

Q. Terrible things that are true, like we saw yesterday?

A. As I said yesterday, Mr Robins, people who write things on the internet -- if we take what people write on the internet as true, I wouldn't have engaged with the brilliant Kingsley Napley. Every company has to -- anything at scale, I think, has to endure an element -- I'm sure Disneyland has its fair share of one-star reviews. I'm sorry to be commercially realistic here, but I am. I mean, it's much better to just go for your -- you know, not attract unnecessary, you know -- I'm sure you don't -- I'm sure anyone in -- you know, people don't welcome the distraction of dealing with their regulatory partners if they don't need to. But, yes, I think you might be reading a lot into it as well.

Q. <SUR00088188-0001>, please. It is an exchange of messages between you and Kerry. Kerry sends you a link to an article in Citywire about the FSCS having to pay out £7 million in compensation. She says: "One of the failed investments in this payout was Lakeview UK Investments. That's Spencer's firm. I checked at Companies House and Roger (Spencer's in-house drunk solicitor) is the director." And you said, "Hmm". This is precisely the sort of thing that you didn't want anyone scrutinising, isn't it?

A. I remember this. Is the chap's name Blear -- Blair or something, Roger Blair.

Q. I think he's called Robert Sedgwick.

A. No, this chap.

Q. They always call him Roger. He's called Robert Sedgwick?

A. Sorry, I'm confusing him with another lawyer, Roger Blears. We discussed this. We would have discussed this. Because, like all these emails and text messages, we are in an office together for eight to ten hours a day, so we are discussing it. I can't remember the specifics of what we discussed, but I can remember us talking it through.

Lakeview was the Cornwall sort of resort with their sort of houses in there. I don't know. I mean --

Q. Saying "Hmm" suggests it's giving you pause for thought, doesn't it?

A. Yes.

Q. There are some obvious questions, aren't there: what's LCF's exposure to the Lakeview site; is it within LCF's security; what's happened; why has it failed? You didn't ask any of those questions, did you?

A. I don't know. I couldn't tell you what we did. Under normal --

Q. Do you accept you probably didn't ask any of those questions?

A. I mean, one thing you've definitely taken for the last four days, even though we've spent a lot of it speaking about the first six months, is we asked an enormous amount of questions.

Q. But did you ask any of the questions I just mentioned?

A. I couldn't tell you.

Q. Do you think you probably didn't?

A. I couldn't tell you, I'm sorry, Mr Robins. I couldn't remember.

Q. Can we look at <C2/3> at page 21, please. This is your witness statement that we saw you verified by a statement of truth and, indeed, confirmed on oath on Monday. Paragraph 105. You say:

"In 2017, Spencer visited our new Brighton office. It was an impressive office with space to seat over 120 people over 2 floors. It had multiple boardrooms and a cafe area which had a barista working for staff every morning. He was impressed with our operations. I told him of my plan for Surge to grow by providing our services to other finance companies by selling our technology platform which was by then growing in a best-in-class technology stack that could onboard financial customers securely and compliantly. Soon after that meeting John approached me with Spencer's request for a 1 per cent introduction fee for connecting Surge to LCF. John assured us that such a fee was standard in the industry and I was aware myself that introduction fees were customary. I said the only way I would agree to it is with a formal agreement but, in the end, one never came and I never chased it as I was too busy."

Then over the page, you say:

"Once we had agreed the 1 per cent fee, John mentioned that Spencer wanted to apply the fee retrospectively from the start of our engagement with LCF. I wasn't keen on it and I pushed back. I initially said no on the basis this should have been agreed at the outset but in the end I had to take the view on the pivotal role that Spencer played in establishing our relationship with LCF. Given LCF's growth and our wider ambitions to build Surge out with other clients, I decided it was a fair price [to pay] for the introduction."

In the next paragraph:

"The fee was routed to a business connected to Spencer which was a horse grooming outfit. I didn't find this unusual given my understanding that Spencer owned it."

Just to ask some questions about that. You accept that you were under no pre-existing contractual obligation to pay any fee whatsoever to Mr Golding, don't you?

A. I do agree with that, yes.

Q. Do you accept that what you have set out there is highly uncommercial and wholly implausible?

A. Well, I'm not sure -- I definitely don't agree with the latter because it's the truth and it happened. But uncommercial -- I wasn't very happy about it and I didn't really want to do it. And neither did Kerry. But we felt like we were being a bit pressed into it. And the way JRM sort of spun it, you know, was -- it was fair and everything else and I was persuaded to do it and --

Q. How could you be pressed into it? Explain that? Spencer could, what, go back in time and reverse his introduction to LCF?

A. No. So the first thing to note is -- I mentioned it previously -- introducer fees were pretty standard, lots of people were doing it. But, of course, normally, what you would do is agree it prior to doing it, that's true. And, you know, it was one of those things that it came -- I think what had happened is, he'd come to our offices, I don't -- I don't remember the detail, but he pitched us a product that he was introducing to us, another bond around technology, to Kerry and I. We sat through a presentation with him and some other chap whose name I can't remember, just the sort of rough guide with it. We'd had no offices, I'd had -- I was investing in other companies, there were quite a few -- so Surge, at that size, was probably about -- when are we talking? 2017?

Q. Yes, we are talking -- you say in your --

A. I say Surge was about --

Q. -- witness statement it was 2017 when you moved into your new Brighton office. That's what you say.

A. I would say on that floor, there was perhaps 40. I'd invested in some other companies of which there was probably a similar number, so 80 people on two floors. It was pretty busy, and he was obviously kind of thinking, "These guys are doing well and growing", and I was investing into other areas and other businesses. I'm a start-up guy and it was a great building to do some incubation for start-up. So I was doing that. I wasn't pleased. Kerry and I, I remember, sitting there -- at the beginning, it was a definite no and then sort of Spencer -- the pitch from JRM was Spencer thought, well, you know, that's the deal and at some point -- it took -- this didn't happen, by the way, in a day, just to be clear. This took some time to go from the pitch to the close.

Q. 1 per cent of new monies into LCF is 4 per cent of your commission from LCF, isn't it?

A. Yes.

Q. So, you had no pre-existing contractual obligation to pay 4 per cent of your commission to Spencer, did you? He couldn't have sued you in a court of law and won?

A. No, but it's a commercial thing. We're not --

Q. But your evidence is you felt pressured by him in some way to agree to give him 4 per cent of your commission from -- your gross commission from LCF?

A. Well, if you look at it, perhaps, in this way, Mr Robins, we had a partner in LCF who was the best bond in the industry at that time, of which there were a lot, and it was growing well, it's -- the quality of its third parties were first class. The security was first class, we thought it was.

Q. Sorry, we are back to your talking point. My question was, is it your evidence that you felt pressured by Spencer in some way to agree to give him 4 per cent of your gross commission from LCF even though you were under no binding, legal obligation to do so?

A. Yes, but not in a sort of, you know, nefarious way.

Q. But yes?

A. He introduced LCF and they were a good client, and he was introducing other businesses and we thought he would be a good route -- you know, he was rich, he was successful, he was connecting us to all these other bonds and other products and we thought, you know, it wasn't --

Q. You say in your witness statement it was in return for the introduction that he'd made to LCF in, what, February 2015. So, he'd done the thing he was getting paid for. You were under no binding obligation to pay him for it. And your evidence is that you came to agree to give him 4 per cent of your gross commissions from LCF, is it?

A. Well, yes, it's what happened. It's the truth.

Q. Can we look at <SUR00084106-0001>, please. This is where Spencer has emailed an invoice to John Russell-Murphy. At the bottom of the page, 2 October 2017. Then at the top, John forwards that to you and Steve, saying:

"Just received this from Spencer, he has backdated the invoice to June!!! Give me a call when you're free."

You would have looked at the attached invoice to see what John was talking about, wouldn't you?

A. I think so, yes. I mean, I look at this in a totally different light now than I did back then.

Q. Can we look at the attachment, <SUR00084107-0001>. We can see it is SG Golding Consulting. He's described it in the narratives of three in the middle of the page fundraising consultancy. We have just seen what you say in your witness statement. You don't say that he was actually providing fundraising consultancy to Surge, do you?

A. I say that it was -- well, it was pitched to me -- to us, sorry, to Kerry and I, by JRM as an introducer fee.

Q. Yes, not about Spencer coming on board as a consultant or anything like that?

A. No. I mean, he was introducing other bonds, not that we -- you know, but --

Q. But you hadn't agreed at this meeting that he'd become a fundraising consultant to Surge, had you?

A. No, not formally. I mean --

Q. Not at all. We have seen what you say in your witness statement.

A. Yes.

Q. Are you sticking with what you said in your witness statement or are you changing your story?

A. I will stick with what I said in my witness --

Q. You said it was an introduction fee, nothing to do with Spencer being a fundraising consultant?

A. Well, I -- that wasn't what was discussed, no, what he's written there.

Q. What he's done is, he's put 1 per cent of the amount raised by LCF for June, July and August 2017, and then, if we look at the bottom, he's then applied VAT to that at 20 per cent. When John said to

you in the covering email, "he has backdated the invoice to June!!!", presumably John's saying that because he thinks, at least, it's not what you had agreed with Spencer?

A. Yes, I think so. Sorry, yes, that's correct. When it first happened -- so, you know, JRM comes in and says, "Spencer wants a 1 per cent introducer fee". Obviously we went back and forth for a while. I don't know about the date of this first invoice and when the first sort of mention of it is, but there was some time when we sort of discussed it and sort of -- internally, Kerry and I mainly --

Q. As far as you were concerned, you hadn't agreed that Spencer could backdate it to the beginning of June, had you?

A. No.

Q. As far as you were concerned, you hadn't agreed 1 per cent plus VAT. You'd agreed 1 per cent?

A. I think that might be right as well, yes.

Q. Adding VAT would have been a problem, wasn't it, because we saw Surge wasn't charging VAT to LCF. So you couldn't have offset any VAT that you were paying to Spencer against any VAT that you were getting from LCF?

A. I think that might be right as well, yes.

Q. Can we look at <SUR00084118-0001>. Steve Jones points out to you, second email down:

"The invoice is SG Golding Consulting, however it is not a limited company. He has quoted a valid VAT number for Spencer Golding Home Farm Equestrian Centre. His invoice is for June-August (£264,000 including VAT)." At the top, Steve adds:

"Just FYI. How can we justify paying £80,000 per month to an equestrian centre?"

When you say in your witness statement, "The fee was routed to a business connected with Spencer which was a horse grooming outfit, I didn't find this unusual", that is not true, is it? It was something that was highly unusual and that you were going to have to work very hard to justify?

A. Before I answer that question, Mr Robins, if I mention lawyers, could you just briefly explain what happens? How does privilege work in that way? Because I'm loath -- I kind of -- there was a period of time where this all happened where we were sort of considering it. If I mention lawyers, do then -- do I then sort of --

Q. I don't want you to go into any details of what you discussed with lawyers in connection with any legal advice they were giving you or any contemplated litigation.

A. But if I mention it, does that mean -- even if I mention it to you, does that mean --

Q. No, just no details. But you can give your evidence. But if you are concerned about --

MR JUSTICE MILES: Do you mean --

MR ROBINS: -- collateral waiver --

MR JUSTICE MILES: Do you mean discussions back then, in 2017, or do you mean --

A. Oh, yes. So when this happened, if I mention a lawyer or something, what happens at that stage, my Lord?

MR JUSTICE MILES: Well, you're then -- if you talk about the content of communications with lawyers, then it may be treated as a waiver of the privilege -- it would probably be privilege that your company had, or still has, in that legal advice.

A. Is it just that specific --

MR JUSTICE MILES: In relation to the transaction. So, it would be, here, in relation to the matters which are being discussed here, which are the, it would appear, 1 per cent payment. But, Mr Ledgister, I don't know whether you want to say anything more about this?

MR LEDGISTER: My Lord, no. I'm not quite sure what Mr Careless is going to say.

MR ROBINS: Just to explain why I was saying what I was saying, I can imagine my instructions may well be to apply for disclosure of all communications with solicitors in respect to which privilege has been waived. I'm not sure it's necessarily fair for a witness to unwittingly walk into that scenario.

MR JUSTICE MILES: It is ultimately a question of -- ultimately, it is a question for the party to decide whether or not to waive privilege.

MR ROBINS: Yes.

MR JUSTICE MILES: But, Mr Careless, Mr Robins has been careful not to ask you about that. So he's not asking you to disclose any legal advice that you obtained at that point. If you do choose, in answering his questions, to disclose the content of any communications with lawyers relating to the relevant transaction, then, as Mr Robins has said, he may seek disclosure of the contents of the surrounding communications in order to be able to see whether what you say is accurate.

A. Yes.

MR JUSTICE MILES: And, secondly, whether there is anything in the surrounding communications which might throw light on whatever you have said. So, that is the protection that I think it would probably be Surge here has, because, presumably, any legal advice would have been provided to Surge. Do you understand that?

A. Yes, I think I do, yes. Could you ask me the question again, please, Mr Robins?

MR ROBINS: You say in your witness statement that you didn't find it unusual to be having to pay this money to a horse grooming outfit, but, in fact, that's something that you and Steve and Kerry would have thought was unusual and would have been concerned as to how you could justify it?

A. Well, I mean, it wasn't just a horse grooming business that we saw it, it was called Home Farm Equestrian Centre, and Spencer was a sort of -- he was renowned involved in horses. So it wasn't quite as out there as it sounds here. Everyone knew he was, you know, into -- you know, he was a show jumper and whatnot, I think. So it wasn't quite as out there as it here seems. Perhaps Steve wasn't aware of that. I don't know. But we would have preferred a contract -- in fact, I think I say in my statement, and I do remember Kerry and I saying to John, especially subsequently from the -- how can I put this? -- you know, the fact that he wanted it from -- the 1 per cent not from when he asked for it, but retrospectively, we were sort of, "Well, we want a contract", and I now can't recall in enormous detail why we didn't get one and whether or not it just got sort of, you know, forgotten about.

Q. Is it because you didn't ask for one?

A. No, that's not true. Kerry will explain that to you next week. We most certainly did.

Q. Can you look at <SUR00084183-0001>, please. This is between you and John Russell-Murphy. John says: "Spencer didn't answer my call again."

You say:

"Text him, try something like this?: -

"Hi Spencer.

"Been trying to get hold of you regarding your invoice. You agreed with Paul in the meeting it would be backdated to the beginning of September only. You also agreed it would be 1 per cent gross. The number can be £80k. Can you reinvoice please? "Also, Paul wants to confirm that you want the same deal on the oil deal from when it launches in November?" You didn't go back to him and say, "If you want it to be retrospective, we will have to put it in a contract", did you?

A. I believe I did and I believe Kerry and I did that to John Russell-Murphy. I can remember this one quite vividly. It was in the boardroom in Brighton. We did. We went to JRM. I mean, JRM was the conduit to Spencer. Obviously, looking at this one now, which I can't remember, if you look at the bottom part of it, I'm now heading up, saying, "Well, are you going to try this two-step on us again?" and I'm asking him whether he's going to do that with the new oil bond he's introduced. I, of course, would have preferred a contract, Mr Robins. It would have been much --

Q. You agreed with him at the meeting that it would be 1 per cent from the beginning of September 2017 onwards, 4 per cent of your commission, because you knew he was in charge of LCF and he had said to you, "You need to pay me this or I'm reducing your commission". That's what happened, isn't it?

A. We paid it because it was asked of us to pay it as an introducer fee, which we thought was, although not -- we didn't enjoy it, paying it, certainly retrospectively, we thought it was okay.

Q. He turned up at your new offices, he had a look around, he said, "Paul, 25 per cent is too rich. You're making too much money. We are going to have to reduce it, or, if you want to keep it as it is, you're going to have to make sure there's something in it for me". That's what happened, isn't it?

A. I'm afraid to enlighten you that 1 per cent is actually a very standard introducer fee for lots of products.

Q. Are you saying it is standard for people to agree it after the event, several years after the event, when they are under no legal obligation to pay? Is that your evidence?

A. The former, no, it's not normal to go back and ask for it afterwards. But, you know, we don't -- there is a spirit of a deal which goes beyond the legal of it and he asked for a 1 per cent introducer fee. We had to make a decision. We were doing well. We thought we had the best bond in the marketplace at the time, and he was introducing other similar products, not all as good, but there were lots of other introductions. We were looking to grow as a company, Mr Robins. Surge had its own ambitions to build its own base. We knew LCF wasn't going to be forever. We wanted to build our own retinue of clients.

Q. Mark has told you, "Spencer is Madoff". Now Spencer wants 1 per cent of investor monies from the beginning of September, 4 per cent of your commission. That was the price for keeping the commission at 25 per cent, wasn't it?

A. It's just not how it happened. In retrospect, obviously, talking about retrofitting it, it was as I told you, Mr Robins.

Q. You knew this was improper, didn't you?

A. I didn't -- well, I didn't enjoy it, let's put it that way, but I didn't think it was illegal.

Q. Can we look at <SUR00084244-0001>, please. This is a WhatsApp message between you and Kerry. On page 1, five down, you say:

"Hey, you need some time to relax. I'm worried about you, I've never seen you unwell." Kerry says:

"Andy hasn't asked us to be an AR before. I'm very sensitive to stress but I don't usually experience it. Andy has tipped me over the edge. It is just a bad headache so I'll be fine. The issue is that being an AR of Andy could be a permanent headache." You say:

"Can you switch off today? And let's talk biz tomorrow. The Spencer thing is also got to be sorted properly."

And Kerry says to you:

"I want us to be part of something to be proud of. I can justify a little clever marketing but I can't justify breaking the briberies act for Spencer ..." You knew that the payment of 1 per cent to Spencer was improper and unlawful, didn't you?

A. No, because, after this, we decided we would go and do a bit more work on that, and I was satisfied after that, and, indeed was Kerry, which was why we did it, that we were not doing that, and in your previous part, before that, I put something like, "I want to sort it out with Spencer properly" or something along those lines. I'm referring there, I think, to getting a contract in place for it.

Q. You agree that Kerry is not a lawyer?

A. I do agree with that.

Q. Do you agree that reference to the Briberies Act is quite specific for a nonlawyer?

A. Yes. I mean, just one comment. Although she's not a lawyer, that is fair to say, she has a good mind for detail and she -- you know, she's -- you know, I think if she was going to take another profession other than marketing, it would be that profession. She's very interested in that side of things.

Q. Okay. So she has sufficient understanding of these matters to know that Spencer demanding a payment in return for some benefit to Surge could constitute bribery?

A. After this, we would have -- she wasn't well. She was very stressed. There were a lot of things going on. We actually did some more consideration on this -- I'm going to put it that way -- and we were satisfied, Kerry and I, after that, that this was okay to do, as long as we got it in a contract, and of course we didn't --

Q. You say in your witness statement it was standard in the industry, it was customary. If Kerry's saying that she's very stressed because she can't justify breaking the Briberies Act for Spencer, she certainly didn't think it was standard or customary, did she?

A. Which is why we would have gone through it in more detail until we were satisfied -- it is like a lot of this stuff you've seen. Where we ask a question and we don't get an answer which -- or we are not happy with, we continue to ask. If we continue, it's because we have become comfortable, and we

did become comfortable. Obviously, retrospectively, I wish I'd have absolutely insisted, before the first penny was paid, that there was a contract in place, but, you know, as you've seen, contracts do tend to catch up with deals subsequently, and I just -- you know, we did get comfortable with it, Mr Robins.

Q. Could we look at <SUR00084336-0001>, please. This is Andy's final invoice from Media GPS. He sent it to you by email on 9 October 2017. You accept that this was never paid by Surge, don't you?

A. If you say it wasn't paid.

Q. It doesn't come out of Surge's bank account, it doesn't go into Media GPS's bank account. It wasn't paid by Surge, was it?

A. It was probably the last one and we probably stopped it.

Q. You stopped it because it's his fee for September, but you'd agreed with Spencer that the arrangement to pay half a per cent of new monies to Andy was going to be replaced by a new arrangement to pay 1 per cent of new monies to Spencer from the beginning of September. That's what you'd agreed with Spencer at the meeting, isn't it?

A. Well, yes, I believe so.

Q. Can we go to <SUR00086593-0001>, please. John tells you that Spencer sent through his outstanding invoice. Do you remember the revised invoice?

A. No.

Q. If we look at <SUR00086594-0001>. He has now backdated it to the beginning of July instead of the beginning of June. But, due to the passage of time, it now also includes October. If you see what he's done, he's reduced the amount for each month so that, when VAT is added, the total, including VAT, is equivalent to 1 per cent of the new money figure for each of those months. Do you see that?

A. Yes.

Q. So I'm right in saying that there had been some sort of negotiation between you and Spencer. He'd asked for payment from the beginning of June, you'd said, no, it should be from the beginning of September, and you'd settled on the beginning of July?

A. I presume so, yes.

Q. He had asked for 1 per cent plus VAT, but you'd said, no, it's got to be a VAT inclusive figure which is equal to 1 per cent; yes?

A. Yes.

Q. This meant, didn't it, that there was a period of overlap between Andy and Spencer because, for July and August, you're paying half a per cent of new monies to Andy and 1 per cent of new monies to Spencer?

A. Yes.

Q. But that was worth it to agree to this compromise with Spencer?

A. Yes.

Q. You accept Surge paid this invoice?

A. Yes.

Q. Can we look at <M1/9> at page 18, please. This is what you told Mr Shaw when he examined you in court. At line 13, just below line 13, you said?

"Answer: He would do general consultancy. "Question: What is general consultancy? "Answer: He would give his view on the way in which we conducted our business, Surge, for example, the core monitoring and other such.

"Question: He was giving you advice on how you should meet your compliance obligations? "Answer: No, it was more general in its tone; it was nothing to do with compliance. It was more of a business guidance style consultancy." Then, at the bottom of the page, two lines from the bottom, you said:

"Answer: ... when we first met Spencer, Spencer was a man of means, he obviously was very successful, wealthy, and he took on a kind of role that he knew how to do business and so on and so forth, so his consultancy was around that general business." You accept, in light of your answers earlier, that that wasn't true?

A. No, what I've said here is true.

Q. But what you said then was untrue; yes?

A. What have I said which is untrue, please, Mr Robins?

Q. Well, you said earlier today that there was no agreement about Spencer doing general consultancy. So, let me ask you: was there an agreement that Spencer would get 1 per cent of new monies into LCF for giving you consultancy on the core monitoring?

A. I might be able to clear this up for you. So, what I say here about him giving us advice about core monitoring and stuff like that, this is true, and he was always trying to give us advice.

Q. Mr Shaw was asking what the 1 per cent was for, what was the quid pro quo, what did Spencer have to give you in return, and you said it was general consultancy about the way you conducted your business, core monitoring and other such, business guidance style consultancy and consultancy around general business. That was not, on your evidence now, what you agreed to pay the 1 per cent for, was it?

MR JUSTICE MILES: Sorry, can you go to the bottom of the previous page?

MR ROBINS: Sure.

MR JUSTICE MILES: I just want to look at the answer that he gave at line 23.

MR ROBINS: Yes, you said there were two things, introduction fee and consultancy. You said that was the quid pro quo for the 1 per cent. But you have told us today it was nothing to do with consultancy, haven't you?

A. Could I just refer you to line 11 on the one on my left.

Q. Does that answer my question?

A. Sorry, I'm just trying to look. I can recollect what he did. I mean, the request was for an introducer fee. That was the request. He did, it is also true to say, try to give us advice on various things. I mean, as I say here somewhere in one of those things earlier, he was very successful and he obviously wanted to have, you know, an input. But the actual -- the ask that was made in whenever it was,

September 2017, was for an introducer fee. He did do these things. These are true. If I have conflated them during this in some way which is confusing, then I'm sorry, but, you know, I just remember that it was, you know, for an introducer fee, as JRM pitched it.

Q. But you agree that the deal you had with Spencer wasn't 1 per cent for -- your evidence is not that it was 1 per cent for consultancy on core monitoring or business guidance style consultancy or general business?

A. He did do that. I think the 1 per cent was for -- the original ask was for it being an introducer fee.

Q. So not for the things I just said?

A. Well, I'm not sure if he's conflating it. I'm just telling you as I recall, Mr Robins.

MR JUSTICE MILES: Sorry, who is conflating it?

A. Sorry, my own evidence conflating it, my Lord.

MR ROBINS: Can we look at <SUR00099146-0001>, please. At the middle of the page, John emails you and Kerry and says:

"As you know, I met with Andy earlier and here are the notes from our meeting ..."

Under the heading "SG" he says:

"Andy said that Spencer didn't go to Las Vegas in the end, he has been dealing with some marital issues and has gone on the missing list. I'm sure he will be in touch when he's ready to communicate again. "We discussed the SG invoicing and Andy wants to get everything out in the open. One of the requirements of our AR status with them will be to provide our financials to LCF. Andy and Kobus will see the payment going to SG and will ask further questions. Andy said he was willing to make a 1 per cent interest reduction on the loans to SG if we reduced our commissions to 24 per cent. I said we will discuss this with SG and will let Andy know."

First of all, it was your understanding at the time that the payments to Spencer were something that it would be undesirable for Kobus to become aware of?

A. It says "Andy and Kobus" there. But I think what's happening here -- yes. The answer is yes.

Q. He's discussed the SG invoicing with Andy. So Andy was already aware, wasn't he?

A. Reading what JRM has written there, yes, I can agree with that.

Q. If, as you say, it was standard and customary, there wouldn't have been any problem with it being seen by Kobus, would there?

A. I'm not sure why we are highlighting Kobus here.

Q. Well, because Andy already knows, "We discussed this SG invoicing and Andy wants to get everything out in the open". So he knows. Kobus is the person who doesn't know, isn't he?

A. Right. Then yes.

Q. If it was customary and standard, that would be no problem with Kobus becoming aware of it. But given Kobus was someone you didn't want to find out about it, it follows, doesn't it, that it wasn't customary or standard, it was something you wanted to keep under wraps and prevent Kobus from discovering?

A. I don't think that's the case. I -- Kobus saw -- you know, Kobus was probably the most frequent person dealing with our stuff. I mean, it's --

Q. He didn't know about the 1 per cent to Spencer, did he?

A. I'm not sure he would have needed to. It's our company and he worked for another company.

Q. But if you were going through the AR process, he would have found out about it, wouldn't he?

A. I see where you're going. Okay. Well, yes, he would have.

Q. And you didn't want him to find out about it, did you?

A. Yes, but I'm not sure it's nefarious in its nature, as you're putting it.

Q. The answer to my question is, you didn't want him to find out?

A. Well, JRM says he didn't here, correct.

Q. Andy says he's willing to make a 1 per cent interest reduction on the loans to Spencer. You knew that Andy had made loans to Spencer?

A. To Spencer-connected companies, yes.

Q. Okay, but --

A. I didn't know any of the 45:45:5:5.

Q. You would have understood "loans to Spencer" to mean loans to Spencer's companies, would you?

A. Yes.

Q. You would have understood the proposal was, "Look, if we reduce our commissions to 24 per cent or something like that, then Spencer can get a benefit in some other way with LCF charging him less interest on his loans". You would have understood that was the proposal?

A. Yes. I mean, you can see at the top here that Andy is trying to reduce -- we knew he was going to go at some point with IFAs and stuff because it was getting too big and he wanted to have -- you can see he's always -- he says "raising was far too expensive". He was always trying to get the comms down. So we knew he would go at some point and we'd have to replace him with a new client. I'm not surprised -- I do remember this slightly vaguely, but now reading this. But, yes, he was always trying to do that.

Q. The payment of 1 per cent of new money to Spencer was the price of keeping your commission at 25 per cent, wasn't it?

A. No, the 1 per cent to Spencer was to pay an introducer fee, which was brought to us by John Russell-Murphy in September 2017.

Q. What was being proposed was, "If we don't want Kobus finding out about Surge paying 1 per cent to Spencer directly, then we need to achieve the same economic effect in a different way, by reducing the commission and passing some other benefit to Spencer". You understood that was the proposal?

A. Yeah, I mean, I don't recognise that, Mr Robins, and I can't really --

Q. You didn't think that was a good idea?

A. I mean, Kobus -- I was -- I liked Kobus. Kobus was a good guy. I've subsequently met Kobus multiple times. I don't see me -- I wouldn't have hid much -- we would have tried to be our own business. Kobus was the compliant guy and he was quite a tough compliant guy. I don't recognise this, I'm afraid, Mr Robins.

Q. Let's look at the top of the page. Kerry comments, second email down:

"This sounds very positive. Particularly the regulated bond and fixing the Spencer payment." If it was something customary and standard, there would have been no need to fix it; correct?

A. Oh, no, we weren't happy about it. We weren't happy about it the day it arrived -- the pitch was given.

Q. Then you say:

"Noted. All good."

So you agree you noted what Mr Russell-Murphy had said and you thought it was all good; yes?

A. Yes.

Q. So you thought his proposal was good?

A. Yes.

Q. If we look at <D7D9-0010862>, this is between John Russell-Murphy and Andy Thomson. You won't have seen it. But it mentions you. In the middle of the page, 2018-08-21 16:22, John says to Andy: "Spencer has called chasing his money, I've said we are going to organise the payment via a company which you're setting up. He's now said he doesn't want to do that and he doesn't want you to know. Don't mention anything at the moment. I will discuss a different solution with Paul."

Do you remember discussing with Mr Russell-Murphy the various possible solutions for fixing the Spencer payment?

A. Not specifically, no.

Q. This was another idea of continuing to make a payment in a way that could be concealed from Kobus, wasn't it?

A. I'm not sure why Kobus has taken a front seat here because I'm afraid that doesn't sort of -- I don't recognise that as a sort of thing, really.

Q. So, is your answer, no, this wasn't something to do with continuing to make payment in a way that could be concealed from Kobus?

A. Well, I don't know if Kobus -- I don't understand why the focus is upon Kobus here.

Q. Just to explain that, in the previous email we saw, about you going through the process to become an AR and concern that Kobus will see the payment and ask further questions --

A. Yes.

Q. -- you discussed possible solutions to that dilemma with Mr Russell-Murphy, didn't you?

A. I presume so, based on this text, yes.

Q. Can we look at <D7D9-0009104>. This is an email from John Russell-Murphy to you and others, and he says in the first paragraph:

"Andy has agreed to continue with the 25 per cent and 22.5 per cent (5-year product) commission ..." Pausing on that, you accept that the 22.5 per cent commission was for the five-year product?

A. I can't remember, but if it's been negotiated there, then yes.

Q. And then he says:

"The cost of the LCF internal team will be paid monthly as a deduction against our commission. I will discuss payments to SG and the solution with Paul tomorrow."

So it's the same answer as you gave a moment ago, I assume: you discussed the solution with John Russell-Murphy?

A. I presume so, yes.

Q. You see that the payments to SG are mentioned in the same paragraph as the first sentence, where Andy has agreed to continue with the existing commissions. The payments to SG were the price for maintaining the commissions and not reducing them; yes?

A. No, that's not true.

Q. "Andy has agreed to continue with the 25 per cent and 22.5 per cent (5-year product) commission ..." End of the paragraph:

"I will discuss payments to SG and the solution with Paul tomorrow."

The payments to SG that had to be fixed were the price for continuing with the existing commissions, weren't they?

A. No, that's not the case.

MR ROBINS: My Lord, I see the time.

MR JUSTICE MILES: Can I just ask a question, Mr Careless, about how the arrangement with Mr Golding was entered. I think a few times in your evidence today you have said, I think, and you can correct me if I am wrong about this, that you can remember that being discussed. Where did that take place, that discussion?

A. The discussion with John Russell-Murphy was in our boardroom, Kerry and I were there, and -- in Brighton, in our boardroom. He would go and see Spencer, so he'd just come back from seeing him. I believe Spencer had been in our office earlier that week pitching a technology bond.

MR JUSTICE MILES: Right. So, was it, or was it not, when Spencer was in the office that the arrangement was made?

A. No, it was not.

MR JUSTICE MILES: Did you have a discussion with Spencer himself about the deal?

A. No, we did not.

MR JUSTICE MILES: Okay. Thank you for your evidence. We will take a five-minute break now, thank you.

(11.50 am)

(A short break)

(11.57 am)

MR ROBINS: Mr Careless, I am going to ask you some questions about LCF 2, which was known initially as Countrywide Corporate Finance, or CCF. There was an idea it might be renamed as Portland Corporate Finance, or PCF and, ultimately, you all settled on the name Westminster Corporate Finance, or WCF. But, for convenience, I'm going to call it LCF 2. LCF 2 was going to be a back-up in the event of LCF having any issues in the future, wasn't it?

A. Yes, I believe so.

Q. So you thought LCF was at such risk of having issues in the future that it was appropriate to set up a back-up?

A. So -- I mean, obviously, when you say that, it doesn't sound particularly good, but could you consider it this way: they are a great client, they use the best third parties, they wanted to have another bond, we are a marketing company and we welcomed it.

Q. You wouldn't go to all the trouble, expense and time of setting up a back-up unless you thought there was a real chance of needing it; right?

A. Well, not only were there regulatory issues both ways, but there were also considerations about size and scale. It was an opportunity for us to take a new client on from scratch with all the same -- you know, the same quality of things that we thought LCF had.

Q. It is a back-up client, isn't it, so that if LCF has any issues in the future, LCF 2 can take over?

A. So, I mean, obviously -- the way to look at it is, we are a marketing company, they want to do another bond, and it is an opportunity -- and with the same calibre of everything. In fact, it was going to be more of a corporate lender as opposed to an SME lender. By that time -- I can't remember specifically when this is, but it feels like it is quite late on -- we probably had a PwC audit, two Ernst & Young audits. We felt we had -- or at least one Ernst & Young audit. We thought they were a really good crew, they knew what they were doing and we were quite happy to help them set up a new --

Q. You thought LCF were at such a high risk of having issues in the future it was necessary to set up a back-up bond now?

A. We knew it was going to stop, 100 per cent it was going to stop. Because Andy was -- just to put some colour on this, Andy was looking to move from an unregulated product into a regulated product.

Q. Those are not the issues that you were concerned about, are they?

A. Sorry.

Q. You were concerned about LCF being closed down or about some discovery being made that caused it to collapse. That was the sort of issue you had in mind, wasn't it?

A. LCF 2, as you colloquially call it, was an opportunity for us to do another bond with, at the time, what looked like to be the best team and the best product with the best security and everything else. Obviously, in hindsight, it doesn't quite look the same. But --

Q. The issues that you were concerned about LCF having in future were issues like it being shut down by the regulator or becoming insolvent. Those are the sort of issues you were concerned with?

A. It wasn't as it sounds like that. It was, literally, we were approached and said -- they want to do another product and they wanted to be a corporate lender and, as long as the security is there, from our point of view -- we are a marketing agency. We were probably speaking to dozens of bond -- well, I am -- about taking on their marketing because we were really starting to ramp up and grow, and so it was a chance to have another product, which we thought and expected would be at the same quality that LCF was at back then.

MR JUSTICE MILES: Mr Careless, can I, again, suggest that you listen carefully to the question, because I think the question -- well, perhaps counsel could ask the question again and you can then give your answer to the question. Would that be all right?

A. Yes, of course.

MR ROBINS: The issues that you were concerned about LCF having in the future were issues like it being shut down by the regulator or becoming insolvent?

A. Well, that's true. I mean, I had that vision on all products, and, as you can see, the cynicism ran quite deep. So, yes.

Q. That's why you thought it made sense to have a clear divide between LCF and LCF 2?

A. We -- the answer to that question is slightly nuanced. We probably wanted to take all of the bits where LCF wasn't as good through Andy, such as not declaring the borrowers and being too opaque with those types of things and make it into a better product.

Q. But you wanted to have a clear divide to ensure that LCF 2 wouldn't be tainted by the collapse of LCF 1?

A. Well, that's true. Yes, that's true.

Q. Can we go to <SUR00091516-0001>, please. At the bottom of page 2, you will see that Simon Hume-Kendall has phoned to say they have a replacement for Neil Harris. You said you love the new name. By this point, it is going to be called Westminster Corporate Finance. You can see that from the email in the middle of the page, where you say:

"Mike, can you look into buying the various web addresses for WCF."

And Mike tells you that's already being done. Then bottom left, Kerry says to you:

"I have someone in mind to run LCF 2 as an alternative to John Lutterloch. His name is Dave Woodcock. He was an Eastern European government debt bond trader for 34 years. He knows his stuff and I think he would be the right fit. I believe he has the balls for the risks involved and he is very hungry for a new opportunity. He is a real man of action, he gets things done. It would also mean we have someone on the inside. I have not discussed this with him but I think we should discuss this possibility together tomorrow." On the left, you can see John responds to Kerry immediately to say:

"Thanks Kerry but they won't agree. They want their own man, so funds get utilised their way." And you say again very quickly:

"Yes, precisely what John says."

Kerry says:

"Dave can utilise funds their way. I'm suggesting someone who I believe would go into this understanding the expectations and risks. Unless you don't think they would take a recommendation from us through concerns that we get too much intel on them?"

And then John says above that, again, very quick response:

"They won't agree, will explain why face to face." And you say:

"Can we stop the emailing and discuss in the morning please."

You knew that Westminster Corporate Finance was going to raise monies for Simon and Spencer, didn't you?

A. So, I think -- I'm not sure exactly what the plan was, and I obviously looked at all this quite recently. But I do have a kind of overarching understanding of what was going on, and that was, they were -- you've got to put some context on this, Mr Robins, for it to make any sense whatsoever. They had security of quarter of a billion pounds, as said by Ernst & Young, at this stage. We thought they were a first-class operation. Please bear that in mind when you look at that. We were having trouble with Andy, and you can see that through the last few days' worth of evidence.

Q. Had you seen the Ernst & Young audited accounts by 29 January 2018?

A. I'm not sure, but I probably would have --

Q. The answer is no, because they didn't exist yet.

A. Right.

Q. Would you like me to ask my question again?

A. Yes.

Q. You knew that Westminster Corporate Finance was going to raise monies for Simon and Spencer, didn't you?

A. I'm not quite sure how the connections lined up. What I was sure about, and what I can definitely see from here, is, we were hoping for another product. But, as you will see, and you will see in further communication here, although we were offered the opportunity to get involved and help build them one from the start, from the ground up, we were trying to make this a better product, because that's what attracts funds, better products. Obviously, with your fraud optics on, you know, various things here, you know, about, you know, these people were trying to put in place, and everything else, that's just Kerry with her banking background trying to recommend someone --

Q. Yes, and --

MR JUSTICE MILES: Sorry, Mr Careless, again, could you try and focus on the question and answer that, and then, of course, if you want to add anything, do so. But just focus on counsel's question. Do you want to ask it again, Mr Robins?

MR ROBINS: Yes, my Lord. You knew Westminster Corporate Finance was going to raise monies for Simon and Spencer, didn't you?

A. Possibly.

Q. Well, when John said:

"They want their own man so funds get utilised their own way", that's what you understood him to mean, isn't it?

A. I think so.

Q. That's why you didn't want it to be explained in writing, isn't it?

A. No.

Q. John, you would agree, isn't prepared to put the explanation in writing. He says "Will explain why face to face", doesn't he?

A. I think you might be reading too much into that, Mr Robins.

Q. You say, "Can we stop the emailing" because you agree you don't want it to be put in writing?

A. No, you will see plenty of writing about this in various other ways. That's just not true.

Q. Well, you knew that --

A. That email is at quarter past 5 at night. I would like some peace and quiet and I'd be happy to discuss it in the morning. Obviously, with fraud optics, it looks like I'm looking ahead.

Q. How many hours a day did you tell us that you work?

A. Well, I did a lot of hours, Mr Robins, yes, that is true.

Q. You wouldn't have had any problem whatsoever with someone emailing you at 13 minutes past 5, would you?

A. I would have much preferred -- by reading it, it looks like I wanted to speak about it in the morning with everyone there, but okay.

Q. You're trying to come up with some explanation when the real explanation is staring you in the face: you didn't want it to be explained in writing what John meant when he said "They want their own man so funds get utilised their way"?

A. No, I don't agree with that. There are swathes of stuff about the people who were going to be involved in this documentation, which is not in front of us, in writing.

Q. You agree Westminster Corporate Finance, as it came to be known, was something that you thought should be set up and then held in reserve as a back-up to LCF?

A. I think so, yes.

Q. So, it wouldn't actually start unless LCF stopped?

A. Well, their pitch -- if I can just slightly expand on, rather than a yes or no here, their pitch to us was, we want to do a more corporate bond, so not about -- you know, and we want to do it without Andy. That was essentially what was happening here. Kerry, who sort of led the charge on that with John, went to -- as we did -- as you will see lots of our documentation -- went to investigate if we could do this or not. And we would only have done it if it was -- and it was purported to use the very best people and the best security. I actually don't know whether -- what happened with this. I presume it just didn't happen because maybe the security wasn't there, or I might be thinking about

the oil bond. But we were looking at lots of products. Things were recommended by these guys and external ones.

Q. If we go to <SUR00092350-0001>.

MR JUSTICE MILES: Sorry, Mr Careless, could I just ask, when you say it was "their pitch", who are you talking about?

A. Yes. So, I think this was led by Simon Hume-Kendall, I believe, unless Mr Robins can point me otherwise. I'm a bit vague on this one.

MR ROBINS: Can we go to <SUR00092350-0001>. It is an email from you to your team. At the bottom of the page where you say "Westminster" you say:

"This needs setting up quickly and holding in reserve as a back-up to LCF."

You agree what you meant was that Westminster wouldn't start unless LCF stopped?

A. Possibly. I mean, it's also -- possibly. We wanted -- LCF was fantastic. I said this previously. There were a lot of low-quality products out there with no security, not using all these brilliant third parties. We were delighted, at that stage, to be given the opportunity to build another one because we would have been paid for it and we were a business.

Q. But the answer to my question is, yes, you meant that Westminster would only start when LCF stopped?

A. Well, possibly, is the answer to that.

Q. You said the other day that the only thing you cared about was cold, hard facts. That's not true, is it: the only thing you care about is cold, hard cash?

A. I mean, Mr Robins, I'm an entrepreneur. I mean, I build businesses. The endeavour of building a business is to make a profit. And I can't --

Q. You don't care about anything other than cold, hard cash?

A. Of course I do. I mean, I think that's an unfair comment.

Q. What you say under the heading "Blackmore", three lines down:

"It is cold, hard cash. I don't care about anything else."

You don't care about anything other than cold, hard cash, do you?

A. I'm a very driven CEO and founder of a business and I do try and set some fairly driven goals for my team. I had a lot of people, and I had to lead them. I'm sorry it doesn't read particularly well, and I do cringe reading it now, Mr Robins. I can't really explain to you -- that's the kind of dialogue I had. I was quite colloquial, yes, we're building businesses and I'm driving people. I'm the same now, I was the same before, in business. You know --

Q. Do you remember being copied into emails attaching draft information memoranda for Westminster Corporate Finance, as it came to be known?

A. I don't recall.

Q. <D7D9-0007342>, please. There's an email from Kerry, copying you in, attaching the 14th version of the Westminster Corporate Finance information memoranda. Do you remember being closely involved in this?

A. I'm afraid I don't remember being closely involved in it.

Q. Well, you were involved enough to be copied in, weren't you?

A. This would have been led by Kerry, who would have led this.

Q. She would have explained to you what she was doing?

A. Yes.

Q. You would have probably had a look, at some point, at the draft information memorandum, wouldn't you?

A. Possibly. I mean, it's not really my thing to look at information memorandums, Mr Robins.

Q. Can we look at <SUR00164336-0001>. This is the draft Westminster Corporate Finance memorandum. If we go to the next -- I don't know why it started here. Is this page 1? Oh, there we are, this is page 1, "Information memorandum. Westminster Corporate Finance Plc bond". If we look at page 9, please, at the bottom. Can we zoom in on the bottom half of the page? It says: "Summary of the opportunity.

"Key features.

"The corporate bonds issued by Westminster are a fixed income investment opportunity, with a choice of either a two-year or a three-year term. The proceeds will be used to provide structured finance to both UK and internationally based companies."

Do you see that?

A. Sorry, sir, could you just say that bit again?

Q. It's the first paragraph under "Key features"?

A. Yes.

Q. Do you see what it says there about proceeds being lent to UK and internationally-based companies?

A. Yes.

Q. Do you see Kerry's comment on the right, Kerry Graham, fourth comment. She says:

"Just to make you aware, the retail investor is less keen on overseas opportunities re concerns over the realisation of security which is held in foreign jurisdictions and there is a positive association with supporting UK businesses."

That's a good point she's making there, isn't it?

A. Yes, I think so.

Q. You would agree with that. Easier to sell --

A. Yes, it's always better to have -- I mean, there are some big foreign bonds, but, yes, I do agree with that, I think.

Q. Can we look at the next page, please [page 10]. At the bottom, again, you see it says:

"Over 99 per cent of businesses in the UK are classed as small or medium sized enterprises (SMEs) and, at the beginning of 2017, these numbered 5.7 million businesses, an increase of 197,000 since 2016 and 2.2 million more than in 2000."

Whether you read this or not, you understood the general idea of WCF was that it would be lending to SMEs?

A. Yes, I thought, on this one -- I don't know why I seem to recollect that. I thought it was more of a corporate lender, I seem to remember that being the pitch.

Q. SMEs are companies, aren't they?

A. Yes, sir.

Q. So it would still be corporate lending, wouldn't it?

A. Yes.

Q. At the bottom:

"A continued consequence of the 2008 banking crisis is that it remains difficult for SMEs to obtain lending from banks."

So you knew that the basic idea was that Westminster Corporate Finance would be lending to SMEs that were finding it difficult to obtain funding from big banks?

A. I honestly would probably very unlikely have read this --

Q. But --

A. -- and my knowledge of this bond would have been secondary to Kerry, who would have led the sort of --

Q. Yeah, yeah, but you'd have -- whether you read this or not, your understanding would have been that Westminster Corporate Finance was going to be lending to these SMEs that were struggling to obtain funding from banks?

A. Yes, I think so.

Q. At the bottom, it says:

"How are smaller lending houses such as Westminster able to compete with high street banks?" Over on the next page, it says about the outcomes of the credit crunch, banks have to carry more capital, et cetera. Then there's a heading "How does this assist SMEs?", and there's more about SMEs. Whether you'd actually read the detail of this or not, you would have known from your discussions with Kerry and John and Simon that this was the basic thrust of how Westminster Corporate Finance was going to be marketed?

A. Yes, I presume so. I presume I did know that then.

Q. Can we look at <SUR00106992-0001>, please. It's an email from John Russell-Murphy to Jo Baldock and you, and then, three paragraphs up from the end of the email, he says:

"WCF needs to issue a loan to SHK/SG prior to going live and take on some decent security. This way the AMs can talk about XXXX amount of security protecting the investors."

You knew that WCF was going to be another front, didn't you?

A. No, Mr Robins. I was, at this stage -- sorry, I can't see the date, but I presume it's sometime in 2018. This is just not true. I mean, I believed in -- when is that, August 2018. You know, Ernst & Young had had an audit then, which was about £260 million, I seem to remember.

Q. Was my question, had --

A. No, sorry, I beg your pardon.

Q. You knew that WCF was going to be another front. Let me explain what I mean by that. It was going to be talking to the public about lending to SMEs but, in reality, making loans to Simon and Spencer?

A. I mean, the way -- no, I don't think that's quite a fair representation. I mean, we are -- by saying things like that, you are sort of dismissing an enormous amount of very significant facts.

Q. It was a back-up. You knew it was a back-up, in case of LCF being shut down, to enable the same individuals to carry on doing the same thing?

A. Bonds wanted -- they wanted multiple products. Lots of companies wanted them. This isn't the only one they wanted. They wanted an oil one at some point. I don't see it in the same characterisation that you pitch it today, Mr Robins. It was a -- we tried our best to -- you know, that's our service. We do marketing. You tell us what you've got. It wouldn't have launched without security because it wouldn't have been able to launch without security. So no matter what logos and things were done, and who was involved, it would have required some substance before it launched, or indeed it would not have launched, and I don't know if this one did. I don't think it even did.

Q. Let me try to phrase the question in a different way. You knew that the same individuals were going to be on the lender side and borrower side, just as was the case in LCF?

A. I think that's fair to say if I can add to it that it also included the same people, the brilliant barristers and solicitors I'd met who had worked at the regulator, the same brilliant, I presumed, auditors. Yes, we were after -- we were dealing with lots of lower-quality products. This was the best one in the game. I know -- in the game, in the industry. It was. And so we were delighted to have the opportunity to help them and do more work.

Q. You knew that, just as with LCF, WCF was going to be talking to the public about lending to a diversified portfolio of SMEs but, in reality, making loans to Simon and Spencer?

A. I did not know that it was lending money to Simon and Spencer. I believed, to be more accurate, it was lending money to companies connected to --

Q. Okay, would it help if I --

A. -- Spencer, quite specifically.

Q. You knew, just as with LCF, WCF was going to be talking to the public about lending to a diverse portfolio of SMEs but, in reality, making loans to Simon and Spencer's companies?

A. Well, I can answer this in a bit more colour for you, then, because --

Q. Could you answer it first before you give us the colour?

A. It was lending it to companies connected to Spencer and Simon, who -- this is the colour --

Q. No, but my question was a yes or no question.

A. Right.

Q. You knew, just as with LCF, that WCF was going to be talking to the public about lending to a diversified portfolio of SMEs but, in reality, making loans to Simon and Spencer's competition?

A. Not necessarily just them, no. The colour around this is -- I did mention this on Monday, I think -- that that day when Kerry and I found ourselves in Goldman Sachs and we were seeing this pitch that Goldman Sachs were talking about the industry of gas and oil, we knew that that's what they were trying to do, is to lend to those sort of distressed --

Q. So including Simon's oil business, so to Simon and Spencer, including his oil business?

A. I think their plan -- this is just from memory -- was to roll up lots of these listed gas and oil companies in the North Sea which could not remove gas out of the ground because the cost was too expensive.

Q. Who was going to run that?

A. I don't know, whoever --

Q. Simon Hume-Kendall?

A. He would have appointed someone, I presume, to --

Q. So someone appointed by Simon Hume-Kendall?

A. Well, I don't know.

Q. You knew that when WCF was launched, it was going to be launched telling the public about lending to a diversified portfolio of SMEs but, in reality, making loans to Simon and Spencer's companies?

A. Connected to Simon and Spencer with security -- that IM you just showed me there, for example, I presume that's written by the law firm, the City law firm, I mean?

Q. You knew that when WCF was launched, it was going to be launched telling the public about lending to a diversified portfolio of SMEs but, in reality, making loans to Simon and Spencer's companies?

A. It was their plan, their introduction. We would never have launched anything unless it was proper, and that means the lawyers were involved and there was -- so all of the work -- and we would have been paid for it, of course.

Q. But is the answer "Yes" or "No"? It is a yes or no question, you see.

A. Sorry.

Q. You knew, when WCF was launched, it was going to be launched telling the public about lending to a diversified portfolio of SMEs but, in reality, making loans to Simon and Spencer's companies?

A. I didn't specifically read the IM, so I can't specifically say yes, I'm afraid.

Q. You said you knew the general basis on which it would be sold to members of the public?

A. It was introduced to us by Simon, so of course that --

Q. You knew it was going to issue a loan to SHK/SG prior to going live, didn't you?

A. Reading this, yes, but I presume that's because the structure is, you need to have something -- some form of security to start a bond.

Q. Come on, is the answer to my question "Yes" or "No", and then we can move on from this?

A. I'm going to go with "Possibly". The way you're pitching it is as if this is -- it is not a fair assessment of what was actually happening at the time. I mean, Kerry would be better placed to explain this. But it was just a natural progression. You know, we've got a great bond, they're doing well, they want another bond, and we want to help them do it and get paid to do it.

Q. Do you remember the idea evolved to become too similar to LCF?

A. Possibly, yes.

Q. Do you remember that was a problem?

A. Yes.

Q. The problem was, if they were too close, LCF's collapse would affect WCF as well?

A. Yes, I seem to remember seeing that recently.

Q. The concern was that, if LCF was to run into problems in the future, WCF was so closely linked that you couldn't see how it would not be affected?

A. Yeah, I would agree that that's fair.

Q. My Lord, I'm moving on to a new topic. We looked at a Money Saving Expert Forum post yesterday and you said you thought there was another from 2017. We haven't been able to find that, but I am going to ask you questions about the post in 2018. <MDR00129284>, please. At the bottom of page 1, James Thomson -- that was Mr Thomson's brother, wasn't it?

A. I can't remember. I've never met him.

Q. Do you remember he did some work on the website and you and your colleagues got annoyed because you thought he was trespassing on your territory?

A. I do remember him now, thank you.

Q. He sends Andy:

"Here's a link to the latest thread talking about LCF and Surge on Moneysavingexpert's forum." He gives a link and says:

"In it, they set out the business relationship between the two companies and its two directors, Kerry and Paul."

On the left, you can see Andy has sent that to John. John has then sent it to you. He said:

"Important -- please read the link below." And you have emailed it to -- you have emailed back to John, copying hub@infoconnections and kerry@infoconnections and said:

"Can I have some views on it please, I can't get the link to open at the moment."

John says:

"It does link LCF to Surge but that's not a problem, we don't hide the fact that we deal with their account management. It mentions that there is very little evidence that LCF lends to SMEs as there is no lending site. Not sure if this is an issue or not." Do you remember the brouhaha in February 2018 when this new post appeared on the internet?

A. I don't recall this one. There were quite a few -- well, not quite a few, there were a few.

Q. When John says, "It mentions that there is very little evidence that LCF lends to SMEs as there is no lending site", you thought that was an issue, didn't you?

A. Yes, I did.

Q. Can we look at <MDR00129307>. Kerry comments in an email to you and John:

"We are not referenced in a bad way. Some of what is said about Surge is very fair and some was even complimentary about us doing a good job. One negative criticism was that Surge could be turning a blind eye to get fees for marketing a bad asset. The criticism is all about speculation that LCF could be a sham, mostly based on the fact that there is no evidence of who LCF lend to which the writers consider to be strange. They don't like the fact that account managers will not answer even the most basic questions about how many companies have been lent to."

Let's take that in reverse. First of all, it is true, and you knew at the time, that your account managers would not answer even the most basic questions about how many companies had been lent to?

A. So, they would have had a script by Kobus or, you know, Kobus and Andy. We would have read it. We would have --

Q. But if Kerry is saying this, it is right, isn't it, that at that time, February 2018, the account managers would not answer even the most basic questions about how many companies had been lent to?

A. I don't recognise -- I mean, we had I don't know how many account managers, but quite a few --

Q. Kerry is unlikely to have got that wrong, isn't she?

A. We would have had enormous scripts, FAQs, everything that they would have asked. I presume this is a script that the account managers led, all the calls were recorded --

Q. But Kerry knew, and you knew, that they wouldn't answer even the most basic questions about how many companies had been lent to?

A. I don't recognise that. They did answer more than basic questions. The account managers I thought were very professional and, indeed, the best in the business at the time.

Q. So you think Kerry is saying something to you that she's got completely wrong. Is that what you're saying?

A. Kerry says, "They don't like the fact the account managers will not answer even the most basic question", she doesn't say --

Q. She's accepting that that is the situation, isn't she?

A. You can ask her next week, but she will agree with me our account managers were first class and, once we'd sort of grown out of that 2016 adolescence and we were professionalising the call recordings and everything else, I don't recognise that they wouldn't have answered the most basic questions, Mr Robins.

Q. Middle of the paragraph. You agree you knew at the time there was no evidence of who LCF lent to?

A. Yes, I do agree with that.

Q. You agree you were aware of speculation that LCF could be a sham?

A. There were -- I mean, I know you haven't found any more. There were some others, but they weren't -- it wasn't like a tirade or an avalanche of negative things. No more than -- no disrespect -- your law firms here would have. You know, people just attract anyone who is above the parapet doing marketing and it's going to attract people who say bad things. So, I don't take that criticism, you know -- I prefer the -- you know, the facts from the professions than the anonymous writer of online posts.

Q. The possibility that Surge could be turning a blind eye to get fees for marketing a bad asset was something that you considered, isn't it?

A. Yeah, I mean -- well, she says that they say it. But I would argue "bad asset" when there's a lot of evidence -- I know you've not shown it, but there is a lot of evidence to the contrary.

Q. Can we look at <MDR00129319>, please. At the bottom of page 2, you will see Mr Russell-Murphy, bottom half of the page, says:

"I've let Andy know. No further action required now."

You agree that you didn't go to Mr Thomson and say, "We need your responses to all the points in this post"?

A. I couldn't tell you whether we -- we would normally, I think, have sent them -- if it was an issue, we would have forwarded it --

Q. It looks like you didn't on this occasion, doesn't it?

A. Okay, yes.

Q. Then it says:

"It does bring up a good point about the lending side which is why I have been pushing for WCF to have a strong lending element to their website." Do you see that?

A. Yes, I do.

Q. So John had been saying, "We need WCF to have a strong lending element to their website" -- not because they need one because they are going to be making loans to Simon & Spencer's companies, but so it looks better to the public. That's what he had been saying?

A. No, Mr Robins, we were trying our best to use all our experience to try and help our client, who we thought were legitimate, build a better product.

Q. You reply saying:

"How long have I been saying that LCF needed a client site for lending???"

What you were saying is, if it had a public-facing lending site, then these awkward questions wouldn't be asked?

A. No, what I'm saying is, it was Andy's ambition to lend to more SMEs. That was something he stated. Although he only -- it was 11 when the audit came out and that was then reflected in our documents. After that, he always used to say he wanted to lend to SMEs, and it just made sense to have that and the system in it.

Q. Jo replies, "I know, forever". Had you been saying forever -- that's an exaggeration. Had you been saying for a very long time that LCF needed a client site for lending?

A. Yes, from the outset, I believe.

Q. Ashleigh, at the top, says:

"What about this one?"

You say again:

"I can't open the link. What is it?"

He says:

"It's a lending site that Andy half set up but never completed."

You were aware Andy had half set up a lending site but never completed it?

A. Right.

Q. Were you?

A. Sorry, sir, could you ask that again?

Q. Were you aware that Andy had half set up a lending site but never completed it?

A. Yes, I will be then, if I've read this. I can't recollect it, though.

Q. Kerry says:

"I know we don't want call to actions that take investors away from the bond website but possibly we need a link to this corporate website in some place? For example, such as the FAQs under a new question: 'I am a company wanting to apply for a loan with LCF, how do I apply?'"

When she's talking about investors, she's saying it would be potentially helpful for investors to see that there was some means of applying for a loan?

A. Yes.

Q. When she says, "Would this tick a box?", you agree she's not talking about any real --

A. Sorry, can I see that?

Q. On the left:

"I know we don't want call to actions ..." Can you tell us what "call to actions" are?

A. Oh, sorry, yes. Can I read this for one moment, Mr Robins? Yes, this is discussions around conversion, site conversion.

Q. Yes. So, she's talking about matters of presentation to members of the public, isn't she?

A. (Reads to self). Yes, she's looking at -- it's quite a marketing view to this. Once you've got someone on a page to go through a breadcrumb, you really don't want to distract them with, "Go and look at our corporate website", "Go and look at our lending", because they'll disappear and are unlikely to come back. You want to try and control the passage of them, you know, to give your details to --

Q. This isn't really about Andy needing a lending website to find new borrowers, it's about the benefits of having a lending website in terms of how LCF is presented to members of the public?

A. No, because it was Andy's ambition --

Q. In terms of what Kerry was talking about here --

A. Right, okay.

Q. -- she's not saying Andy needs a lending website to find new borrowers. She's talking about the benefits of having a lending website in terms of how LCF is presented to members of the public?

A. Well, yes, but, you know, it can have -- it is also a useful thing to have to get deal flow when you're in a position to want to expand your business.

Q. But that's not what she's talking about, is it, when she says "tick a box"?

A. You have slightly lost me on this one.

Q. When she says "Would this tick a box?", she's talking about how LCF is presented to members of the public. She doesn't want "call to actions that take investors away from the bond website". This is about how LCF looks to prospective bondholders, isn't it?

A. I see, okay. It was Andy's ambition to lend to other companies. We had been pushing him from day one. We didn't realise, day one, he was only going to have 11 investors buy, sort of, 2018 and the Ernst & Young audit came out, and we were all constantly pushing him to remove the opaqueness around that side of it. The majority of what Kerry is saying here is around conversion. You know, like she puts "case study" underneath. That's all about converting people. You want to try to give people conversion data.

Q. It was very strange, wasn't it, that, by February 2018, Mr Thomson hadn't been able to provide a single case study about a borrower? It was very strange, wasn't it?

A. I think it was unhelpful, I think might be the way I would -- from a marketing point of view, it was unhelpful.

Q. From a commonsense point of view, it was very strange?

A. But by this time, we had all these amazing lawyers and auditors running around seeing things we didn't see. So there wasn't that level of -- like we are doing today, where everything has got a connotation to it.

Q. Can we look at <MDR00129338>, please. Kerry sends to you and John the post. You would have read this?

A. There's a chance I didn't, to be honest, but yes --

Q. You probably did?

A. Possibly.

Q. Given all the discussion that we have just seen about it, you would have probably wanted to know what the post said?

A. Oh, sorry --

Q. About your company?

A. Yes, I could well have read this one. I didn't realise what I was looking at, yes.

Q. You wanted to know what had been said about your company on the internet, surely?

A. Possibly. Don't we all?

Q. So probably read it?

A. Probably, yes.

Q. Second paragraph. It says:

"We have all heard of the adage: don't bite the hand that feeds you."

You know what that means, don't you?

A. Yes, I do.

Q. "However, you would think the officers and staff of Surge would want to know something about how LC&F, a commercial lender, a very small start-up with debts and no previous track record of SME lending is making the money to pay Surge, company expenses and profits, and the investor interest, especially as that is not clear at all."

You would agree it wasn't clear at all, was it?

A. I mean, I can see enormous amounts of inaccuracies in this.

Q. But it wasn't clear to you how LCF was making the money to pay commission and interest?

A. I would have left that to the PwC and Ernst & Young auditors, Mr Robins.

Q. It says:

"Staff in Surge appear to have no information about the bond-related commercial lending business ... even basics such as how many lending team employees, who they are and where they are based."

A. That's not true.

Q. You knew it was just Mr Thomson, didn't you?

A. If you looked at the publicly available information that Ernst & Young did, it listed how many companies they were lending to and various other things.

Q. They are "lending team employees". You knew it was just Mr Thomson, didn't you? He was the lending team. There was no-one else, was there?

A. One of the things I recall Andy saying -- when we used to talk about inflows -- I'm at risk of repeating myself -- but he did say, Mr Robins -- he would ask, "What are the predicted inflows", at

various times. Most quarters, he would ask this question, and we would obviously give him our predictions based on time of year and competitors and everything else. He used to say, "Well, if I had 20 million, I could get it out the door in a day", and we believed that he was starting there and he was off to go and build something bigger and have more clients to lend to. I think -- yeah, I mean, a previous track record of SME lending, we were led to believe, and potentially this is true, that he did have previous experience and he was a person who could lend money out to companies. So him being the lending team wasn't like a kind of flag for that because it's what he used to do at the bank.

Q. You were aware, weren't you, that when members of the public asked your salespeople about the borrowers, your salespeople often said, "Well, we can't tell you due to data protection laws"?

A. I wasn't aware of that.

Q. Were you aware, as set out in the final line on the page, that "Data protection is a lame excuse as data protection laws in the UK only apply to live individuals and not to companies"?

A. I'm afraid I wasn't --

Q. If we look at the top of the next page, please --

A. -- aware of that.

Q. It says:

"Many companies like to showcase their trading clients' names on their websites ..."

That's true, isn't it?

A. Yeah, I think that would be true.

Q. It says, in the second line:

"Do you see any names of the hundreds of companies LC&F is lending investor capital to on the LC&F bond website? No, only numbers ..."

It is true that LCF never publicly disclosed the name of a single borrowing company, isn't it?

A. I don't believe they did.

Q. That was pretty strange, wasn't it?

A. Well, if they didn't have two of the largest auditors in the world checking it out, yes, I would say so, but they did and, therefore, I didn't think it was that strange.

Q. Second paragraph, third line:

"But what if a company had no choice but to not provide or disclose evidence of a commercial business because the business actually did not exist?" That's something that must have crossed your mind?

A. They did exist. I had been to their offices. I had met people. I had sat down with lawyers, barristers, like yourself. I knew they existed. That wasn't true.

Q. When this post came out, you were very concerned about what it said, weren't you?

A. Yes, I would have been very keen to remove this, Mr Robins.

Q. You were also concerned about how to protect yourself better, weren't you?

A. I'm not sure. I don't recollect.

Q. Can we look at <SUR00092853-0001>, please. At the bottom of the page, John emails you to say: "Paul, I've just been talking to Kerry about how to protect ourselves better following the blog that was on MSE."

Do you remember that was something you discussed with them?

A. Quite possibly, yeah. That would have been -- that would have definitely been something we would have, you know, wanted to address.

Q. He suggests creating a role for an individual who has the responsibility of ongoing due diligence. No such role was ever created, was it?

A. Well, I think you could argue -- well --

Q. Was it created after this email? Did you say, "Yes, good idea", and create it?

A. Well, I mean, Kerry would have had that role anyway, and Mark Partridge would have had that role. But, no, I don't think we did.

Q. Then John says:

"The information that we should be collecting is quarterly management accounts, company responses to any bad press or blogs, recording of minutes when meeting our clients, et cetera. This should be collated and put in a shared management file."

The idea that John was proposing was that you would have a file of evidence ready to go to defend yourselves if and when LCF collapsed?

A. I mean, I'm not sure about the last bit. But the first bit I can certainly agree with, yes.

Q. Then he says, at the top of the next page: "If one of our client bonds fail in the future, we could then show a history of ongoing DD. This won't help the investors but will help protect our reputation and soften the blow if a bond does fail." The thing that concerned you and John and Kerry was how best to protect yourselves, wasn't it?

A. I mean, yes.

Q. On the left-hand side, you say:

"We already do what we can. For example, I have Mark Partridge request accounts, underlying security reports from both bonds. I have been running this for two years."

That was something you had been running to protect yourselves, wasn't it?

A. Sorry, Mr Robins, could you say that again?

Q. John is talking in his email about, "How do we protect ourselves?". You say:

"We already do what we can.

"For example, I have Mark Partridge request accounts ... I have been running this for two years." You had been doing that for two years so you'd have evidence to protect yourselves in the event of LCF failing?

A. Or I did it for two years because I wanted to see the accounts.

Q. Well, John's email is talking about how best to protect yourselves, how to protect your reputation, and soften the blow if a bond does fail, and you say, "I've got it in hand, I've got Mark asking Andy for things". That's what you are saying, isn't it?

A. I mean, I am saying that, yes, but it's also -- it needs to be taken into context. I mean, you know, we want to show that we have done what we have done rather than just do it, because there will be many times when we're not writing down when we're asked -- Andy would have been asked about security almost every time he came to our building by someone -- Kerry or John probably: (a) to update the account managers, there's like 40-odd people there; and (b) it's just good for us to keep --

Q. If he gives you a bigger number, it helps you to sell the bond, doesn't it?

A. The number -- what we say has to be backed up by what other people say, namely, auditors. I mean, we --

Q. Mark writing to Andy, which is what you are talking about here, was never about getting to the truth, was it, it was about creating a paper trail to protect yourself in the event of LCF failing?

A. I did want to put a paper trail, yes, because, of course -- I mean, I can see what we're trying to do here. But we didn't -- it wasn't -- we weren't faking Mark asking questions. Mark was asking questions -- I mean, look at the way in which he's asking them, Mr Robins.

Q. You thought there was such a risk of LCF's collapse that you needed to create a paper trail to protect yourself?

A. I thought LCF, even after the FCA went in, was still a first class -- I thought it would pay back the bondholders. I did. I thought the security was sufficient to pay back the bondholders.

Q. You thought there was such a risk of LCF's collapse, you needed to create a paper trail to protect yourself?

A. I can't agree with that. We were -- I mean, I can see what I'm writing there. So, I think in the second line -- sorry, the third line, I say:

"Right now LCF is behind with its accounts, but he has provided reasons why."

I'm talking about Andy there.

Q. And you're talking about how you can justify continuing to sell bonds. He's given reasons why. If LCF was to collapse tomorrow, we would say, "Well, he is behind with his accounts, but he gave reasons". You knew he was a liar. You knew you couldn't trust his reasons, didn't you?

A. But couldn't I trust PwC and Ernst & Young, Mr Robins? How about Lewis Silkin and the barrister?

Q. Had you seen Ernst & Young's reports on 14 February 2018?

A. I'm not sure. But I'd probably heard -- I'd certainly seen PricewaterhouseCoopers'. I'm certainly seeing Lewis Silkin. I'm certainly sat with a barrister who's been ten years at the regulator. I have to have some comfort. I can see it looks like I'm trying -- but Mark would have done -- I -- we didn't -- I'm just trying to --

Q. You didn't even believe Mr Thomson when he told you that the accounts had been filed, did you?

A. I didn't -- sorry, could you say that again?

Q. You didn't even believe Mr Thomson when he told you that the accounts had been filed, did you?

A. I'm not sure. I don't recollect that memory.

Q. Can we look at <SUR00093339-0001>, please. You email Mark Partridge on the 20th, at 3.11 am: "Hi Mark, could you take a look at LCF's accounts which have allegedly been filed yesterday ..." You didn't even believe Mr Thomson when he told you that the accounts had been filed, did you?

A. I mean, I -- I'm not sure why I wrote "allegedly". I mean --

Q. Let me show you the previous email, <SUR00093302-0001>. John has just told you the previous day: "I have just spoken with Andy, he said the LCF accounts have now been fully audited and are available at Companies House."

Even though Andy said that, you say "allegedly" because you didn't believe a word that came out of his mouth?

A. I don't agree I don't believe a word that came out of his mouth, and I said this yesterday: even though he had some personality differences and issues which -- well, lots of people have used colloquial terms with, he had a banking background, he used the very best third parties. There were lots of positives. I know we know different things now. I mean, on this -- sorry, is this the day before? So this is the day before I say to -- this -- I -- on 3 am, the next morning, in 12 hours, I say "allegedly" because I think I'm obviously talking about this, ie, allegedly John has told me, perhaps.

Q. You say "allegedly" because you don't trust Mr Thomson; right?

A. I mean, I -- I -- even if Mr Thomson had -- you know, had other issues, he at least had the sort of mind-set to get the very best -- two of the very best auditors in the world, the very best lawyers. You know, it is very difficult for me to sort of -- I can't sit here and just say that this -- you know, without retrofitting things. At the time, I thought, despite some of his personality issues, I thought he was outsourcing to the best and, therefore, I took some comfort from that.

Q. John's told -- sorry, Andy has told John that the accounts are available at Companies House. John has checked and they are not. You must have been thinking, "Oh, here we go again, the usual BS"?

A. I mean, maybe there's a delay. I mean, for example, that figure, if that figure was totally different from Ernst & Young and it wasn't 287 million, it was 87 million, by way of example, that would have been a bigger thing. I don't know. I mean, he wasn't -- you know, other people have described Andy as being a bit lazy. I mean, maybe he's just -- you know, I don't think I can conflate the delay in this to -- sorry.

MR JUSTICE MILES: Finish your answer.

A. Sorry, I beg your pardon. Yes, I'm not sure I can conflate Andy's delay as dishonesty.

MR ROBINS: My Lord, could we run on for 15 minutes to ensure we finish today?

MR JUSTICE MILES: Yes, we can do that.

MR ROBINS: I'm grateful. Let me take you, Mr Careless, to the email that you have mentioned a number of times before and on which you place a lot of reliance, <MDR00224100>. It's from Mark Partridge to Kerry and you, and he says:

"Well good news.

"EY have assessed their security at £284 million which gives them 5x cover on loan book at 30/4/17. What bonds in £m have been issued since then? "I can't quite reconcile their costs to commissions that Surge should have been paid on new bonds ... Not really our issue though the main thing is the bond cover looks more than adequate."

Do you say you remember receiving this email?

A. Yes.

Q. Do you say you have got a very clear memory of that?

A. Probably combined with seeing it all during my preparation for today.

Q. I think it starts a bit earlier than that. Let's look at <SUR00121388-0001>. There's an email to you, 20 June 2019, so quite a few months after LCF has collapsed and gone into administration. Subject "Media inquiry: Paul Careless arrest". So you'd been arrested by the SFO by this point?

A. Yes, sir.

Q. You were beginning to get enquiries from journalists asking for comment?

A. Yes.

Q. This is 20 June 2019. Can we look at <SUR00121429-0001>. This is seven days later. Do you see Kerry has scanned a document and emailed it to herself?

A. Yes.

Q. Do you remember Kerry doing a lot of work to help you prepare for your questioning by the SFO?

A. Maybe.

Q. If we look at the attachment, <SUR00121430-0001>, is that Kerry's handwriting or your handwriting?

A. I don't recognise it. It is not mine.

Q. We can see, at the top, it's printed out from Kerry's InfoConnections email account. Do you think she probably printed it out and has written this on it?

A. I'm not sure whose handwriting it is.

Q. It looks like it's been scanned in, doesn't it, from that previous thing and sent to Kerry?

A. Right. Okay.

Q. It's an email from Mr Thomson to Kerry and the handwriting says:

"Contract negotiation & request for DD." Do you remember seeing this?

A. I don't --

Q. Could it be Vicki Bennett's handwriting? It's just been suggested maybe that's a possibility. I thought it was Kerry?

A. No, definitely not Vicki's. Vicki's is more bubblelike.

Q. So probably Kerry?

A. I'm afraid I couldn't tell you.

Q. <SUR00121431-0001>. There's the email. The attachment is <SUR00121432-0001>. I can take a different one if that one is not coming up? All the covering emails look the same. We could look at <SUR00121434-0001>. This one says:

"LCF's response to concerns over regulation." Do you remember Kerry or someone going through Kerry's emails and taking out documents that might help you answer the SFO's questions?

A. I've only -- when is this? 2018. So --

Q. No, this is, top left, 27 June 2019.

A. So it's when I was arrested, essentially?

Q. Yes. Someone is going through Kerry's inbox, identifying helpful, or potentially helpful, documents. Do you remember this?

A. Obviously I don't, but my conversations with the SFO --

Q. I wasn't asking about that.

A. Oh, sorry.

Q. You don't remember. Can I just help to remind you?

A. Yes.

Q. Do you remember that Kerry or someone gave printouts of these emails, annotated and highlighted --

A. Yes.

Q. -- gave them to you in a file?

A. Quite possibly.

Q. Do you remember you took photos of some key documents and sent them to Mark Partridge by WhatsApp?

A. Possibly.

Q. If we look at <SUR00121460-0001>, this is your WhatsApp to Mark Partridge. The first two are attachments and, the third, Mark Partridge says:

"All good emails shows due process was followed." The sort of attachments you sent are <SUR00121461-0001>.

This is one of the documents. We can see it's now been highlighted?

A. I see. So Kerry sent them to me and I sent them to Mark?

Q. The reason I say in a file, let's look at <SUR00121462-0001>. It looks more like photos of something in a file rather than the original scan, doesn't it?

A. Yes, it does, yes. Yes, sir.

Q. Do you think Kerry or someone gave you some key documents in a file for you to read up on before you went to be interviewed by the SFO?

A. Well, no, that wouldn't -- that would have been impossible, Mr Robins, because I was arrested at my house at about quarter to 6 in the morning. I went to Worthing Police Station, where I didn't have a solicitor, and gave a full -- in fact, I think I'm the only person who did, gave a full account to the Serious Fraud Office on the same day, leaving the police station at 10.00 at night on the same day I was arrested and I was never then subsequently spoken to by the SFO until 2022, and then, after I'd done that, I was released from their investigation.

Q. You agree this extensive exercise is happening within a week of your arrest? We saw the date that someone was going through Kerry's inbox?

A. Right, yes.

Q. Can we look at one of the documents that was in the file, <SUR00156721-0001>. This is Mark Partridge's email, 20 February 2018:

"Well good news. EY have assessed their security at £284m ..."

That's been highlighted. And someone has written: "LCF's audit received well by our accountant." This is why you remember that email, isn't it; not from the time but from the briefing materials from Kerry's inbox that you were given within a few days of your arrest?

A. I remember this email and, indeed, other emails, because I'd been sort of preparing for the trial. Actually, this is the first time I've ever seen it. I didn't realise -- I can't recollect -- I'm not saying it didn't happen, but I wasn't preparing for an SFO interview. I had one SFO interview. I gave a full and open account without a solicitor present because I'd -- in fact, my answer to being arrested was, "I should be a witness, not a suspect. I will give you my best effort to assist you".

Q. Were you preparing to be interviewed by the administrators, perhaps?

A. I mean, perhaps.

Q. Did you prepare to be interviewed by the administrators?

A. I hope -- maybe. There is a chance.

Q. Do you remember the examination in court took place on 24 January 2020?

A. I take your word for that, Mr Robins.

Q. Can we look at <SUR00123002-0001>, please. This is a WhatsApp message between you and Vicki Bennett. 24 January 2020. At 7.17 am she says:

"I'm at the yard, but have my phone if you want me to test you."

Did she help you rehearse your answers for Mr Shaw?

A. I don't know. Possibly.

Q. Fourth down, she says:

"Think about ..."

"Incentives to AMs, did it encourage them to overstep the boundaries into selling."

"Who came up with 25 per cent fee and did you know borrowers were paying it?"

"Who negotiated Spencer's fee."

These were all things that there were some sensitivities around; correct?

A. Well, I mean, you know, without sort of breaking the privilege, or whatever my Lord said earlier, it's no different than -- my lawyers would have done things very similar to this, I'm sure.

Q. Okay:

"Why was JRM paid so much?"

"Why did you set up RPD?"

"Why did you keep going when it was obvious that the business model was fundamentally flawed and that it would take years to recoup your fees from borrowers interest."

Then you say:

"Answer these for me please.

"Each one."

This is the morning when you're due to be examined in court by Mr Shaw. She says:

"Account managers were incentivised on SLA, so quality, compliance, customer service. Also on not wasting leads and contacting customers (without hassling). Any drops in compliance or quality were taken seriously ..."

Next one, she says:

"25 per cent fee was negotiated at the start as we identified that it was market rate. The fee remained in place despite the level of services we provided increasing. We provided excellent value for money and [had] LCF performed the same tasks internally it would have cost them much more. Make sure they understand how much we did, they really don't seem to get it!" The next one:

"Borrowers paying our 25 per cent fee is nothing to do with Surge business ... and was not agreed." The next one in brackets:

"(I don't actually know who negotiated Spencer's fee by the way)."

She suggests the answer:

"When we met Spencer we knew he was already a wealthy man and we understood this was due to success in properties development and from introducing people as he is very well connected. The fee he was paid is not unusual in any way."

Then she suggests another answer:

"JRM has the experience in 'selling' the product whereas we held the technical and marketing expertise. He was integral to our operation ..."

The next one:

"RPD is a marketing channel. We were paying other sites to feature our clients on their listings, we knew we could do a better job ..."

The next one:

"LCF business model is something you need to discuss with them as it is separate from mine. I took assurances that their model was viable from the audited accounts and the fact that they continued to pay me. Having not actually had a contract signed between us they were free to go elsewhere had I been too expensive, they knew they were getting value for money. I did not have access to their loan book or sight of their finances outside of the audited accounts, as far as I was concerned their model was viable." Then you say:

"This is brilliant."

Then she says:

"Don't answer questions about their business model." She also tells you:

"You can't be in contempt if you don't know the answer."

Do you remember rehearsing your answers with Vicki, her coaching you in this way?

A. If you had put this as a -- sorry, the answer to that is, I don't remember it, no. But it is no -- it is just like my lawyers would have done, I presume.

MR JUSTICE MILES: What was Vicki's job?

A. Vicki, my Lord, was my long-suffering assistant. She was with me when we had Money Expert between 2004 and 2007. When I exited that business, I took a couple of people from the marketing department, and then she followed me for quite some time before leaving in 2015 for personal reasons and then she came back -- I asked her to come back to Surge in 2017 and, yeah, we -- she's --

MR JUSTICE MILES: Do you think Vicki was sending these messages, or was someone else --

A. No, Vicki was sending me these messages, for sure, yes.

MR ROBINS: It's from her phone.

A. Yes, I would agree with that. I'm not sure if she's not allowed to do that or whatever, but, you know, no different to what my lawyers would have done, I'm sure.

Q. Kerry has given you the key documents, including Mark's email saying, "Well, good news". Vicki has given you the script, "I took assurances that their model was viable from the audited accounts. I did not have access to their loan book or sight of their finances outside of the audited accounts". You have learnt your lines, you have come here and you have said them?

A. Well, you earlier on, incorrectly, thought I'd done that prior to the SFO interview, but that wasn't the case, Mr Robins.

Q. You have learnt your lines and you have come here and said them; yes?

A. No, Mr Robins.

Q. And I think --

A. My assistant is trying to assist me, and I'm -- you know, I can't sit here and apologise for her doing that.

Q. You have learnt --

A. Her level of detail and understanding in this case was much better than mine. I don't -- I'm not a great person on the detail. Anyone will know that. I can't -- you know, the fact that she's giving me an aide-memoire, I mean, I'm sorry if that --

Q. You have learnt your lines and you have come here and you've said them and we know them: "I thought it was the best bond around. It was a good bond. They had good security. They had the audit from PwC, the audit from Ernst & Young. Best accountants in the world. Lewis Silkin". These are all your talking points, your lines. They're reconstruction, aren't they?

A. They are also facts, aren't they, Mr Robins?

Q. This is a script that you have developed, rehearsed and recited, isn't it?

A. Mr Robins, I have -- she is my assistant, she is trying to assist me. It is nothing more than that. Everything you have just said there, it's PwC, it's Ernst & Young, it's -- they are all true. They are facts, and I can't make any -- I can't sit here and say knowing the facts is -- you know.

Q. They are cherry-picked facts to create a narrative to exonerate yourself, aren't they?

A. Well, they are cherry-picked facts, you are correct, but --

Q. Do you understand the oath "the whole truth and nothing but the truth"? It is the whole truth, not the cherry-picked truth?

A. I do understand that, Mr Robins, yes.

Q. And do you accept that you have come here and told us your carefully formulated and rehearsed lines?

A. Oh, Mr Robins, this is -- I mean, with respect, I mean, she's my assistant. She's trying to give me an aide-memoire. I'm not renowned for having a great -- and she's helped me. I'm probably under pressure to see Mr Shaw, you know, eviscerate me in court. So I'm not -- I can't sit here and say -- they are facts. Everything she has written there is a fact. And PwC -- you have just said yourself that they were facts. If I was rehearsing things, Mr Robins, I would have sat like all the other people in the Serious Fraud Office interview and said "no comment". But I didn't, did I? I sat there and answered the questions truthfully and honestly and, of course, that must have resonated because I was released from the SFO investigation for crime and my costs were paid. I cannot apologise for Vicki doing the job which I pay her to do. I didn't know she wasn't allowed. It is not that dissimilar, frankly, to the assistance the brilliant Kingsley Napley give me over the years.

MR ROBINS: My Lord, if that is a convenient moment.

MR JUSTICE MILES: We will come back at 2 o'clock.

(1.15 pm)

(The short adjournment)

(2.00 pm)

MR ROBINS: Mr Careless, we looked at Mark Partridge's email sent at 10.06 on 20 February 2018, and you told us you had a very clear memory. So, what happened next?

A. Particularly with regards to Mark?

Q. On that day. On that day.

A. Yes, sir.

Q. On that day, what was the next thing to happen?

A. I'm not sure.

Q. Your memory is so clear, you can't tell us the next thing to happen?

A. Well, I remember that because I was preparing for the trial, but --

Q. You don't remember it from the time, do you?

A. Well, I have difficulty remembering what is -- you know, what is the information I know now and what I knew then. I have, as I say, some understanding of overarching elements, but I don't know what you're referring to.

Q. Can we look at <MDR00130465>, please. This is just over an hour later, an hour and 12 minutes later. Jo Baldock emails Mark, she copies you, and she says: "LCF accounts -- questions.

"Hi Mark, hope you are well. Following the release of the LCF accounts after taking a quick look through there are a few items on them that I know will raise questions with potential clients:

"1. The asset figure quoted was only confirmed to us the recent up-to-date figure yesterday by Andy, back in April 2017 [the period covered by the accounts] we were quoting an asset figure of £215 million as confirmed by Andy at the time?"

She is pointing out a discrepancy, isn't she?

A. Yes, sir.

Q. Then she says:

"2. The accounts quote there are 6 employees with salaries of 87,000 but the directors took no funds -- clients will ask how the directors made an income." That raises the question, doesn't it, how on earth did Mr Thomson afford to buy a helicopter?

A. Yes, sir.

Q. "3. Where in the accounts does it show a comms payment to Surge?

"4. Page 1 states that LCF only lent to 11 companies, we are quoting many more than this to our clients (100's) -- is there any further explanation to this?"

Your salespeople were still quoting hundreds of borrowers to clients, weren't they?

A. I believe so, yes. Unless their script was updated by Kobus through the system, that would have been the case. Maybe they were saying hundreds of loans, perhaps, but yes.

Q. Well, Jo was in charge of the account managers, wasn't she?

A. Yes, sir.

Q. She seems to have thought all the staff working under her were quoting hundreds of borrowing companies, doesn't she?

A. I think we were saying loans. Whatever is on the script. So, yes, if it said that -- no, I think it said loans on the script, if I remember rightly. But, yes, potentially. Whatever they had on the script, we would have said, as updated by Kobus.

Q. When you saw this, you thought, "Irrespective of what Mark says, these Ernst & Young accounts aren't good enough, we are going to have to do some more due diligence", didn't you?

A. A "good" from Mark is like a "great" from anybody else --

Q. Yes, but that's before Jo raises all these concerns, isn't it?

A. I mean, yes, it is before that.

Q. You saw Jo's email and you thought, "We can't rely on the Ernst & Young accounts, too many unanswered questions. We are going to have to do a bit more digging", didn't you?

A. I don't think I would have thought that. I mean, I -- I think what I take from this -- I don't recollect this. I sort of draw from this that maybe she's just trying to clarify the accounts in a way in which the account managers can explain to the bondholders what -- at this time, this is the Ernst & Young audit we are referring to, isn't it?

Q. We are referring to Ernst & Young, and she's raised some concerning points, hasn't she? Yes?

A. I mean, with respect to Jo, you know, Ernst & Young are the second-largest auditors in the world, Mr Robins. I think -- and, as I have now seen, they did an unqualified audit. They saw our comms payment. We saw that --

Q. Your evidence then is you saw this and you didn't think that there was any further due diligence that you should carry out? I think that's the evidence you just gave, isn't it?

A. I would have accepted the audit as being pretty good.

Q. So you saw this and thought, "We can rely on the audit, no need for anything else"?

A. I've got no problem with people continuing to clarify things, but, personally, I would have thought that was pretty good.

Q. Did Kerry want to do some further due diligence?

A. Kerry, Jo, all of my staff would have done continuous due diligence, even --

Q. But in response to the accounts, did you discuss with Kerry, "If she thought this really isn't good enough, we need to dig a bit further"?

A. I can't remember precisely, but she would have -- probably more Jo and Mark, but Kerry would have sent questions about updates and so on, yes.

Q. Did you know that she went straight to Kobus to say, "We need to see more. We want management accounts"?

A. Unless I was cc'd in on it, perhaps.

Q. Can we look at <SUR00093402-0001>. At the bottom half of the page, there is an email, on the 20th, from Kobus to Kerry, copying you and Andy, and he says: "Just to follow up on what we have discussed this morning."

And then "Accounts":

"As for your request to perform more due diligence on us ..."

You knew Kerry had gone to Kobus after seeing the Ernst & Young accounts and said, "We need to perform more due diligence"?

A. I'm not sure if I knew she'd gone to Kobus, but I knew that she would have asked further questions.

Q. You agree that was probably not after Mark has said "Well, good news", it is probably after Jo has sent the email raising the questions and concerns?

A. I think so, from the time line. I mean, we wouldn't have just had emails, there would have been -- we were in an office together. Mark's office from our office was -- we were in central Brighton. His office is central Brighton. Five minutes away. We could well have spoken in person on multiple occasions. But yes is the answer.

Q. Mark says, "Well, good news". Jo says, "Hang on, what about all these questions?". And then Kerry speaks to Kobus and says, "We want to perform more due diligence". That's probably what happened, isn't it?

A. Probably.

Q. You knew she was going to him, did you?

A. Not Kobus, I'm not sure. I can't remember, Mr Robins.

Q. Basically, he says no. He says he's not comfortable providing such information to anyone. Do you remember Kerry telling you she wasn't happy?

A. I'm just reading it. Okay. I saw it in the previous picture, yes.

Q. At the top of the page, she says:

"A polite push back on my request for quarterly MI. Not happy."

You would agree it is not correct to say you got the Ernst & Young accounts, thought, "We can breathe a big sigh of relief, cynicism goes out the window, no need? For anything further"? That's not what happened, is it?

A. I can't remember what happened at this stage, sorry.

Q. You can see what's happened. Jo's read the questions, Kerry's asked for further DD, Kobus has refused, she's not happy?

A. I don't recall what happened after this, Mr Robins.

Q. Do you accept what I have just described is what happened?

A. Yes, sir.

Q. Let's look at the next day, <SUR00144763-0001>. You can see, at the bottom of the page, Aaron -- is it Aaron Phillips?

A. Yes, sir.

Q. Has emailed Jo Baldock, copying sales: "Questions from the team for Kobus."

And then, at the top of the page, Jo Baldock sends that to Kerry. Do you remember this happening?

A. I'm afraid I didn't.

Q. Let's look at the questions to see if it assists. <SUR00144764-0001>, please. You can see the Ernst & Young accounts saying only 11 borrowers have put the cat among the pigeons because the first question is: "How many companies do we currently lend to? We were told around 150 companies in June 2017." You were aware your salespeople were labouring under the misapprehension that LCF had lent to around 150 companies.

A. I'm not sure they all were, Mr Robins. There were quite a few. There were probably, just on LCF account managers, 20.

Q. You agree all of the ones who attended the meeting in June 2017 were labouring under that misapprehension?

A. It appears so.

Q. Then a number of questions. The final one: "Due to the detail in the new accounts, a few questions may arise recording the business model itself -- with less active loans over longer periods of time and a fee paid to Surge, how do LC&F make a profit after paying high interest rates to [borrowers]?" You agree that's a pertinent question?

A. Yes, sir.

Q. You understand what the questioner is getting at, don't you?

A. Yes.

Q. You understand the questioner is concerned about the fact that LCF's business model doesn't seem to make any sense; yes?

A. Well, I mean, he's asking for clarity to Andy and Jo on the detail, yes.

Q. Because it doesn't make any sense; right?

A. Well, I mean, that's down to Aaron to suggest.

Q. Do you think you saw this list of questions?

A. I don't recall.

Q. Can we look at <MDR00130961>. The same day, 21st, Kerry emails Kobus, copies you. The third paragraph on the subject of ongoing monitoring she says: "... we are keen to have a formal process in place but this should not in any way be onerous or invasive. If our suggestion of a quarterly P&L and balance sheet is not your preference how about a quarterly statement of assets and liabilities as a more streamlined/light touch compromise?"

It is not true, is it, to say the Ernst & Young accounts made you feel reassured and as though you didn't have to look any further?

A. I mean, it was -- I think it is because it was growing quite quickly at this stage, so there was more necessity to sort of have more information, I think, is the answer to that question.

Q. That's the point that Kerry makes in the next paragraph. The accounts, by the time you get them, are inevitably very out of date, aren't they?

A. Yes, that is true --

Q. We saw this --

A. -- at this pace.

Q. This is an email copied to you. At the bottom, in the middle of the paragraph, she says:

"The AMs are making a list of key questions that they would like to have an official answer to and I will send this later today."

You were aware that the AMs were making a list of key questions, weren't you?

A. This isn't a one-off thing, Mr Robins. I think there would have been lots of questions all the time, especially early on. But, yes, that wouldn't be a surprise to me.

Q. You were aware the response to the Ernst & Young accounts was to leave account managers scratching their heads thinking, "This isn't what we have been told," and they wanted to put together a list of key questions for Kobus to address?

A. I think this might have some bearing on the disconnect between the complexity of an audit and the layman's view on how that, sort of, is explained to the client.

Q. But you were aware that, amongst your sales team, the Ernst & Young accounts had not provided reassurance, they had raised more questions than they had answered?

A. Well, I mean, they were just doing their job. They wanted to make sure they reflected what it was saying. That doesn't look -- this just looks like they are sort of clarifying it to me, Mr Robins.

Q. They realised what they had been saying to members of the public wasn't true, didn't they?

A. Well, they would have relied upon the script that was updated by Kobus that Jo and Kobus would have done during the training.

Q. So they would have realised that the script they'd been given by LCF was contradicted by the audited accounts?

A. I mean, if it was the case -- so, for example, in this, I seem to -- this reminds me that we did then go back and change the number of details to reflect that. So it did say "11 borrowers" as opposed to "100 loans" or --

Q. But amongst the account managers, on the 20th and 21st, it was consternation rather than reassurance in light of the Ernst & Young accounts, wasn't it?

A. I'm not sure I can agree with that, frankly. There was a buzz that our client had not just one audit from PwC but then a second audit which was even bigger from a just as prestigious brand. I mean, it was -- I felt very reassured by that.

Q. You felt a buzz because you knew you could rely on this to sell even more bonds and make even more money?

A. I felt a buzz because, if you can't rely on Ernst & Young, it begs the question who on earth you can rely on.

Q. Let's look at the list of questions that Kerry sends. <MDR00131073>. It is an email that you are not copied into. Do you think you would have seen it?

A. Can I have one second just to read it, please? I don't know.

Q. Do you think you would have discussed it with Kerry?

A. Quite possibly.

Q. At the bottom, do you see a list of questions based on the document we saw earlier from the account managers, 1 to 5?

A. Yes, sir.

Q. Are you able to spot what's missing, or shall we have them up side by side?

A. Side by side, please. Or just tell me and -- I can't --

Q. Okay. The thing that's missing is the question you agreed is a pertinent question:

"Due to the detail in the new accounts, a few questions may arise regarding the business model itself -- with less active loans over longer periods of time, and a fee paid to Surge, how do LC&F make a profit after paying high interest rates to [borrowers]." That's not there. Do you see?

A. Right, okay.

Q. So a question that's been raised by the account managers, but Kerry has left it out of her email. Do you have any ideas as to why she might have done that?

A. I'm afraid I'm at a loss, Mr Robins. I'm not sure.

Q. Do you think you told her not to ask that question because it was too contentious?

A. I can't recall.

Q. Can we look at <SUR00144774-0001>, please. Kerry explains to Jo, at the top of the page: "I had to water down the AMs questions slightly as Paul thought my original email was too contentious, particularly this question:

"Due to the detail in the new accounts, a few questions may arise regarding the business model itself -- with less active loans over longer periods of time, and a fee paid to Surge, how do LC&F make a profit after paying high interest rates to bondholders?" Kerry says, essentially, she is going to have to try to work out the answer for herself. Do you accept you told her that that question was too contentious and that it shouldn't be asked?

A. I may have asked her to water it down slightly because of the nature of their relationship, yes.

Q. What, Kobus and Kerry's relationship?

A. Andy and Kerry's relationship.

Q. She's sending -- oh, yes, she sent the email to Andy. So you say it was because of the nature of their relationship rather than the nature of the question? Is that what you're asking us to accept?

A. I'm not quite sure why she's put that there. If I have asked her to water it down, it would have been because of the tone of -- her and Andy were just water and oil, Mr Robins, and that's how I see it.

Q. It is not just water it down, is it; you asked her to delete a very pertinent question. "How on earth does this all make sense?", that's the gist of the question. You told her to delete that question, didn't you, not to ask it?

A. Yeah, I can't recall it, I'm not sure why. I don't think it would have been a case of -- I think we would have tried to water it down, frankly.

Q. You didn't want her to ask that question because -- well, there are various possibilities: you would find out that LCF's business model just didn't make sense and you'd have to stop selling bonds; or maybe Andy and Spencer would have got annoyed with you for asking difficult questions and jeopardise your 25 per cent commission. You just didn't want to rock the boat by pointing out the obvious problem, did you?

A. Mr Robins, when you meet Kerry yourself next week, you will understand yourself why I would have asked her to do that. She is no wallflower and she would have -- it could have been more contentious than it needed to be. I'm not sure I specifically told her, you know, other than to water it down, dilute it slightly, and that's something I would have been -- that would have been a running theme, frankly. Part of a CEO's job is to try and navigate that position between difficult personalities and, as you have described earlier, certain people, including Kerry, thought he was a twat. So I tried to control the sort of -- you know, the sort of atmosphere around it.

Q. If we look at <SUR00093580-0001>. This is two days later, I think. Let's check the date. Yes, two days later. Kerry emails Mark, copying John and you, "LCF stats":

"Just to keep you in the loop, we had a call with Andy yesterday where we quizzed him on the up-to-date management information. He is going to put this in writing but on the phone he said:

"Current loans out: £117 million.

"Security: £1 billion (yes billion, not a typo)." When you saw this email, you would have thought to yourself, "Here we go again, it's the usual BS, almost certainly crap"; yes?

A. I mean, I do remember this. I think we spoke about it, and I -- I don't remember the sort of semantics of the conversation. Obviously, it was kind of a big deal because we were obviously a bit taken aback by it, and I remember Kerry -- even John speaking to me about it. I don't remember the detail of it.

Q. You would have been taken aback because the accounts had just said 284 million. Now Andy is saying a billion. That's completely unbelievable, isn't it?

A. Can I just draw your attention to the information you told me earlier about 267 million in an email, which then came out at 270-something by Ernst & Young. So it wasn't that particularly far off. So he did have -- despite all of the things we said, he did have a bit of a track record of getting it thereabouts right. I do accept that that is an enormous number, and of course, you know -- I mean, the last two audits were as he said they were going to be. This one, of course -- so this was prior to the third Ernst & Young audit, wasn't it?

Q. Two. There was only one Ernst & Young audit?

A. Was there? Right. I seem to understand that -- as I understand -- I must be mistaken, but I thought there was a PwC audit and a first Ernst & Young audit and then they were just about to publish the accounts of the second Ernst & Young --

Q. I've only seen two accounts, I don't know what Andy may have told you, but you didn't believe him when he told you, through John and Kerry, that the security was a billion, did you?

A. I mean, he was right on the previous one. I do accept that that is an enormous number, but -- and we would have spoken about it. I mean, I don't know what -- could you ask the question again, Mr Robins?

Q. You didn't believe it, did you? You thought, "Here we go again. He's lying again".

A. I will have to -- I will have to sort of reply with my previous answer, which is he talked 267, 275 came up.

Q. But you didn't believe this, did you? You just told us your reaction. It didn't sound, from what you said, as though you believed it. You didn't, did you?

A. I mean, at this time, February 2018, the amount of professions around him, barristers, solicitors, City firms, PricewaterhouseCoopers, Ernst & Young, and here's me with my maths GCSE calling the shots. I have to have some -- I do accept that's a good number.

MR JUSTICE MILES: Did you believe it or did you not believe it? I think that was the question that you were being asked.

A. Yes, my Lord.

MR JUSTICE MILES: It is perfectly all right to say yes or no, but I think that was the question. Did you believe it or did you not believe it, at the time?

A. I can't -- I honestly couldn't remember specifically what I thought exactly at the time.

MR ROBINS: But it is unlikely that you would have believed it, isn't it?

A. I don't know. I mean, he was talking -- at this time -- some recollection I've just had there, at about this time, Andy had engaged with various sort of advisers to talk about doing banking and was going into a fully regulated product, and we were potentially moving on. That was the talk then, a listing and all sorts of things. So, I really don't know what was going on in the background. I have to reply to you in the notion that I thought perhaps the number he'd said previously, which had come out in this Ernst & Young audit, was not dissimilar -- I'm just not that way wired that everyone is a BS -- you know, sometimes people do exaggerate, me first and foremost, but I just -- I don't know. I can't -- I can't remember quite my -- I would have been taken aback, there is no doubt about that.

Q. You'd have been taken aback because it was so unbelievable?

A. I kindly submit that my answer is: I can't recall quite the specifics.

Q. What sort of loan to value ratio do you think that would give rise to?

A. I would say it -- well, I think it's 11.7.

Q. 11.7. That's not credible, is it? You know how the world works. That's just silly. There is no way that could be true?

A. Well, actually, here is some colour to it: at this time, had I have seen -- I believe I might have met the IOG/Goldman Sachs team thing that was going on and they were -- I believed in IOG. I genuinely thought that was going to be some massive multi-billion-pound gas and oil business. I believed in the story, I believed in the-team. There were lots of people -- ex-Goldman Sachs people, I'm in Goldman

Sachs' office, Kerry and I, they are talking billions then. There was a number. And I recall, and Kerry will remember this because we walked out of there a bit bamboozled, that we were way beyond our own capability. They were talking billions. And of course IOG ended up being a genuine, real business, apart from what happened at the end. I invested in IOG. My friends and family invested -- not my family --

Q. So you knew what the market cap of IOG was. Do you? Is that your evidence?

A. I -- well, I'm not sure when I invested. I think I invested after it all went --

Q. Sorry, I'm confused now. You had or you hadn't invested by this point?

A. In IOG -- I'm not even sure if I had the -- I think I would have had the Goldman Sachs meeting at this point. I don't -- I didn't invest until 2019.

Q. Did you know what IOG's market cap was?

A. At this point, I'm not sure I did.

Q. All that the Ernst & Young accounts meant to you is that there was less of a risk of LCF going wrong in the immediate future. There was less chance of having to activate Westminster Corporate Finance in the immediate future, but you knew there was still a very serious risk of LCF going wrong, didn't you?

A. Yes, I think that's fair to say across all bonds, yes. But yes.

Q. But about LCF in particular, you were concerned -- whilst it may not be quite so imminent, there was still a real risk of it going wrong?

A. Well, in this -- it's -- you know, Lehman Brothers went wrong, Mr Robins. Businesses do go wrong. Of course, we were right in the middle of it, raising 10 million back then -- probably 8 million or 10 million a month for them. So, yes, it was definitely something on the radar.

Q. What you were particularly concerned about was that LCF might go wrong in a way that gave rise to liability for Surge?

A. Yes, I would say that's fair.

Q. That was still a real concern in your mind, even after you'd seen the E&Y accounts on which you tell us you placed so much reliance?

A. I think it would have been an ongoing concern, yes.

Q. So, if we look at <SUR00164326-0001> --

MR JUSTICE MILES: Just before you ask that question, Mr Robins, if I may, can I ask a quick question about the email on the screen at the moment?

This reports Mr Thomson as having said that the loan terms are three years or less. Did you believe that to be true?

A. Again, I'm afraid I wasn't the guy for the detail. I'm afraid I can't quite recollect what I thought about that, my Lord.

MR JUSTICE MILES: Sorry.

MR ROBINS: Can we look at <SUR00164326-0001>. Is there a previous page? Thanks. Mark emails Vicki, copying you. This is the 6th, so just a couple of weeks after the Ernst & Young accounts. He says:

"The thing that springs to mind is Surge's potential liability should LCF go wrong. Whilst there is less imminency as they have filed audited accounts I think it is still worth looking at. I have spoken to some lawyers who raised some relevant points -- we can discuss taking to the next stage."

When you saw this, you would have thought, "Yes, he's making a very good point. I agree"?

A. I'm not sure I would. It is Mark Partridge and --

Q. Sorry, but your answers earlier were that --

A. Okay, yes, then. Yes.

Q. Thanks.

A. I think, you know, Mark -- I mean, as we have seen from 2015, that's now three years, Mark was -- it wasn't like a set thing, this DD. I was just -- you know, Mark's on it. He would just do it and I would give him a call or Kerry would. You can see we were meeting here. He was at my office quite a bit.

Q. Yes. But the point, obviously, I'm making is, looking at this, everything you said about being so tremendously reassured by the Ernst & Young accounts just isn't correct, is it?

A. No, I just don't agree with that. I mean, despite the way you sort of set the ground there, I'm afraid my recollection is, I was. I said to you, I might not have much on the detail -- in the way of front of detail, but there are certain things which definitely are ironclad, and I think the sense of the audits was the sort of number one priority, and, as I have said to anyone who would listen back then, this was -- these were audits by two of the biggest accountants in the world, unqualified. They knew about us. They saw everything, they saw the borrowers. I know I keep referring to it and I'm being repetitive, but I'm sat there in a room of lawyers, Lewis Silkin.

Q. This is certainly ironclad, but it is not your recollection, is it? It is your reconstruction, it's your talking points, it's your rehearsed lines?

A. But they're also facts, Mr Robins, as much as I -- you know, you suggest that. I mean -- I'm not quite sure what one would do when, you know -- we're getting the best audits available in the world. We are asking questions about those audits. We are trying our best to represent -- I thought it was good. I genuinely did think it was good, up until -- for quite some time.

MR ROBINS: My Lord, I'm moving on to a new topic, unless your Lordship has any --

MR JUSTICE MILES: Again, on that email, when Mr Partridge said that "should LCF go wrong", what did you understand he meant by that?

A. I -- I mean -- well, knowing Mark, probably -- I don't know, "wrong" as in collapse financially, probably as it did in some version with the FCA stopping them.

MR ROBINS: View Property Group was your property investment business, wasn't it?

A. Yes, sir.

Q. Jeremy Eastell worked for VPG?

A. Yes.

Q. You learned of an opportunity to buy some land at Brading Marsh in the Isle of Wight?

A. Yes, sir.

Q. You hoped to immediately resell it to Prime Resort Development at a profit?

A. That was the plan, yes.

Q. You knew that Mr Russell-Murphy was liaising with Spencer Golding about this?

A. Yes, I did.

Q. You learnt that you might be able to buy the Brading Marsh site for less than £3 million, didn't you?

A. Yes.

Q. Do you remember Matt Hodgson went back with an offer of £2.25 million based on a fast transaction?

A. I don't remember that, no.

Q. Matt Hodgson was one of your employees at VPG, wasn't he?

A. Yes, sir, there were three.

Q. Who was the third?

A. There was Matt Hallam, quantity surveyor --

Q. Is he related to you?

A. Yes, he is, sir. He is my cousin. It is how View Property Group came into being.

Q. Do you remember being told the Brading Marsh land was held in a non-trading SPV so that you could acquire it by buying the SPV?

A. I don't recall that, no.

Q. It was called IOW Eco Reserve, I think. Does that ring any bells?

A. Yes, sir. Well, I take your word for it. I've obviously read up on this quite recently.

Q. That was the company that owned the land at Brading Marsh, wasn't it?

A. I believe so.

Q. Do you remember Matt Hodgson going back to tell Matthew Hollywood that you had increased your offer to 2.5 million?

A. I don't recall.

Q. You would have been kept informed about all of that by Mr Russell-Murphy and/or Matt Hodgson, wouldn't you?

A. Yes.

Q. Mr Russell-Murphy would have updated you, in particular on WhatsApp?

A. Yes.

Q. Can we look at <D7D9-0007645>, please. Page 2. We see John says:

"Just received an email from the IOW agent, we will definitely get the site for under 3 million ...
"We've been offered Isle of Wight for 2.75m, it's the first round of negotiations, I will try to get them down to 2.5. At this price we can set a realistic resale and still make a bundle of cash." That was the plan from the outset, wasn't it?

A. Yes.

Q. When you say, "Good news, we can build them an amazing bond", you're talking about Prime?

A. I think so, yes.

Q. John says:

"Yes definitely. I will make sure SG knows that when I meet him. That way we can guarantee our cut without any funny business."

Your cut was going to be your profit on this deal, wasn't it?

A. I presume so, yes.

Q. In the end, VPG agreed to buy the land for -- well, the company that owned the land for 2.5 million, didn't it?

A. I believe so.

Q. Do you remember Matt Hodgson wanted the contracts to be made out in favour of VPG on an assignable basis?

A. I'm afraid I don't.

Q. I'm not sure it's particularly important. Let's look at the next, <D7D9-0007796>. You would have seen these heads of terms, wouldn't you, for the sale of the Isle of Wight Eco Reserve to Surge for £2.5 million?

A. Yes, quite possibly, yes.

Q. Mr Russell-Murphy had told you that Prime would buy the site from you immediately for £5 million; yes?

A. I believe so, yes.

Q. So that would give rise to a profit of 2.5 million?

A. I think so, yes.

Q. And then that would be split by you and John Russell-Murphy, on the one hand, and Spencer Golding, on the other hand?

A. I believe that was the proposed deal, yes.

Q. You knew that Prime would be borrowing the purchase monies from LCF?

A. So, I think I did, yes.

Q. So you knew that you, Mr Russell-Murphy and Mr Golding would be splitting 2.5 million that had come from LCF?

A. Yes. We are cantering over quite a bit of important detail, but, to be concise with you, yes.

Q. So LCF would be left with a loan to Prime; yes? For 5 million?

A. Yes. So, I would like the opportunity to give you some colour here.

Q. But --

A. I'm not sure precisely, on the answer to that.

Q. Maybe the next document will help. <D7D9-0007803>. Next page, please. Mr Russell-Murphy emails you: "Just got the price from Spencer, they are putting it through at 5. We make 2.5m."

Thumbs up. You would have understood "they are putting it through at 5" means Prime are prepared to buy it for 5?

A. Yes.

Q. So when "we make 2.5", that's you, John and Spencer?

A. I believe so, yes.

Q. So you say:

"1.25 million???"

And John says:

"Yes our share will be 1.25m. Spencer gets 1.25m." You understood that was the deal?

A. Yes.

Q. And then John says:

"Just getting the budget from Andy for the next few months. We will have to give LCF a big push." You had to give LCF a big push so that it had the money to pay your fee and lend 5 million to Prime?

A. I'm not entirely sure on the detail of that question.

Q. But that's what John means, "We'll have to give LCF a big push" so that LCF has the extra money to pay --

A. It was doing 15 million a month at that point.

Q. Yes, and it needed the extra 5 million for Prime and, of course, your comms on top of that?

A. I'm not sure that's entirely -- quite possibly.

Q. That's what you would have understood?

A. Quite possibly, yes.

Q. When you said "Yes, yes", you were excited?

A. There is a reason for me saying that.

Q. Because you're excited?

A. Because I had an ulterior motive while I was excited, yes. Would you like me to give you some colour on that?

Q. I would just like you to answer my question.

A. Yes.

Q. You accept you were excited. And then we see John says: "Andy just text to say he is doing the calculations and will send me the figures later today. "I'm not sure if he knows we are involved, best to keep quiet at the moment until SG clarifies." So your involvement was potentially something to be kept secret from Andy; yes?

A. Possibly. That's what he's written.

Q. And then:

"Spencer is meeting us Monday before we get together with everyone. We will have 30 minutes with him to talk about completing the Isle of Wight deal." Again, something to be discussed with Spencer before anyone else arrives?

A. That is what he wrote.

Q. What you understood to be the position?

A. Yes.

Q. And then he says:

"Are you free? Just got the figures from Andy." You say:

"Yes call me but I'm in da bath."

He jokes that he will FaceTime, and then sends you a message to say:

"Gross figures to cover LCF's current commitments at the end of Oct 7m and Nov 6.5m.

"We then need to add a further 2.5m + comms for those months to complete at the end of Nov." You would have understood him to say that you needed to raise for LCF an extra 2.5 million for November plus commission on that and an extra 2.5 million for October, plus the commission --

A. Yes, that is what he's written.

Q. -- on that. So he spells it out. October has to go up to 10.1 and November 9.6. So you understood that you had to push LCF to raise the extra money for LCF to lend to Prime for Prime to buy for 5?

A. Yes.

Q. And he says the figures are "very achievable". Presumably, you thought the figures were achievable as well?

A. Yes, sir.

Q. So you knew that the deal wouldn't happen at all unless LCF could lend the 5 million purchase money to Prime?

A. Not necessarily.

Q. Okay. Let's have a look at <SUR00112146-0001>. On page 2, at the bottom, Chris says:

"We need a big push -- funds in today isn't where we need to be."

You say:

"Guys -- if LCF doesn't pick it up I'll have to switch Blackmore from BIR for a few days." You're talking about rearranging the rankings to maximise LCF's sales, aren't you?

A. Yes, sir.

Q. Then, at the bottom left, you say:

"We must hit 10m for LCF. It's worth so much more." You're talking about hitting the 10 million so it can lend the money to Prime for the Isle of Wight deal?

A. Yes, that's true.

Q. Ryan says:

"I can push BIR traffic to LCF to aid this if needs be."

You say "We may have to". Then, at the top left, you say:

"Achieving LCF's short-term goal is our mission. Why? Because it triggers the Isle of Wight deal, worth over £1 million to us."

Do you see that?

A. Yes, I do.

Q. So you knew that the deal wouldn't happen unless LCF could lend the 5 million purchase money to Prime?

A. Obviously, we are cantering along. VPG was a property company. It was doing lots of flips. I didn't see it as an issue until I was -- the brakes were pulled on by Kerry. Of course, I regret sort of even considering it. But at the time -- obviously I didn't do it, but at the time, yes, I got carried away and thought it was completely fine to do this.

Q. John agreed with you, didn't he? He thought that putting LCF back to the top of BIR until the end of November was a good plan because maximising LCF would help with the Isle of Wight deal?

A. Yes.

Q. You were kept up to date about progress of the deal?

A. Yes. So, the deal progressed through -- so some colour for the court might be useful on that question, and that is Matt Hodgson and JRM went way back. Matt Hodgson brought the deal over. It looked like it was worth 10 million from the pitch, he said. But it was distressed. They needed to move quickly. And we could have flipped it if we were willing to put the cash up. That was the pitch. JRM then sort of took over the deal and sponsored it -- well, not sponsored it, but sort of pushed it forward. He then went to meet whoever the people are at Prime and then came back and said, "This is the deal, I think we should do this deal". I was, at that time, with VPG, looking at lots of property deals, you know, some as big as this, some actually a bit bigger, but, yeah, it kind of just cantered through and I didn't -- I kind of --

Q. If that is the colour, there is one thing missing. My question was, you were kept up to date about the progress of the deal. You were liaising very closely with Spencer Golding about it, weren't you?

A. I'm not sure. Potentially, yes.

Q. Can we look at <SUR00164568-0001>. This is a screenshot because you haven't disclosed the WhatsApp messages. This is the only thing you have disclosed. Spencer sent you the contact details for Prime, didn't he?

A. I believe so, yes.

Q. Can we look at <SUR00164570-0001>. It is another screenshot. You haven't disclosed the messages. But Spencer told you that he was going to make the buyer's solicitor aware it was a back-to-back deal, didn't he?

A. Yes.

Q. Can we look at <SUR00164572-0001>. This is another screenshot. It is of a WhatsApp group that you have created; John, Spencer and you are the members. Again, it is a screenshot. You haven't disclosed anything else. Where are all the messages from the Isle of Wight or IOW WhatsApp group? Where are they?

A. So, I have never deleted anything off my phone. The SFO took all of my stuff on the 26th of that year -- June that year -- sorry, the next year. I have not deleted any of my messages at all. I have given everything to this court, as requested. Perhaps that's a question for other people.

Q. Can we look at <SUR00114440-0001>, please. This is between you and John. At the top, John says he's heading to Pulborough first thing to pick up his new car. Do you remember what car he was getting in November '18?

A. I don't, I'm sorry.

Q. He says:

"My focus, as always, is the IOW. Matt is meeting Hamed."

Hamed from SO Legal was your conveyancing solicitor, wasn't he?

A. Yes, he was. I think that initial sentence might be important later. My focus always is the Isle of Wight. Yes, Hamed was a solicitor, a friend of JRM's and Matt's, who was based in Eastbourne.

Q. He says:

"I will speak with Spencer again and make sure we are making daily progress."

Spencer was a close part of the discussions moving this forward, wasn't he?

A. Yes.

Q. Then --

A. John was the main sponsor of it, yes.

Q. Then you say:

"Morning Jonny ... exciting!!"

Below that, you say:

"IOW is your focus. That's paying the downpayment on my new heli I'm getting. I'm 100 per cent counting on you getting it over the line."

You were planning to use your share of the 1.25 that you and John would split to buy your helicopter, weren't you?

A. I think in the context, Mr Robins, yes, of it being, I thought, at that time, a legitimate plan, and I thought it was above board. I owned a property company. We flipped properties. We used our cash to do it. We used other debt. We did it with partners. I didn't, at that stage, consider this, until it was pulled up by Kerry, an issue.

Q. You seem to want to know when you thought it would complete, because you then say:

"When do you think we'll complete?"

John says:

"We are aiming for an exchange by Friday 14 Dec. Completion will probably be within 30 days. Spencer might push for a longer completion if we are not hitting the numbers."

You understood that to mean if you weren't hitting the right numbers on LCF bond sales?

A. Possibly, yes.

Q. "I keep pushing him on figures but he is always vague. Once we've exchanged we are home and dry. I will do my best to complete mid Jan."

You understood that was the proposed timetable at this point?

A. Yes, sir.

Q. So the structure was going to be, View Property Group SPV5 buys the shares in Isle of Wight Eco Reserve for £2.5 million and then Prime buys the shares in View Property Group SPV5 for £5 million. You understood that was the basic structure?

A. I honestly wasn't abreast of the detail at the time. I probably owned about five companies, 120-odd staff. This company alone was doing quite a bit of property. We were doing a big one on the Hove seafront, called St Catherine's, which was a 10-mill deal.

Q. You knew it was back to back?

A. Yeah, it did look like a good deal. Obviously the deal was brought to me. John then goes to -- and sort of takes over and says, "I've got a plan for it and this is what we should do. We can just back-to-back it". It wasn't flipping distressed properties -- I mean, it wasn't something we had done a lot of, we had done some of, and obviously the team are much more learned in that area than we are.

Q. There were 100 shares in View Property Group SPV5?

A. Right.

Q. 50 of them were put into the name of Elten Barker. You remember that?

A. I'm sad to say they were, yes.

Q. That was for Spencer?

A. Not on my instruction was that done.

Q. That was for Spencer?

A. I presume.

Q. Then 25 were put in your personal name?

A. I'm -- I never instructed this to happen. It was done by Matt Hodgson, JRM's friend, the guy that we -- who was connected to them all. I have my view on it. But, no, I did not instruct someone to do that for me. In fact, there is an email somewhere, I'm saying "Who did this?" and then someone --

Q. This was to enable the profit split, wasn't it? We have discussed that before. It is 1.25 for Spencer so that goes out to the 50 per cent shareholding in Elten Barker's name. It is 1.25 between you and John, a quarter each. So you get a quarter of the shares each. That's all this is. It is a profit split mechanism, isn't it?

A. Yes, it does look like this.

Q. This is how you get the money to make the downpayment on your helicopter, isn't it? It comes out through the shares as a dividend?

A. I presume so.

Q. Do you remember Matt Hodgson liaising with Terry Mitchell of Prime?

A. I do not. I subsequently found out they knew each other. I didn't know that at the time, Mr Robins.

Q. So, you buy an asset for 2.5, sell it on for 5. The borrowing company gets the 5 from LCF, you make a profit: 1.25 for you and John, 1.25 for Spencer. That's money that's come from the LCF bondholders. You had first-hand knowledge of how LCF worked, didn't you?

A. Yes, I did.

Q. Money will be siphoned off for the personal benefit of Mr Golding. That's how it worked?

A. I mean, Mr Robins, obviously, the brilliant way in which you have asked your questions gives this a view which -- it doesn't give the true characterisation of actually what happened. But, yes, at that point, what you have just said there is true.

Q. The FCA intervention meant that LCF wouldn't be able to lend the purchase monies to Prime, didn't it?

A. Correct.

Q. But you hoped that Prime would be able to get the money from somewhere else?

A. I'm not sure. I don't recollect that at the time. The wheels were coming off all over the place after that event.

Q. Do you remember, in the middle of January 2019, you seemed to think that maybe it wasn't such a good idea to go ahead with the Isle of Wight deal and told Kerry that you probably wouldn't do it?

A. I do.

Q. Do you remember, after that, you changed your mind again and had discussions with John Russell-Murphy about how you might get it over the line?

A. Yes, I do, and the reason for that -- and perhaps this would then fill in the blanks which you have cantered over earlier, Mr Robins -- is, View Property Group -- this deal was brought by Matt Hodgson,

longstanding friend of both Spencer and JRM. It was brought to my attention. The pitch was, it was going to be like a -- you know, it was a distressed purchase and they were going to build lodges and so on. JRM came in and said he wanted to take that and go and present it to Prime, which Spencer was connected to, and get him involved. I agreed. It looked like there were lots of properties, it looked like an exciting opportunity. I was doing something similar somewhere else. And he just took control over it. If you actually look at the correspondence, right up until the bit where I tell my team I'm no longer doing it and I tell Kerry I agree with her we shouldn't do it, at that point, the only person who is -- I am suggesting we continue to do it is JRM and there is a reason for that. I have had to think long and hard about this over the last couple of weeks about what was going on, because obviously a lot was going on over that period that LCF went under. The explanation that I believe to be true is, JRM was constantly asking us for money -- "us" being Surge. Big invoices left, right and centre. By letting him focus on this deal, I sort of pushed it down his line and said, "If you get that deal done, you can do it" knowing the deal wasn't going to happen.

Q. Right. But after you agreed with Kerry that you probably wouldn't go ahead with it, you started thinking, "We have lost our major client. We need the cash. It will really help us. Let's crack on and see if we can get it over the line"?

A. That was definitely on my mind.

Q. <D7D9-0008767>. Page 2. This is a couple of weeks after you've expressed some regret to Kerry and suggested you won't go ahead with it. John is saying that he's just finished -- this is three up from the bottom:

"Just finishing the meeting with Prime, I've got great news ... so happy about the IOW. It will really help Surge and take the pressure off."

You say:

"It will really help us. Losing 350k is scary. But we will get back when we get these new clients onboarded."

At this time, you have lost your major client. You were looking for new clients and you thought, "Well, let's see if we can do it. We need the cash"?

A. So, I was definitely -- the only person I continued to discuss this one with was JRM because I was trying to get him off my back. As you can see there, I'm burning 350,000 a month. I've got a 120 retinue of staff and John is sending me invoices and pressing me. I knew at the time I told Kerry I wasn't going to do it -- I didn't do it. Obviously, I'm damned if I do and I'm damned if I don't. But in this -- that is my honest belief, that I was just pushing it down John's way to keep him off me and I had no intention of doing it. In fact, it is not long after this that we let John Russell-Murphy go.

Q. Look at <SUR00117974-0001>.

A. I think the connection between those people is an important point worth noting.

Q. You are asking John, at the top of the page: "What percentage do you think Isle of Wight deal gets done?"

John says 99 per cent. So you thought there was a risk it might not happen, but John was pretty confident?

A. He was then talking about it from other places and everything else. I was just happy to push him along. And I was running lots of things. I mean, this is post LCF's collapse. There was an enormous amount of things going on at this stage. He was just getting off my back and working on that property deal.

Q. As far as you were aware, it would still complete, if at all possible?

A. He seemed to think that there was -- I was -- I'm fairly sure, Mr Robins, that I was -- after I'd told Kerry we weren't going to do it and we had a chat about it, and after I'd told the team to not do it, I think the only person I kind of encouraged -- and of course I regret this enormously -- was JRM. In fact, you read it out in court on Monday, a little note I wrote to myself to John in draft, talking about how much money the company was losing and "Would you mind stop invoicing us enormous sums while I try and get the ship stable?". This was just a way to try and not have him -- not have to pay him and let him try to find the money from creating his own profit.

Q. Yeah, okay, but if he could get it across the line, you'd be happy to take your 1.25 -- potentially, even at this point, you might use it to help shore up your company?

A. As I recall, in my mind's mind, once Kerry and I had had that conversation, which would have been a bit before this, I think, I had decided it wasn't going to happen. In my head, I thought it wasn't going to happen. I didn't let go of the possibility, which is where I really sort of let myself down here. But I think this needs to be taken into some context. I didn't think -- even after LCF went under, I didn't believe it to be a fraud. When it went under, I'm still -- I'm invited to a meeting with Spencer and the lawyers and Andy, all the people from 2015, slightly different lawyers, maybe, or maybe one was the same. I didn't believe it was a fraud even then.

Q. No, but you thought that there was still a reasonable possibility that John might get the Isle of Wight deal over the line and you were happy for that to happen if he could do it?

A. I mean, I don't -- I think I'd agreed with Kerry I wasn't going to do it and I think I was just throwing it to him as a bone to get him off my back to stop sending me massive invoices.

Q. You'd agreed with Kerry you weren't going to do it for understandable reasons. But you'd gone back on that, hadn't you, and thought, "We need the money. If John can get it over the line, then" --

A. I've thought about this long and hard, Mr Robins, because it is something -- out of everything we have seen this week, I've sort of let myself down somewhat here. I don't believe I was really intending -- I didn't do it, of course I didn't, but John was a very high-pressure sort of, kind of sales guy and he was like, "Can I just get -- can you just pay me 30, can you pay me 40?", and I just kind of let this happen to try and push him away from me. Because, at the time, I'm dealing with a meltdown, you know, a total meltdown of sort of my own business and, indeed, the wider companies that I sort of owned and controlled.

Q. Let's look at <SUR00118626-0001>. This is 8 March. John says to you:

"Give me a call when you finish your meeting, I've just heard from Terry re IOW completion." You say "Good news", he says, "Yep".

You had to go to a dentist appointment but you say: "Steve text me saying Isle of Wight is progressing still but nothing definite."

This reflects what we were just discussing, doesn't it, that you may not have been progressing it yourself, but if John could get it over the line, you would be happy to take your 1.25?

A. I was happy to push him off because he was asking me for money constantly and it looked like a good opportunity to just sort of sideline him away from me dealing with the proper issues we were dealing with.

Q. Do you remember details of the Isle of Wight deal came to be reported in the Sunday Times?

A. I do not.

Q. That's what prompted some correspondence with Peter Tayler. Do you remember that?

A. I think I -- at that point, I thought someone was hacking my phone or something, yes.

Q. Peter Tayler was head of compliance at Northern Provident, wasn't he?

A. I don't remember.

Q. You have referred in a document we have seen to Northern Provident as "our compliance partners"?

A. Okay, yes. Northern Provident were Blackmore's, I believe, compliance partner. Was it Paul Crawford, actually, his name?

Q. There is a Peter Tayler who is head of compliance. But the name Paul Crawford also rings a bell. If we look at <SUR00119759-0001>. It must be the next page. Page 5, actually. He is emailing Kerry. He says: "We came across the attached article over the weekend. Following discussions with Paul Crawford we would like to receive comments back from Paul Careless directly as it relates to him. Can we get comment on if this article reports correctly and if there are any inaccuracies or additional relevant information?" Do you remember seeing this?

A. I am aware of this. I can't -- I couldn't recollect it. This period was particularly kinetic. I do recall this, yes.

Q. Do you remember Kerry told you about it?

A. I think so, yes.

Q. <SUR00119551-0001>. It is between you and Kerry. Kerry says:

"Morning, hope everything is good with you and Sunday Times didn't cause you too much stress." Then you say you have become acclimatised to it. At the bottom:

"NPI sent an email asking for you to comment on the Sunday Times re SPV5. Please don't be offended that they ask, they understand you have done absolutely nothing wrong. It's because they are regulated that they must follow due process. They need to have it on file that they challenged you and that you provided an adequate response."

Over on the next page, we can see, right at the bottom, that Kerry sent you a suggested reply, this is on the left:

"Suggested reply to NPI for you to use." When she sent you a suggested reply, you would have read it, wouldn't you?

A. Not necessarily, I'm afraid.

Q. If you had read it, you would have seen, wouldn't you -- let's look at the paragraph beginning, "I own a property development company":

"We do local projects in Brighton & Hove ... My team came across a piece of land for sale ... The project was beyond the scope and location of what we could deliver but we did see an opportunity in broking the sale to another developer and taking a fee."

That's not an accurate description of the proposed deal, is it? You're making a £2.5 million profit on flipping the property?

A. That's correct, yes.

Q. Then, at the bottom of the next paragraph, it says: "John Russell-Murphy who originally introduced us to individuals connected to LCF suggested Elten Barker and Spencer Golding are well connected in property development circles and enlisted their help. They found a buyer and we agreed to split the broker fees." Again, reference to "broker fees" isn't accurate, is it? It was £2.5 million profit on flipping, wasn't it?

A. Yes, I believe so, yes.

Q. Then it says:

"They found a buyer and we agreed to split the broker fees. That was until we discovered that the proposed buyer was a borrower of LCF and I pulled out." That wasn't correct, was it? We have seen the emails. You knew you had to give LCF a push so it could lend the money to Prime so that Prime could pay --

A. I did pull out at some point, Mr Robins.

Q. Yeah, but you knew from the beginning that Prime was going to be borrowing the 5 from LCF, didn't you?

A. Yes, I did. I was aware of that, yes.

Q. So that sentence is not correct?

A. Well, I mean, it is correct, because what happened --

Q. It is not correct, is it? You knew all along that the proposed buyer was a borrower of LCF, didn't you?

A. Right. I see, okay.

Q. So it wasn't correct, was it?

A. Right. Okay.

Q. Then "I pulled out before LCF went into administration." Again, that's not true, is it? We have just seen the emails from March?

A. I think -- what, because I'm sort of encouraging JRM?

Q. Yes, you haven't pulled out. You're happy for it to go ahead if you can get it over the line?

A. Firstly, I wouldn't have read it. I just know I wouldn't. I was in hospital doing something. I probably would have relied on Kerry, she's very good and I would have just copied and pasted it. I also believed that, you know, I wasn't going to do that deal despite encouraging JRM. It was literally a red herring or it was a way for me --

Q. You hadn't pulled out before LCF went into administration, had you?

A. If you say I didn't, then, no, of course not.

Q. In terms of where you were, can we see the next -- here we are, left-hand side. This is 1 April 2019. You say: "I ... am in London, with Andra at a hospital arranging her C section."

On what date was your son born?

A. He was born on 7 August 2019.

Q. So she wasn't having her C section, you were just at the hospital arranging the appointment?

A. Yes.

Q. So, Kerry sends this to you and you say in your fifth witness statement, at paragraph --

MR JUSTICE MILES: Sorry, can I just go on in that document? Sorry, were you going on with that?

MR ROBINS: Yes, absolutely.

MR JUSTICE MILES: I just wanted to see what was on the next page.

MR ROBINS: Sure.

MR JUSTICE MILES: Because it goes that way, doesn't it? It is getting later in the day as you go on?

MR ROBINS: Yes. Let's have a look at it now. Right-hand side. Kerry says to you:

"Are you okay to reply by email to NPI using this as a template?"

You say, "Yes, doing it right now".

She says:

"I want to add one paragraph to that because I didn't answer their last question:

"I also confirm this was my only connection to Elten and any people connected to LCF and there are no similar connections between me or any of my companies to Blackmore.

"I acted for LCF as I do now for Blackmore and other clients purely as a provider of outsourced business services."

Then you say:

"This is very good -- let's get them in?!" You say in your witness statement, fifth witness statement, paragraph 13:

"The urgency and gravity of the situation meant that I would have just copied and pasted the email and sent it with minimal review or changes."

So, we know you did copy and paste Kerry's email and send it to Peter Tayler. You say in your statement you'd have sent it with minimal review or changes. You accept that you would have read it before you sent it?

A. I'm afraid I cannot agree to that, not just --

Q. The urgency and gravity of the situation meant you wouldn't have read it at all? Is that your evidence?

A. It is probably more likely than not that I wouldn't have read it. I'm renowned for --

Q. It is highly unlikely. You understood, surely, it was important to reply accurately, to tell the truth?

A. I'm afraid it is -- anybody who has known me for any period of time would know it is highly unlikely -- Kerry would draft things and I would copy them and paste them because she is very good at it. She's the chief operating officer and much better than me. There is a chance that I did read it, and I can't recall precisely, but I would say it's more likely not to be -- that I -- that I would have.

Q. Let's look at <SUR00119759-0001>.

A. Did the email go as it was? Sorry.

Q. Page 4 at the bottom. This is where, as you say, you copied it and pasted it and sent it to Peter. Are you saying you did that without reading it at all?

A. Can I see if it says "iPhone" at the bottom or something along those lines? I don't know if mine ever did that. I don't think I did. I could have done. I could have read it. It is very unlikely, though.

Q. It is interesting you mention iPhone. You saved her 41 draft as a note in your iPhone before you sent it to Peter Tayler, didn't you?

A. I'm not sure.

Q. <SUR00164813-0001>. This is disclosed by your solicitors recently. It is relevant documents from your iPhone notes. You see in the middle of the page: "Hi Peter."

"On my iPhone/notes". You have saved Kerry's message as a note on your iPhone, haven't you?

A. Yes.

Q. Is your evidence that you received the draft from Kerry but didn't read it, you said thanks to Kerry but hadn't read it, saved it on your iPhone but didn't read it, copied it into an email, still didn't read it. Sent the email, never read it. That is just not probable, is it?

A. I know it probably sounds improbable to a barrister of your standing, but I just -- I'm afraid it is quite probable with me. I'm very casual with communication and I -- Kerry would have drafted things. I often would have just copied and pasted it. So I'm sorry to say I can't guarantee I did read that.

Q. Can we bring up on screen three documents at the same time? Is that possible? Let's do two.

<SUR00119551-0001>, and this one. We need the next page, please. Do you see Kerry's version?

A. Yes. She is the one on the right?

Q. Yes. It's the same. You just copied it. You have saved it on your iPhone and then sent it to Peter. You wouldn't have done that without reading it, not about something like this?

A. I'm sorry, I know you're sort of standing your ground there, but I'm afraid, as I said to you on my previous answer, I am renowned -- it's the reason I've got someone like Kerry because she's first class at doing this sort of stuff. It is more likely than not I didn't read it. I barely read anything. I'm very sort of -- I don't like emails and I much prefer to do a phone call or a meeting or something. I will do them, but I more than likely just copied and pasted it in. Your point being that it is wrong, I think, isn't it?

Q. Yes. You sent something to Peter Tayler that you knew was untrue?

A. Well, I'm -- look, I don't -- I'm not keen on, you know -- I probably didn't read it. That's the truth. Even though I've gone down the whole path of doing the stuff I did earlier, which I've said I regret. I wouldn't have read it. I can't agree to that.

Q. Can we look at <R1/28>, please. This is a news article from 7 July 2019 about some allegations relating to the Money Expert website that you had been involved in. It says at the bottom of the page:

"Paul Careless was accused of helping to artificially boost revenues and internet hits ..." If we look at the next page, please, there's a picture of you. The page after. There's a quote from you, at the top. It says:

"Careless said: 'I was neither a shareholder nor director in Money Expert, merely a consultant introducing various parties ...'."

Do you remember yesterday you told us you were a beneficial owner of shares in Money Expert?

A. I did take -- yes, I was.

Q. It is right, isn't it, that when the pressure is on, when allegations are made, when things are being scrutinised, you lie?

A. Well, I -- I lie as much as the next man, but in this case you are totally mistaken and I could quite easily explain why. This deal was put together by Eversheds in Manchester. Nigel Warr was a very successful entrepreneur. That allegation and that claim came from a disgruntled employee. It failed. It failed before it even got in front of the court.

Q. I'm not asking about that. I'm asking about the quote from you.

A. I know.

Q. You lied?

A. No.

Q. You said you weren't a shareholder?

A. Well, I was not a shareholder --

Q. You told us yesterday you were a beneficial owner of shares?

A. -- and I was not a director. I had a deal with Eversheds, which I can furnish the court, which said, if the business sold, I would get a portion of the sales from the main shareholder, a chap called Nigel Warr. So, you know, that's not a lie. That's the truth. I was neither of those things.

MR ROBINS: My Lord, I don't know if that is a convenient moment for the shorthand writer's break. I have probably 30 minutes after that, so we can finish today.

MR JUSTICE MILES: Can I just ask a question before that, going back to the Isle of Wight deal. What did you think the relationship was between Spencer Golding and Prime?

A. I thought he was connected to them. I had never met Prime. I knew that they were borrowing some money from LCF. But they allegedly -- I mean, I knew afterwards. They carried on and they lent money from other places.

MR JUSTICE MILES: But at the time?

A. At the time.

MR JUSTICE MILES: When -- before the collapse of LCF and when --

A. So Spencer, my Lord, was a property -- allegedly made his money from property. He was a property developer.

MR JUSTICE MILES: Right. My specific question was about his relationship with Prime. Because you said in one of your answers that you understood that there was a relationship between --

A. I wasn't entirely sure, much like Spencer Golding throughout, what quite that relationship was --

MR JUSTICE MILES: What did you understand it --

A. -- precisely. I would have thought, perhaps, that he was either an introducer, he was funding them, something quite engrained in that company, connected in that sort of fundamental way. Obviously, I'd never met the CEO, but he knew the CEO.

MR JUSTICE MILES: Right. Okay. Thank you. We will take five minutes. Thanks.

(3.21 pm)

(A short break)

(3.26 pm)

MR ROBINS: Can we look at <SUR00115269-0001>, please. Mr Careless, this is a WhatsApp chain between you and Kerry. 10 December 2018, the day of the FCA raid. Five down, you ask her:

"What do you think has happened?"

She replies:

"I have a theory, the retail prospectus put them more on the FCA's agenda. If I was the FCA I would have a massive issue with only 11 borrowing companies. Then at the same time they have a file on us because they don't understand how much work we do for 20 per cent, they think we are taking too much money because they don't understand the extent of the outsourced solution. Too much money means they think we are related to Blackmore and now they think the same re LCF and LCF is suspicious because only 11 borrowing companies doesn't look good."

Do you see that?

A. Yes, sir.

Q. You would have understood at the time that she was referring to the unwelcome revelations in Ernst & Young's audited accounts?

A. Sorry, sir, one more time?

Q. Eleven borrowing companies.

A. Yes.

Q. That's where you saw 11 borrowing companies?

A. I think so, yes, that's right.

Q. So you and Kerry weren't reassured by the Ernst & Young accounts. You thought this was the massive issue which made LCF look suspicious, didn't you?

A. I mean, it's her opinion on what happened, and I can see, you know, in hindsight -- back then -- I don't know. I mean, you know, it's on Ernst & Young's sort of audit. We know now, from this trial, that they saw all those companies. We know that the barrister saw those companies. The solicitor from Lewis Silkin saw those companies. So I think I can just presume that, you know, that's her opinion and maybe that was the reason.

Q. You knew that was her opinion, didn't you?

A. Yes.

Q. The Ernst & Young --

A. Well, here I do, yes.

Q. Even at the time, on 20 February 2018, we saw the consternation caused by the revelation in the Ernst & Young accounts, didn't we? You knew at the time?

A. Yes, we did, yes.

Q. After the FCA raid, there was considerable press attention on LCF, wasn't there?

A. Yes, sir.

Q. There was press attention on Surge?

A. Yes.

Q. Do you remember adverse comments about the 25 per cent commission?

A. Yes.

Q. You felt you needed evidence to support your argument that 25 per cent was market standard, didn't you?

A. Yes.

Q. Did you discuss with Kerry that you would need to create some evidence to support that argument?

A. Something to do with Thistle, I believe, yes.

Q. Can we look at <SUR00118102-0001>. Page 2, please. This is 21 February. A member of the public has emailed an account manager, Hayley Harris, to say: "You will no doubt be aware of the current problems at LCF.

"One of the issues that has materialised, and that none of the bondholders were aware of, is the use of an agent company to sell the bonds.

"Extremely high commissions were charged and have been paid to said agents.

"The deduction of such high commissions which ultimately have to be recovered from borrowers is causing concern.

"Are you able to confirm that Blackmore has never and does not use such a practice?"

Then we can see that Hayley sends that to Kerry and Kerry then sends it on to Pat. This is the left: "Please see this inquiry from an investor asking us about fees paid for marketing. Would you mind replying as it might be unethical for us to reply when we are the marketing company. To assist, I have drafted something for you which you can modify or send as you see fit. Please can you cc Hayley and she will save all the communications to the clients record in sales force." Her email to Pat says:

"Dear Mr *****.

"Thank you for your enquiry. I cannot comment about LC as I do not know the details of this case. Blackmore are fully transparent and in our investment memorandum we publish the amount that is spent on marketing which is 20 per cent of the amount of capital raised. It is a significant operational cost and one we don't take lightly. Before selecting our current supplier we obtained quotes from four firms, all came in at around that figure. 20 per cent is an industry standard", et cetera.

Then on the left, above that, you have clearly been copied because you say:

"Excellent email draft. He better use it." You wanted him to use it so that you had some evidence to support your market rate argument, didn't you?

A. Yes, but it was the market rate, Mr Robins.

Q. Kerry says at the top:

"I really hope he does because I need it for evidence. Everyone tells us that our competitors charge between 15 and 30 per cent but we don't ever get to have a written quote from a competitor to physically evidence it. This letter from Pat is a third party confirming the industry standard."

That's not really independent evidence, is it, if Kerry has drafted it for Pat to send to support your argument?

A. Right. Okay.

Q. It is not really evidence to support your argument, is it, if Kerry has drafted it for Pat to send?

A. Kerry was well aware that that was the market rate and Pat was because we had met him before LCF and he'd already told us that, and this fee -- sorry, sir, I'm digressing. What was your question?

Q. It is not really evidence to support your argument if Kerry has drafted the email for Pat to send?

A. Okay, I do -- I mean, it's not independent evidence, that's fair to say.

Q. Can we look at <SUR00125178-0001>. Can we zoom in at the top, please. Pat has sent the email and Kerry emails Nick Morrison. Who is he?

A. Nick Morrison was an account manager on Blackmore Bonds.

Q. She says:

"Hi Nick, please can you start a shared folder that has restricted access (you and I for now). This is to collate evidence that will support our case as we might be challenged by the administrator. Can you place this email trail in it in a folder entitled: Fees Evidence. This is independent evidence that our fees are market standard because a director of Blackmore, Pat McCreesh, has independently stated that to a client making the enquiry."

You said Kerry was no wallflower. Do you say she's a liar?

A. I don't say Kerry --

Q. Is she telling the truth in this email?

A. She was under an enormous amount of pressure.

Q. Is she prepared to lie under pressure?

A. I can't -- aren't we all, under some circumstances, in the real world, you know, say things which we later regret? I mean, I can see the point, but, I mean, she's writing stuff that she genuinely believes too. I mean, she's not just sort of making it up. I mean, you know, there's plenty -- hopefully, we will see evidence that people are offering us these deals. The best -- Thistle were the best, pre-eminent --

Q. Let's see one, <SUR00158203-0001>. This is a short time later. It is an email from someone called Chris Brown, CEO of Hydrogard Legal Services. You gave this to your expert Mr Grainger, didn't you?

A. I don't recall.

Q. Well, he mentions it in his reports. He's not got it from anywhere else, has he?

A. We would have had lots of these and --

Q. Hang on. This is after the press about "Captain Careless embroiled in LCF collapse". He emails you:

"I was very interested to see your success in raising funds from investors and I had hoped that you may help us raise funds for our business for a 25 per cent commission."

This is you creating evidence again, isn't it?

A. I haven't created this evidence.

Q. Do you think his Lordship is really that gullible? You say he emailed you out of the blue, apropos of nothing, first line:

"... very interested to see your success ... I had hoped that you may help us raise funds for our business for a 25 per cent commission."

Are you saying that is genuine?

A. Are you suggesting I made it up?

Q. Yes. This is completely bizarre and inherently unlikely, isn't it?

A. Mr Robins, please.

Q. We have seen Kerry's set up the file to create the evidence. Up pops Chris Brown. "I hoped you may raise funds for our business for a 25 per cent commission". Is that how someone starts an unsolicited enquiry, in your experience?

A. I mean, I did not -- we -- no-one would have done that. I didn't do it. No-one I would have given instructions to do that. We would not have made that up. Haven't you just checked them out? Has someone not checked them out?

Q. The interesting thing is, you haven't disclosed any response to that. Let's see. You have lost your major client. You are looking for new clients. Chris Brown pops up, "I hoped you may help us raise funds for our business for a 25 per cent commission". You would have responded, wouldn't you?

A. I think we would have.

Q. Yes, but you didn't. It's not been disclosed. You didn't respond because it pops up in the email -- the inbox, it has done its job. Kerry puts it in the file, evidence for the administrators, no-one responds because you all know it is not genuine?

A. May I read it for one minute, please? I mean, I genuinely don't -- I don't recollect this. We would have had lots of people offering us to raise money. We saw lots of bonds, both existing, new, during the thing.

Q. Is that how you open a negotiation or even an inquiry, then, to say, "I hoped you may help us raise funds for our business for a 25 per cent commission"?

A. I mean, I'm not sure if it's how normal people would actually do it. I mean --

Q. Of course they wouldn't. You would only write this if you were trying to create some evidence to put in a file for the administrators in due course, wouldn't you?

A. I did not write that. I did not instruct anyone to write it. Can't we just look at the company and, if they're existing, then, of course, that dismisses that --

Q. I'm not sure it's that easy, Mr Careless. If you were looking for new clients, why didn't you respond?

A. When was this one? We were in total -- in March 2019, Mr Robins, I had 130 -- 120 -- a lot of staff, five companies. I didn't know whether I was coming or going. I didn't know if I was letting them go or not letting them go. I was having meetings with Lewis Silkin and LCF about what I was going to do with the sort of specific (inaudible). We had a lot of things. There are professional firms. Litigation funding was the number one, and remains the number one, bond, sort of, issuance there is because it takes a long time, it is often five years, it pays 25 per cent. I mentioned earlier I still get them today. I mean, I can't -- I don't remember it, honestly. I'm sorry. I can't help you with it.

Q. Let's look at <SUR00118650-0001>. This is a WhatsApp from Kerry to you. She is forwarding an article from The Times about funding circle. She says: "Gold dust: on revenue of £140 million there was a marketing spend of £58 million. We are cheap by comparison. We are £60 million for £230 million funds in. Or am I being too simplistic? Perhaps they don't count invested funds in revenue?"

Do you remember Kerry telling you about this?

A. I'm afraid I don't.

Q. You don't remember using it repeatedly to support your argument that 25 per cent was market rate, it was much cheaper than the cost incurred by Funding Circle?

A. Mr Robins, I don't.

Q. Okay. Let me show you an example, <SUR00120261-0001>. You have emailed Johnny Mercer:

"Morning, yes. The number is industry standard. I have seven clients at the moment doubts." You didn't have seven clients, did you? You were down to one by this point?

A. Yes, sir.

Q. "It may be unpalatable but that is the cost for raising funds. Funding Circle, the UK's largest alternative investment firm, has a cost of raising funds exceeding 25 per cent."

You don't remember using this repeatedly to support your argument?

A. I don't specifically remember it --

Q. Let's show you another example. <SUR00120260-0001>. At the bottom there, you sent Johnny Mercer the link to the accounts. You said:

"Funding Circle (2018) -- 41 per cent.

"Industry standard."

You don't remember this?

A. I --

Q. Do you remember telling Mr Shaw about it?

A. Mr Robins, it was the standard rate. It is the standard rate. I do not recognise that email.

Q. Do you remember telling Mr Shaw about it, <M1/9>, page 11. Line 19:

"Answer: ... Funding Circles [is] probably the largest one which spends nearly 40 per cent of its money on acquiring customers. We could do it far -- that is available in their public accounts."

You don't remember saying that?

A. I do remember -- if Kerry said it, I believe she would have checked those company's accounts out, so I would have said it with that sort of belief in mind.

Q. Page 66, please. Line 22. You say:

"Funding Circle, you have to go through its accounts to see it, it pays 37 per cent."

This became one of the lines in the script that Kerry wrote for you, didn't it?

A. I'm not sure. I mean, I -- Funding Circle was a big competitor back then. Bonds pay 25 per cent, Mr Robins. I can't say it any more times.

Q. You said you had to go through the accounts to see it. Had you looked at Funding Circle's accounts?

A. No, Mr Robins.

Q. So you were happy to make assertions based on Funding Circle's position without actually bothering to look at its accounts, were you?

A. At that point, I was sort of -- Kerry would have -- I would have presumed Kerry would have looked at them before she sort of told me the --

Q. Let me show you them. <MDR00227316>. These are the accounts that were mentioned. Bottom of page 3, bottom right. Do you see "Originations, 2.3bn". Do you understand "originations" means new loans?

A. Right, I didn't, but I do now.

Q. New loans of 2.3 billion in the year 2018?

A. I see.

Q. Bottom left, "Revenue", 141.9 million.

A. I see.

Q. At page 13, in the middle, 'How we generate revenue". They charge a transaction fee and a service fee. So the revenue is just their transaction fees and servicing fees, isn't it?

A. If it says so in their accounts, yes.

Q. And then --

A. Could you go back to the previous page because I saw 40 per cent flash by in a second, I just want to check that.

Q. Yes, we can go back to that, page 3. Is it this page?

A. Okay, yes.

Q. Was it page 13?

A. No, this one.

Q. Yes, the penultimate bullet point:

"Marketing as a percentage of revenue maintained at 40 per cent."

"Revenue" is their fees, isn't it, not their investor monies?

A. Could I kindly ask you to go back to the sort of main thing and give me 30 seconds, please, sir?

Q. Revenue, that's their fees?

A. Okay.

Q. Their small percentage fees, transactional fee, servicing fee?

A. I have never seen these accounts before. You are right to say I was saying this and just basing it on what Kerry had said. That is correct. Because I believed she --

Q. Let's go back to look at what Kerry said, <SUR00118650-0001>. She said:

"Gold dust: on revenue of £140 million [their fees] there was a marketing spend of £58 million. We are cheap by comparison. We are £60 million for £230 million funds in. Or am I being too simplistic? Perhaps they don't count invested funds in revenue?" Mr Careless, you would have known of course they don't count invested funds in revenue?

A. It seems as though I've taken on the role of being far better at analysing companies' accounts than Ernst & Young and PwC, why not pin that at me as well? Mr Robins, I am sorry, but Kerry would have held a belief -- in fact, I do remember something else about Funding Circle. I'm a bit wary about the privilege side of it, but another team, for me, did something similar for the SFO --

Q. You accept they weren't spending 40 per cent of investors' money on marketing, don't you? It is preposterous.

A. It is not preposterous.

Q. Absolutely preposterous.

A. As we stand here today, some of the -- I beg your pardon, Evelyn here lent money at 40 per cent in one year to pay for this very litigation. The cost of raising money is extraordinarily expensive to do. That is why the standard rate for a bond is, and indeed remains, 25 per cent. What a lot of people do is they are dishonest and they might split it as a 10 per cent bill, perhaps, for their marketing and 15 per cent something else. Our 25 per cent was there. Ernst & Young saw it. PwC saw it. Lewis Silkin saw it. A barrister who worked at the regulator for ten years saw it. We are hardly camouflaging this. I appreciate it does look a bit like -- a bit chaotic there with the sort of pulling it all together, but Kerry -- I mean, she would have gone through those accounts and I'm pretty sure there was something there in those accounts that she has seen to give her that view.

Q. Do you want to go back? We can have another look at them. What they show is that Funding Circle spent 41 per cent of its own revenue, its own fee income, on marketing, not 41 per cent of investor money?

A. I see. Okay.

Q. Can we transpose that to LCF's position, <L1/8> at page 4, please. This is LCF's strategic report for the year ended 30 April 2017. We see in the third paragraph, in the financial year LCF issued bonds with an aggregate par value of £53.4 million. So commission payable to Surge from those bonds, 25 per cent, would have been £13.35 million. Yes?

A. Yes, sir.

Q. If we look at page 18, note 2, LCF's revenue was £7.8 million, wasn't it?

A. Yes, sir.

Q. So if we apply the Funding Circle number, 41 per cent of revenue, Surge would have got 3.2 million, wouldn't it?

A. Yes, sir.

Q. And 3.2 is only 6 per cent of the new bond figure of £53.4 million, isn't it?

A. Yes, sir.

Q. So, if we use the Funding Circle example, then Surge should have been getting 6 per cent, not 25 per cent; yes?

A. Yes, sir.

Q. Now, you were associated with a number of companies in addition to Surge, weren't you?

A. Yes, sir.

Q. If we look at <A1/5.1> at page 2, we can go through the detail on the following pages if we need to, but the short point is, you are connected in one way or another with all of these companies, aren't you?

A. Yes, sir.

Q. InfoConnection, you're a shareholder, I think, are you?

A. I think so.

Q. Aston Beckworth, you have been a director and a shareholder?

A. Yes, sir.

Q. Surge Group, a director and a shareholder?

A. Yes, sir.

Q. In your defence, you have admitted to receiving, personally, a total of £8.6 million deriving from LCF via Surge, haven't you?

A. Yes, sir.

Q. It is right, isn't it, that you also received monies deriving from LCF in more indirect routes, in other routes, not necessarily just LCF to Surge to you, it could be LCF to Surge to RPDigital to you?

A. Yes.

Q. Or LCF to Surge to RPDigital to Aston Beckworth to you?

A. Possibly.

Q. Can we look at <SUR00032722-0001> at page 2. We can see Steve says to you:

"By the way, would it be okay if I split my monthly invoice the following: 15 per cent AB." That's Aston Beckworth, isn't it?

A. Yes, sir.

Q. "30 per cent IC" -- InfoConnections?

A. Yes, sir.

Q. "30 per cent SF" -- Surge Financial?

A. Yes.

Q. "And 25 per cent RPD". That's RPDigital, isn't it?

A. Yes, sir.

Q. So you decide how much money you wanted to take and then work out which companies to take it from?

A. Steve Jones was the financial director of all of those companies. He had a consultancy called -- so he billed from all of them.

Q. You took money via all of them as well, didn't you?

A. Yes. So, from a structural point of view, if you would like me to just outline that for you briefly, I can. Surge Financial made profit. It did two things with it: it paid its shareholders, Kerry and I, on a 90 per cent/10 per cent basis. Some money was then lent to a Topco, we called that Surge Group. Surge Group then became an incubating start-up business because I had a lot of offices. I used that company to invest in various other businesses about sort of between 5 and 7 over a sort of three- or four-year period. It would lend that money out. Some would pay it back. There were issues then, of course, when LCF went under and then, subsequently, of course, when I was arrested by the Serious Fraud Office, everything sort of -- people ran for the hills and it went into a total meltdown situation, and leading up to that, sometimes you will see banking issues because we -- our banks were being -- I subsequently found out from sort of a chap who worked at the SFO, who was a lawyer, that the SFO

check your bank, and then, of course, that -- your bank then write to you and remove you. We had a bit of that going on. So --

Q. Okay. You're aware that you wouldn't, or couldn't, provide bank statements so we obtained what are called Bankers Trust Orders from the court?

A. Yes, sir.

Q. We got bank statements for various companies you're associated with?

A. Yes, sir.

Q. We have analysed them. Can we go to <A1/15>, please. We need to open it in native format. Then we need to go to tab 3. We need to get rid of this funny thing in the middle. Let's just see if you accept these numbers. If you don't, that's fine, we can give your legal team a chance to go through the same bank statements and they can tell us. But, broadly speaking, does it look right that you had about £715,000 out of Aston Beckworth?

A. Yes, sir.

Q. And about £353,000 out of RPDigitalServices.

A. Yes, sir.

Q. Somewhere in the region of 8.6 from Surge Financial?

A. Yes, I believe that's now about right, yes.

Q. And about 1.4 from Surge Group?

A. Yes, sir.

Q. So the total of 11 million is about right?

A. Yes, sir.

MR JUSTICE MILES: Mr Robins, can I just understand this, so I understand your questions?

MR ROBINS: Yes.

MR JUSTICE MILES: What's your case -- sorry, in terms of questions --

MR ROBINS: Sure. Maybe your Lordship can ask me.

MR JUSTICE MILES: What money are you talking about here, as it were? On your case, where is it said to come from?

MR ROBINS: Mr Shaw is clarifying it. I hope I didn't suggest from my questions -- it is not about money that has necessarily come from LCF, although, of course, they were the main source of income for Surge.

MR JUSTICE MILES: That's what I had understood.

MR ROBINS: It is about payments out of these various companies to Mr Careless.

MR JUSTICE MILES: So it is not being suggested to Mr Careless that these are ultimately from --

MR ROBINS: Well, not 100 per cent.

MR JUSTICE MILES: -- LCF.

MR ROBINS: I mean, obviously, as a matter of mathematics, inevitably, a very high percentage would come from LCF because it was the principal source of Surge's revenue.

MR JUSTICE MILES: Well, that's Surge. I'm just looking at this.

MR ROBINS: Yes. This is not necessarily 100 per cent from LCF, and I hope I didn't suggest that in my questions.

MR JUSTICE MILES: I don't know whether it matters to your questions, but do you need to explore that or -- I will leave it to you, obviously.

MR ROBINS: I can ask the question.

You accept that LCF was responsible for the lion's share of Surge's income, don't you?

A. Yes. To assist the court, Surge Financial drove 61 million in revenue from commissions driven from LCF, around 10 million from the contract we held with Blackmore, and that was Surge Financial. Various companies had various different revenues, but that was the money that would have gone to me, as a shareholder, and then up into Surge Group, which was the Topco, which then would have invested in various sort of different enterprises I was involved in and starting up from various things that I could talk you through, if you want me to.

MR JUSTICE MILES: Did the monies that came to you from these other companies, like Aston Beckworth, did they come from Surge to Aston Beckworth?

A. Yes, my Lord.

MR JUSTICE MILES: So it goes Surge, company, you?

A. Yes, my Lord.

MR JUSTICE MILES: Right.

MR ROBINS: We can, now we have got the bank statements, do the forensic exercise, but you would accept that the lion's share of the money that came to you would have ultimately derived from LCF?

A. Yes, sir, whatever 61 and 10 million is, that percentage, yes, sir.

MR ROBINS: My Lord, I have no further questions for this witness. I think it is for my learned friend Ms Dwarka, who indicated that she had some questions.

Cross-examination by **MS DWARKA**

MS DWARKA: Mr Careless, Mr Robins has shown you many documents during your cross-examination, so I do not intend to do so, as I think you have seen everything that you needed to see to deal with my questions, which should be fairly short. But if you do need to see some of them, and if I think they are important, I will refer to them.

Now, I want you to try and remember how it was at the time rather than what you know now. Is it fair to say at the time that you believed in LCF as a business and that you had great plans for Surge and its future?

A. Yes, ma'am.

Q. You wanted this project to work and you wanted your staff to make sure they do everything in their capacity to make sure it works; is that right?

A. Yes, ma'am.

Q. LCF was Surge's best client in that sense at the time, wasn't it?

A. Yes, that's correct.

Q. So, you wouldn't have wanted to lose this client under any circumstances, would you?

A. No.

Q. When you saw that it was doing much better than Blackmore, you decided to focus on that business, didn't you?

A. Yes, that's correct.

Q. Now, is it correct to say that you ran the business and took strategic decisions on the direction of the business on a sort of a high level, but that Ms Venn was the person who mainly dealt with the nitty-gritty; is that right?

A. Yes, that's true.

Q. So, she is the one who would have more detailed knowledge of what was going on on a day-to-day basis, or even the email that she writes that you're copied in?

A. Yes, that would be true.

Q. Now, you had a good relationship with Mr Thomson, did you?

A. Yes, ma'am.

Q. I know that there's been some mention of very flowery language that I am not planning to deploy to describe him, but he was more rigid to deal with but was otherwise someone that was trying to do his business in the best way he could, wasn't he?

A. Yes, he was.

Q. Was that your impression at the time?

A. Yes, I did have that impression, yes, at the time.

Q. But your colleague, Ms Venn, found him very difficult to deal with?

A. Yes.

Q. She often questioned his instructions and didn't want to follow them at times; is that right?

A. Yes, that would be true.

Q. I mean, you were shown by Mr Robins an email where Ms Venn -- I can refer to the document number if everybody wants to see. <SUR00003280-0001>. You were referred to that email where Ms Venn asked you to override him and speak to Spencer?

A. Yes, ma'am.

Q. So, she wasn't very happy to follow whatever he was asking her to do?

A. Sorry, could you say that again?

Q. And questioned his authority?

A. Sorry, could you say that again? I didn't catch it.

Q. Ms Venn often questioned his instructions?

A. Yes.

Q. And didn't really want to follow them at times?

A. Yes, that's fair.

Q. She often questioned his authority?

A. Early on, I think --

Q. That is an example of questioning authority?

A. Yes, that is an example of it. I mean, this was very early on when we couldn't quite establish quite who was who. But, yes, that is fair to say early on.

Q. I will come on to the next. That view did change when Ms Venn wrote an email to you to explain her conversation with Mr Thomson. You were referred to that email. I can give the reference number. <SUR00131168-0001>. This is the very long email where Ms Venn tells you that Andy, Mr Thomson, is saying that he's in charge, don't talk to other people, and that you should basically follow him rather than anybody else. Do you remember that?

A. Yes, ma'am.

Q. Now, it was put to you in cross-examination by Mr Robins that you and Ms Venn still did not want to follow Mr Thomson and still questioned him, and you said in your evidence this week that Mr Thomson had difficulty dealing with women. Do you recall?

A. Yes, I do recall.

Q. Do you think that's the reason why, for example, Ms Venn still didn't want to believe him? Could that be a reason?

A. I mean --

Q. Rather than believing the email?

A. Andy wasn't -- I mean, it was kind of renowned within our company, within Surge and the wider company as we grew, that Andy wasn't particularly good with women in positions of power, and in my company I had quite a few of them, and so he would sometimes either have Kobus deal with it or indeed go around, or attempt to go around -- and on many occasions I would try to push him back to Kerry because it was her job and she was better at it than I was.

Q. So there is a possibility, isn't there, that Ms Venn wouldn't believe he's still in charge for that reason, because she just found him difficult to deal with?

A. Kerry would have told the truth. This would have been her belief. You know, Kerry would not have been influenced by any misogyny or any other, indeed, issue that people had. She's very a straight shooter, and of course I would expect her to -- I mean, people didn't -- you know, particularly Jo and

particularly Kerry didn't get on with Andy. I mean, it was part of a growing business. Because he was obviously our main client, and I wanted to keep him happy, and I'd expect them to play that party line. But of course, you know, sometimes it blew up and I would sort of make it all good and other times, you know, we would sort of push on.

Q. So, it was put to you in cross-examination that you and Ms Venn were still speaking to Mr Golding, Spencer, in the background, despite what Mr Thomson's told you both. Was that the case because you needed certain things to get done which was more advantageous in terms of sale pitches, more than anything? Is that a possibility?

A. Yes, I think, just to establish that, JRM is the person who spoke to Spencer the most. I -- you know, I did see him on a number of occasions obviously early on, but as it grew -- the last time I saw him was with the Lewis Silkin thing after the LCF blow-up in 2019. It was predominantly JRM who would go to Spencer because the three of them, JRM, Spencer and Andy, had a pre-existing relationship. So that's why that kind of happened. Kerry and I didn't, you know --

Q. You would ask JRM to go and speak to Spencer?

A. Yeah, I think we both would early on, yes.

Q. You said in your cross-examination this week that you think there was a sort of mentor/mentee relationship between Mr Thomson and Mr Golding. Do you remember saying this?

A. I don't remember.

Q. Well, you did say it. I don't have the reference --

A. Okay. I accept I did, yes.

Q. Would that be a reason why you or Ms Venn felt you could ask Mr Golding to persuade Mr Thomson to either change his instructions or views on certain things, because you felt it was bad for business or bad for your sales pitch?

A. I mean, Spencer was a very wealthy individual and of course he had that type of relationship with everyone, where he was, you know, sort of the, you know, the mentor and you were the mentee, because of, you know, the sort of hierarchy of wealth, I assume. But, I mean, yeah, it was clear -- I didn't think it was Andy's first business because I think, prior to that, he was working somewhere else running a business, but subsequently I've realised perhaps not. But, yeah, I mean, they definitely had a -- Spencer was the guru and Andy was the Padawan, to use a Jedi Knight reference.

Q. Do you think Mr Thomson is a bit traditional, in the sense that he gives value and respect to people such as Mr Spencer Golding or Mr Simon Hume-Kendall? Because you mentioned having seen some Rolls Royce -- I think today you mentioned this -- when you first met them and you said obviously your first impression of them was people of power?

A. That wasn't Andy's --

Q. No, no. I mean do you think Mr Thomson also thought of them in the same way as you did, so gave them value and essentially trusted them?

A. Yes. Yeah, I mean -- yeah, I mean, they looked like they were very successful people.

Q. You had a separate relationship with Mr Golding that developed with time, didn't you? I will give you context.

In cross-examination this week, you said that you probably met him ten times, but he had helped you with your business in the past. Mr Robins had referred to some occasions where he's helped you. So you had a sort of a separate business, separate relationship, in that sense?

A. As we were growing fast at the beginning, he advanced us a few loans, yes, that's correct.

Q. That's it. That's what I meant. Obviously, Mr Robins also referred to your dealing in relation to the property in Isle of Wight. So that's also another example of things happening separately, as a sort of separate relationship with Mr Golding, behind the scenes a little bit, because obviously your loan is also something that I don't expect Mr Thomson to know?

A. Okay, yes, I think that's fair to say.

Q. I think you were referred to some text messages, but I think you and Mr Russell-Murphy weren't sure whether Mr Thomson knew about the deal of the Isle of Wight. If you want, I can give you the reference number. <D7D9-0007803>. Mr Robins has gone through that text. In the middle of the page, it says John Russell-Murphy says:

"I'm not sure if he knows we are involved, best to keep quiet at the moment until SG clarifies." So it is fair to say that there are certain things that he wasn't aware of in the background that were happening, is it?

A. Yes.

Q. He wasn't always in meetings or calls that you had with Mr Golding, or even Mr Simon Hume-Kendall, because you had worked on some other projects, some other bonds?

A. Yes. I mean, the hierarchy was, we would have seen Andy Thomson a lot, we would have then seen Simon Hume-Kendall because we were working on a bond for him and we would have -- if he was doing meetings. Kerry in particular spent some time in their offices, a couple of weeks or a week in Tunbridge Wells. And then Spencer after that. He was, you know, fleeting.

Q. So, he wasn't always in the loop of what's happening?

A. Who, Andy?

Q. Mr Thomson, yes.

A. No, not always.

Q. But you trusted Mr Thomson, though, because you had given him some extra work to do for you, Surge and Blackmore -- I know that you specifically say it's for Blackmore, Mr Thomson says it was for you, Surge and Blackmore -- which you paid separately, didn't you?

A. Yes, that's right.

Q. I say this because Mr Thomson did do some further work which was not Blackmore related. Do you remember?

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

Q. You don't remember him dealing with any meetings separately that's not Blackmore related for you?

A. I'm afraid I don't.

Q. Mr Thomson issued invoices for work done, and those invoices were paid by Surge upon issue; is that right?

A. Yes, that's correct.

Q. You were shown various invoices by Mr Robins, so, again, I don't intend to show you those here, but they are meant to cover work done for Blackmore and some extra work that Mr Thomson did for Surge, but you don't remember he did anything extra?

A. Well, I mean, as I told the court yesterday, it was -- Blackmore was doing 1 million a month, he was doing 5. I needed them to get the same regulatory authority that LCF had. I needed them to upgrade the quality of their counterparties to attract more funds. Doing so would have been a very profitable move by us. Actually, what ended up happening, ma'am, was the opposite: Blackmore got pulled into a regulatory investigation and the funds for them stopped coming in at some point.

Q. Now, the value of those invoices issued by Mr Thomson was calculated using 0.5 per cent of the money raised for LCF by Surge. Is that right? It was --

A. Yes, that's correct.

Q. -- put to you this week. Now, did you do that to encourage Mr Thomson to assist you with Blackmore because if you had attached it to the Blackmore Bond, it would have been less attractive for him. Do you think that's a possibility?

A. Yes. He wouldn't have made any money if it was through the Blackmore Bond because the cash was being chewed up in their growth for the team, and so on, so I did tie it to LCF, yes.

Q. Dealing with the main issue that Surge has with Mr Thomson, because your counsel had cross-examined him on it, there is a question about whether a document, an agreement, between Surge and LCF was signed by Ms Venn or not, but a signed document was sent to PwC which Ms Venn says she did not sign. You know about this issue?

A. Yes, I do.

Q. Now, Mr Robins took you through the various emails showing the contents of the emails, the draft agreements, to show you what was being said at that point; do you recall?

A. Yes.

Q. An agreement does exist between Surge and LCF, but there is a dispute as to whether it's been recorded in writing or not; is that right?

A. Well, I mean --

Q. Well, Surge was paid whenever it issued its invoices, so there must have been an oral agreement.

A. Yes.

Q. You probably don't know whether it was paid on time or not, but you would have generally known that it's been paid because I know you were dealing only with high level in terms of the business, rather than the nitty-gritty, but you would have known if it wasn't paid?

A. That's correct.

Q. Mr Thomson said in his evidence that he received the agreement signed and just sent it to PwC. Do you know this?

A. Yes, I do.

Q. That is a possibility, isn't it?

A. I mean, I'm afraid I will have to -- the information that I am aware of is that Kerry said that she did not sign that, and I'm afraid I would have to stand by Kerry on that. If she said she didn't sign it, then she did not sign it.

Q. No, I didn't mean she signed it.

A. Right.

Q. But it is a possibility that he received it signed by whoever?

A. I mean --

Q. Well, did you provide him with a signed agreement, for example?

A. No, I did not.

Q. You were shown an email about you asking Ms Venn to just sign it to help him. I can refer to the document. <MDR00059720>. That's the reason I'm asking you.

A. Right.

Q. Did you ask anybody else to do so, to sign it and just send it back?

A. No, I didn't.

Q. Do you think Mr Russell-Murphy could have given him a signed copy to keep peace?

A. I think it's highly unlikely.

Q. Mr Thomson said he spoke to you when all this happened and that you told him that you will sort this out. Do you remember telling him that?

A. Yes, probably on a phone call or something, was it?

Q. Yes. He mentioned this in his evidence, and he seems to really remember that he was at the end of his driveway when he had that call. But he genuinely believed that you were going to get it sorted out for him. Does "sorting out" mean that you could have got this signed and sent back?

A. I'm afraid I can't agree to that because I -- look, Kerry would have -- I don't sign contracts. Very rarely would I have signed a contract, because I don't read them, and very rarely do I read any attachments. Kerry would have done that. That was her sort of role as -- and she was a director then, too. So, it is definitely not me. I didn't sign that document because, you know, I just don't sign them - I mean, I do, but very rarely. So, I wouldn't have signed that, I'm afraid.

MS DWARKA: Thank you, Mr Careless. My Lord, I have no further questions.

Re-examination by **MR LEDGISTER**

MR LEDGISTER: Mr Careless, just this, please: on the topic of LCF raising their head above the parapet, you were asked a number of questions about this by Mr Robins. You told him a couple of days ago, in answer to one of his questions, that you didn't think that LCF was strong enough to be on TV. Can you just give a bit of colour to what you meant by that?

A. There were lots of reasons that it wasn't strong enough to go on TV: it wasn't strong enough from a regulatory point of view; it wasn't strong enough from a scale point of view; it just wasn't ready to go on TV. It would have -- that's mass marketing. It is like newspapers. The amount of people that read The Times, The FT, The Telegraph or watch TV far outweighs the amount of people who are searching for very specific terms on the internet around interest rates.

MR LEDGISTER: Thank you. Does my Lord have any questions?

MR JUSTICE MILES: No, thank you.

MR LEDGISTER: I'm grateful, my Lord.

MR JUSTICE MILES: Mr Careless, that completes your evidence. Thank you very much.

(The witness withdrew)

MR ROBINS: There is no timetabling to discuss. It is 10.30 am Monday for Mrs Venn.

MR JUSTICE MILES: Tuesday.

MR ROBINS: Tuesday, I'm being told, for Mrs Venn.

MR JUSTICE MILES: Right. We will resume then. Thank you. (4.21 pm)

(The hearing was adjourned to Tuesday, 7 May 2024 at 10.30 am)

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