

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 32 - Tuesday, 7 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

Tuesday, 7 May 2024 (10.30 am)

Housekeeping

MR CURRY: Good morning, my Lord. As you see, we are currently deprived of my leader's company, owing to a miscalculation over the rail strike.

As you may have heard from your clerk, I tried to communicate as soon as I could, we are also deprived of Ms Venn's company.

I apologise for that, my Lord. My current understanding is that, after driving around railway stations near Rye, which is where she lives, where she knew there was going to be a strike but anticipated that there would still be trains available for her, she found that there weren't. She has driven to a station at the East End -- I couldn't tell your Lordship precisely which one -- on the Elizabeth Line and is currently somewhere travelling on the Elizabeth Line in order to reach court this morning. So, I would be grateful, subject to any matters that my learned friends have for your Lordship, if your Lordship would wait for her to arrive this morning. Again, with my apologies. My Lord, the second matter arising out of this, which I should mention immediately, is that Ms Venn has taken more -- Ms Venn reckons, by the time she reaches court this morning, she will have taken about four hours to get here and will take four hours, more or less, to get back in the evening. She may be able to improve those times.

It is not possible, so I understand, for her to stay in London overnight because she needs to be on hand for the cats.

In those circumstances, my Lord, I am instructed to ask for your Lordship's permission that she gives the remainder of her evidence after today by way of video evidence, over a videolink.

MR JUSTICE MILES: Is there a train strike tomorrow? No?

MR CURRY: The train disruptions will be continuing all week.

MR JUSTICE MILES: But not --

MR CURRY: Whether it is directly affecting her area tomorrow, I have not been able to find out. I will do my best to get the best information I have, but that's the current position. Ms Venn is expecting travel to continue to be much more difficult than she had appreciated for the rest of this week.

I appreciate this is a late application, and, at the current state, an informal one. But there we are.

MR JUSTICE MILES: Mr Robins, do you have anything to say about that?

MR ROBINS: My Lord, this is a one-day train strike, the impact of which was explained to the public last Tuesday. It is surprising that Mrs Venn didn't look into the details.

There is no good reason to allow her to give evidence by videolink. As your Lordship observes, there is no train strike tomorrow. There is, at best, a bit of disruption. In any event, she lives in Rye. That's about two hours by car. If she took four hours this morning, that's only because she spent the time touring local train stations to discover the reality of the strike. She could set off early, get here tomorrow, park in one of the many multistorey car parks in central London without any difficulty. If your Lordship were to accede to the application, someone from here would have to go there, which is just as difficult, if not more, as it would be for her to come here.

It seems my learned friend hasn't looked into the practicalities of this, which we know from looking at the Cayman expert. It would be necessary to ensure she had the right equipment, there would need to be two screens. The WiFi link would have to be tested to ensure the speed was sufficient to connect by videolink, with satisfactory audio, and to display the documents on the screen. It takes a bit of time to get the equipment in place and to do all the tests to make sure it is properly set up. It is unreal to think this could all be done by 10.30 tomorrow. So we would oppose the application.

MR JUSTICE MILES: Thank you.

MR CURRY: My Lord, very briefly, contrary to my learned friend's suggestion, some consideration has been given to the practicalities of this. Ms Venn has an office from where she can give evidence, she has two screens, and I am instructed, at least, that she has a good internet connection. It is, of course, the case that arrangements will have to be made to ensure that she has proper access to the electronic bundle. My Lord, I fully appreciate that I am making this application informally, on almost no notice to your Lordship and on very little notice to me and those instructing me, and it may be that I therefore do not have the full facts that could be prayed in aid of this application. So if your Lordship is against me thus far, rather than simply determining once and for all the position, I would respectfully suggest that your Lordship should stand the matter over, as it were, pending further submissions over the course of the day.

MR JUSTICE MILES: Okay. I'm not going to make such a direction at this stage on the basis of the information that I have available. This has been in the diary for some time, and Ms Venn has known about the need to give evidence during this period, and there's no sufficient evidence before me, I think, to justify this step.

Although remote facilities are sometimes available in these cases, it is much more convenient, generally, for everyone, including the witness, for evidence to be given in court. It tends to be quicker, which is in her interests, just as it is in everyone else's, and so, at the moment, I'm not going to accede to that application. I will adjourn until she arrives.

Mr Robins, I received a further application in writing this morning, I think. Is that something that -- I see from the covering information that it's been provided to the defendants. Has there been any objection to any such order?

MR ROBINS: No.

MR CURRY: My Lord, I'm afraid I don't know, and my instructing solicitor is not currently able to tell me, what the application is.

MR JUSTICE MILES: It is a further Bankers Trust -- I call it that for shorthand.

MR CURRY: My Lord, I can't say absolutely for certain, but I very, very much doubt that the Surge defendants have any objection to that.

MR JUSTICE MILES: I will leave that there for now, but it would be helpful if, in the course of today, an indication could be given as to whether there is any opposition to that order.

MR CURRY: Of course, my Lord.

MR JUSTICE MILES: In those circumstances, I will rise until Ms Venn arrives, and then we will commence. Thank you. (10.40 am)

(A short break)

(11.30 am)

MR LEDGISTER: My Lord, I apologise for having kept the court waiting this morning. I think Mr Curry has informed the court as to the position of Ms Venn. She is now here, and, with the court's leave, may I call her to give evidence?

MRS KERRY VENN (sworn)

Examination-in-chief by **MR LEDGISTER**

MR LEDGISTER: Ms Venn, if you wouldn't mind, just keep your voice up. It is very important that we can hear you over this side of the courtroom. You are quite softly spoken.

A. Hopefully you can hear me with the microphone.

Q. The microphone, unfortunately, doesn't amplify your voice. Give the court your full name?

A. My name is Kerry Venn.

Q. Can we have <C2/4>. Is there a document in front of you on the screen?

A. Yes.

Q. Is this your first witness statement that you made in relation to these proceedings?

A. Yes.

Q. Can we please turn to page 23. Is that your signature?

A. Yes.

Q. Are the contents of this witness statement true, to your knowledge and belief?

A. They are true.

Q. Again, please, if we can turn to document <C2/7>. Is this your second witness statement in relation to these proceedings?

A. That is my second witness statement.

Q. Can we please turn to page number 4. Again, is that your signature?

A. Yes.

Q. Are the contents of this witness statement also true, to your knowledge and belief?

A. Yes.

MR LEDGISTER: My Lord, may these statements be admitted as Ms Venn's evidence-in-chief?

MR JUSTICE MILES: Yes.

MR LEDGISTER: Please wait there, Ms Venn.

Cross-examination by **MR ROBINS**

MR ROBINS: You met Paul Careless when he was selling a website called Ask an Accountant to a company called Boox.

A. That's correct.

Q. You were working for Boox at the time?

A. Yes.

Q. You found, from your conversations with him, that he worked in lead generation?

A. Yes.

Q. And so he had built, as I understand it, a number of public-facing websites; is that right?

A. That's correct.

Q. So members of the public could ask a question and enter contact details?

A. Yes.

Q. In the terminology of the industry, that's called a lead?

A. Yes.

Q. That's something you can sell to people who are interested in those leads?

A. Well, an appropriate professional to what the question is being asked. So, if it's Ask an Accountant, those leads could only be sold to an accountant.

Q. At around this time, Paul, I think, was working on a contact called Ask a Solicitor?

A. He already had that up and running. It wasn't called Ask a Solicitor, it was called Legal Care.

Q. It was effectively Ask a Solicitor?

A. Same thing.

Q. You asked if he'd thought about Ask a Doctor?

A. Yes.

Q. That was, I think, an idea that resonated with you?

A. Very much.

Q. Paul thought it sounded like a good idea?

A. Yes.

Q. You agreed with him that you would run the business?

A. Yes.

Q. And you'd be the sole director?

A. We didn't really discuss who would be director. You know, there would be no problem with him also being a director.

Q. But you were appointed sole director?

A. Yes.

Q. You agreed that he could own 90 per cent of the business?

A. Yes. He built all the software and tested the market for the concept in other sectors.

Q. So, even though you came up with the idea, you were going to run it, you were happy for him to have 90 per cent?

A. Yes, because to build that software required a team of developers and coders and money, so, actually, he'd already made quite an investment to get to this point. It was effectively a white label of software that he had already built.

Q. But you agreed that the 90 per cent/10 per cent would apply to any other business that you were involved in?

A. No, because we weren't thinking ahead at the time that there would be other businesses, but it's true that, over time, we started another business and stuck with the 90/10.

Q. Is it fair to say that one of the reasons that you were happy to give him 90 per cent was because you saw him as a visionary?

A. Definitely.

Q. You also thought he was a talented leader?

A. 100 per cent.

Q. He was someone who could be in control of decisions and you'd place your trust in him?

A. Yes.

Q. Is it fair to say you looked up to him?

A. Very much.

Q. Around this time, he was also working on pension advice online, I think, was he?

A. I think he'd -- I don't think he was actually working on anything other than Legal Care, but he had worked on multiple brands and he'd let some of them go because he realised that he couldn't invest enough money in them all to make them successful, so he'd sold off a few of these websites, and that's what selling Ask an Accountant was all about. He was selling off some legacy websites to focus on Legal Care. Ask a Pension, I don't know if that was already up and running or if that was one created when we -- when our legal and medical businesses weren't being successful and we had to pivot. I can't -- I don't know if -- I don't know when Ask a Pension Advisor was actually created.

Q. At some point in 2014 anyway, you were selling leads to Pat McCreesh and Phil Nunn?

A. After the whole Ask a Doctor thing, I couldn't get the investment to get it to the next level. I had seed investment and it ran for about nine months. Only had three doctors working for it. Realised I couldn't get the investment to develop it further. And Legal Care wasn't going well for Paul. So, at that point, we decided we wanted to keep our team of staff employed and we wanted to find new opportunities for ourselves, so we put our heads together and thought, "Which direction do we go in now?", and that is when we decided to do more work in financial services, lead generation in financial services, and Pat McCreesh was our first client.

Q. So, was Blackmore Bond a property company or a pension company or a bit of both?

A. Blackmore Bond was a property company. Predating Blackmore Bond, Pat and Phil Nunn had a pension business.

Q. So, 2014, certainly early 2015, you were selling leads to Blackmore?

A. Yes.

Q. I think you also built a website for Blackmore?

A. Yes.

Q. And designed promotional literature?

A. Yes.

Q. Did you deal with digital marketing for Blackmore?

A. Yes.

Q. As you were just starting out, you didn't really know exactly what to charge Blackmore for that sort of thing, did you?

A. Well, when we first started a relationship with Blackmore, we were charging per pension lead, and I think it was £150 a lead. I don't know how we struck that price. I think it might have been phoning around other IFAs and seeing what people were willing to pay, maybe. This is now -- I don't recall exactly. Then we wanted to do more because £150 a lead was never going to pay the bills, so we found out more about the process and we got to the stage of doing letters of authority, which is the point in the process where you can hand over for legal advice -- not legal, pension advice, and we could then charge £350 a lead. Again, none of this was going to pay the bills, but we were trying to find our way. We were trying to keep our team employed, of only three people, and trying to get enough money to live whilst we thought big, and Paul was a real visionary on that.

Q. I think the cost per lead came down a bit from 150?

A. That wasn't the cost per lead. That's what we could sell a lead for for the pension business, which is very different from the bond market.

Q. So if we look at <SUR00000879-0001>, it is 28 January 2015, an email from you to Pat saying "We have now delivered 423 leads":

"The good news is that the cost per lead has the come down by 51 per cent from £68.47 to £33.37 ..." You attached an invoice. Do you think the cost had come down from £150 to something considerably lower than that?

A. No, it never cost 150. That's what we sold it for in order to make a profit. I don't know what it cost at that time. But, clearly, this is a little bit later, when we're forming more of a relationship with Pat and Phil, and there seems to be talk here of partnership, and so we may now be giving to them at cost to try and get a -- engineer a further partnership on this pension business together.

Q. I see. So sharing the costs rather than selling leads to them as you might sell them to any other financial advisor you found?

A. Yes, we developed a close relationship where we hoped to do more with them, and that ultimately led to them telling us that they were setting up a minibond and asking us if we'd like to be involved.

Q. When it came to building a website and designing promotional literature and so on, it was essentially a question of Pat telling you what he was prepared to pay for your services?

A. Not to design a website, no. We are most likely to have told him what we would charge for building a website.

Q. Okay. Can we look at <C2/4> at page 4, please. This is your witness statement. In paragraph 16, at the bottom, you say:

"We were engaged to build a website for the Blackmore Bonds, design promotional literature, project the bonds via digital marketing and to collect and process paper-based application forms." Then, in the middle of the paragraph:

"As we were just starting out, we did not know exactly what to charge Blackmore and it was a question of Pat telling us what he was prepared to pay us for our services ..."

A. You have jumped ahead slightly. When I'm saying we would tell him how much, that's if we were building a website for his pension services and it's just a website. Now, where you are here, showing me this, this is where we are actually now engaged on a bond, and we hadn't done work on a bond before and, also, we were now seeing that we could do more than just build a website. You know, we were going to be in control of all kind of promotions here, and it was very hard to know what that would cost us and what, indeed, to charge him.

Q. So you know what to charge for a website, but it's the other services that developed that you didn't have so much of an idea about?

A. I'll tell you why. Because we didn't know exactly how this was going to evolve because our conversations with Blackmore, we were designing it together, if you like. This was a first for them and it was a first for us. And what you will know is, ultimately, they outsourced the whole promotions and new client acquisitions and some customer service work to us, as did LCF. And it was very hard to know how to price something like that.

Q. Then, at some point in early February 2015, Paul Careless had a conversation with Ben Beal?

A. Yes.

Q. I think Ben said, "Let me introduce you to John Russell-Murphy"?

A. He didn't -- I mean, yes, but I can't remember whether he said, "Let me introduce you" and named John Russell-Murphy or whether he said, "Let me introduce you to people who are in financial services and have some opportunities", people who were managing products like bonds. I can't remember now if his words were "John Russell-Murphy" or if it was a collection of people.

Q. The way you described it when you were interviewed by the administrators was that Ben said, "You should really talk to John" and made the introduction and then John said, "I can introduce you to Spencer Golding". Is that potentially slightly oversimplifying it?

A. It's not really an oversimplification. But I think -- I think we met John at the same time for the first time as we met Spencer and Simon Hume-Kendall. But I think it's true that we spoke to John before that meeting and John was our first connection.

Q. I see. You mean spoke by telephone?

A. Yes.

Q. And then the meeting, I think you just mentioned, was 25 February 2015?

A. Yes.

Q. Then, after that, there was a trial period of selling leads to Sales Aid Finance (England)?

A. Actually, to John, really. So John was the investment adviser who was following up these leads, but the products that he was promoting included Sales Aid Finance (England).

Q. Then, after that, you continued to have a lot of conversations with John?

A. John was very impressed that our leads converted well, which means that he would have less conversations to secure an investment, so he could see they were of high quality and he was willing to engage further with us.

Q. It's fair to say that what was going through your mind at the time, as well, "We have got -- Paul and I have got the experience in marketing and online, we don't have the selling experience; John's got the selling experience. If we join forces, there's potential here for a massive synergy"?

A. Yes.

Q. It is right to say you and Paul hadn't sold an investment before, whereas John had a lot of experience in selling and communicating with the retail public about investments?

A. That's correct.

Q. Then, at some point, you and Paul incorporated the company Surge as the vehicle for your business together?

A. Yes.

Q. Do you think that was before or after you'd decided to join forces with John?

A. I think it was before, but I use the word "think" because I don't have certainty around it. Because I think, whether we had met John or not, we'd intended to go in this direction and we'd have met someone else. So it wasn't really, "We have met LCF and now there's an opportunity", it was more, "This is the direction we want to expand into and we will find clients".

Q. When you say in your witness statement that the first opportunities with SAFE came in scraps, I think you're talking about the work on the rebrand and the website and the marketing materials?

A. Yes.

Q. You say in your witness statement that you discussed with Paul what you would like to charge for that work. Do you remember how much you did charge?

A. This could be wrong, but, as you have the records, you might correct me, but I think we may have initially charged about 50,000. Maybe it was in two lots of 25.

Q. Two lots of 5?

A. That seems a little low. I doubt it. Unless that was just for the brochure. But for a website, no, it's much more likely to be 25 and 25.

Q. If we look at <SUR00129022-0001>. This is an email from Paul Careless to John Russell-Murphy. He proposes the items in paragraphs 1 to 6. Then, two paragraphs below that, he says:

"We will charge for just our time as we will be working with LCF. We will charge £10,000 + VAT with £5,000 + VAT due on start date ... and £5,000 + VAT payable on completion ..."

In light of what you said, do you think it would have been higher if there had been no expectation of an ongoing relationship?

A. This is a very generous price, and forgive me if my recollections aren't good. It is almost nine years ago. This is a very generous price and I think it's likely to be in hope of more work, but I also think it's because we didn't have a lot of work and this was a loss leader. We wanted to make sure we picked this up.

Q. At around this time, Pat agreed that you could also start selling for Blackmore?

A. Yes.

Q. Do you think you started selling for Blackmore on or around 22 June 2015?

A. That sounds about right, but in all honesty, I -- I know that, yes, that year, but, I mean, it could have been May, it could have been August. It's in that sort of part of that year.

Q. If we look at <SUR00001292-0001>, it is an email from Paul to Pat and Phil. You're not copied. I don't know if you've even seen this before. Does it look familiar?

A. No.

Q. On page 2, Paul says at the top:

"We only started selling BME on Monday, 22 June." Does that look about right?

A. It could be, but, equally, we might have started before then with their loan note and maybe BME is reference to the actual minibond which the loan note evolved into a minibond. I don't know that this is relevant to the court to get stuck up -- whether it was February or whether it was June. If it is relevant, we'd have to go -- we'd have to delve further into the emails. But, suffice to say, we worked for Blackmore before we worked for LCF.

Q. If it is right that you started selling for Blackmore on 22 June, you probably wouldn't have closed the first deal immediately, on the 22nd, would you?

A. Highly unlikely.

Q. What do you think, take a week or two to close the first deal?

A. That's very likely. I can't say categorically, but it's very likely.

Q. Can we look at <SUR00116548-0001>. There's a WhatsApp exchange between you and Paul. It must be on the next page -- the page after, maybe [page 3]. In the middle of the page, you say to him:

"Wednesday 25th Feb 2015 we met SG for 1st time at the Barn."

At the bottom of the page, you see:

"Our 1st Blackmore Estates deal closed on 3rd July 2015."

So, if the first Blackmore deal closed on 3 July, it is probably right, isn't it, that you started selling for Blackmore a couple of weeks earlier?

A. For Blackmore Estates, but I don't know what the Blackmore name is for the Blackmore loan note, which I believe would have come first. Blackmore started with a loan note, which is very, very similar to a minibond, unless you're a legal specialist in this area, you might consider it -- the nuance to be important, but it sort of -- loan notes were popular pre minibond and then the minibond market seemed to come up.

Q. But you didn't sell the loan note?

A. Yes, we did.

Q. In which case, it must be the loan note that you're referring to?

A. Well, why do you say that?

Q. Well, if we go back to <SUR00001292-0001>, Paul's reporting to Pat and Phil. He says:

"Pensions", and we can see it's still about selling leads. Then Blackmore Estates, he says: "John Russell-Murphy (JRM for short!) is my new sales director."

And:

"He starts ... tomorrow ... from my new offices", he says at the end of the paragraph.

Then, over the page, he says:

"We only started selling BME on Monday 22nd June." He gives the screen grabs from Pipedrive. He says, above the bold:

"JRM will be selling from tomorrow."

And then, on the right, in the big paragraph, second line, he says:

"If I had of simply relied solely on sending you leads, with respect, things would look a little bleak right now."

What he's talking about is the previous sentence: "Pat agreeing to me running a sales team has really helped."

It was around this time that you first started selling for Blackmore, wasn't it?

A. Potentially, but I'm hesitant because we could well have been doing the loan note before that, just because I'm surprised it's as late as June/July. I had thought it was earlier in the year, and that makes me think perhaps what we're seeing here is a reference to the minibond or a lack of information about what predated it, which was the loan notes.

Q. Well, let's put aside Blackmore. You started selling for LCF on 4 August 2015; is that right?

A. Sounds about right. I can't be specific on the date, but it sounds about right. And if your documents say that, then yes.

Q. In your witness statement, you say that in the summer of 2015, when Surge first started selling bonds for SAFE or LCF, as it became, "We were already charging Blackmore 20 per cent for similar services". Is that right?

A. Yes.

Q. Is that a clear recollection?

A. Well, I guess, the day we started, when we were finding our feet, we may have billed differently, but as soon as we understood what the prices were in the market that we had found ourselves in, it was 20 per cent. But in the very early days, as we evolved from selling leads to initially further work for them, there might have been some different prices as we sort of found our feet and extended our range of services and finally struck our price of 20 per cent.

Q. Do you think it might have been a commission of 7 and a half per cent for Blackmore on the understanding that you and Paul would be given some sort of stake in the business?

A. It's true that we were offered a stake in the business, and we ummed and ahed about that for a very long time. I do recall that we were going to offer them a lower amount for a stake in the business, but we never got that stake in the business. I'm not sure if we ever billed the lower amount. I'm not saying we didn't, I'm not saying we did. I don't recall and, actually, my real recollection throughout is 20 per cent.

Q. But do you think you struck a deal at the beginning for the 7.5?

A. This is lost to memory, like, lost to the past, until you're mentioning this now, but, actually, I think there was a point at which we were going to take a lower amount for a stake in their business, but we never did that.

Now, did we ever take -- charge a lesser amount whilst we negotiated the stake in the business that never happened? That could have happened. The only way to know that for sure is to check our bank statements. I just don't recall. What -- my recollection is 20 per cent. And if there was any different amount, it would have been right at the outset, when we were just trying to establish what our offering was going to be and what was a fair market rate for that offering.

Q. If we look at <SUR00001331-0001>, there's -- I don't expect you to have seen this before. It is an email from Paul to Pat. Right at the bottom on that page, Paul says:

"JRM's sales team target for SAFE is £1m closed by 1st September. (£250k comms to SF)."

That's the 25 per cent, isn't it?

A. Yes.

Q. Just in the middle of -- well, below the middle of the page, just above the heading "Surge", he says: "JRM sales team target for BME is £2 million closed by 1 September. (£150k comms to Info Connect)." Which would be 7.5 per cent. Is this, do you think, consistent with the answer you gave a moment ago, that it could well have been 7.5 per cent at the outset?

A. Yes, this is exactly consistent, but what I'm -- if this is relevant to your case, I strongly urge you to check the bank statements to see if 7.5 actually happened or how long it happened for, because it doesn't -- I don't recall it very clearly, so it was obviously a fleeting moment in time, and, really, 99 per cent of the business we did would have been at 20 per cent, and this would have been just at the outset while finding feet. We never did do that joint venture and so we never did take a reduction in fee, or if we did -- sorry, that's categorical and I didn't mean to be categorical. What I'm saying is, if we did take a reduction in fee on the promise of a joint venture, it wouldn't have been for very long

because the joint venture never happened and then we would have gone right back up to market rate, which is 20 per cent.

Q. You say the job that you were going to do for LCF was essentially the same as the job you were doing for Blackmore?

A. Yes, although it wasn't -- none of this was clear, day one. You have to remember, this evolved as we looked at what these companies needed and what the skills were within our team and where we thought the opportunity lied. So, this evolved quite quickly. We didn't have a fully-formed package to go to market with and say, "Dear Mr Bond Company, this is what we can offer you". It evolved as we - - we had already started working on websites before we realised that we could build the application process as an online journey that could plug into the website. You know, that evolved quite quickly. Then we thought, well, we could actually do more customer services and have a team of staff answering the phones for them, acting as an agent of the bond issuer. So all of these things evolved. We didn't have a fully-fledged offering to market, day one. But, ultimately, we did exactly the same job for LCF that we did for Blackmore, in the end.

Q. The sort of time period we are looking at, I think it was envisaged, wasn't it, you would be doing the same job for LCF as you were doing for Blackmore?

A. Yes.

Q. John Russell-Murphy, I think, had told you that he was receiving 20 per cent from SAFE?

A. Yes.

Q. And he told you that he was going to be able to get them up to 25 per cent?

A. Yes.

Q. Given that you hadn't sold investments before, when you talk about the market rate, you're really talking about what Mr Russell-Murphy told you?

A. He wasn't the only person we met that had access to bond issuers, so we met a representative of Dolphin, which was a German property bond, we met someone called Chris McRae, who was like an introducer middleman, who promoted a range of bonds. We met a litigation finance company, I forget the name. It might be Augusta, but I'm not sure, really. So, yes, we did meet other bond issuers and their representatives, and the rates they charged were there or thereabouts. Some of them, you had to sell a certain amount to hit a hurdle, so it might be they were offering 15 per cent but, after you'd sold 200,000 of bonds, then you went up to 20 per cent and, if you'd sold a million of bonds, you went up to 25. They all had their own pricing system but, ultimately, they were there or thereabouts with the 20/25 per cent.

Q. I might ask you some questions about that later. I know it's very difficult, in 2024, to know exactly when these things happened. But none of the things you're talking about had happened before June/July 2015, had they?

A. It would have been around that time. Was it before or was it after? Well, is it June, is it August? I don't know. But, around that time, we were trying to, you know, promote ourselves in this marketplace and we were speaking to a number of people. Did I meet them one or two days before LCF or one or two days after? I don't know. But, at this point in our evolution as a business, we were trying to find out what these companies needed and what they were willing to pay and we spoke to a few of them.

Q. You say in your statement that John Russell-Murphy pushed for changes to LCF's marketing materials, like adding biographies of LCF's key staff to the LCF website. Do you think that's right?

A. That wasn't just John, that was us. We came at it from a marketing perspective, thinking, "If we were a member of the public looking for investment, what would give us comfort to put our money in this product?", and so we thought, if you have a credible board, if you have recruited a good group of advisors, that's very helpful. So we would have recommended that early on.

Q. <SUR00001422-0001>. There's an email from you to John that John has sent on to Andy. This is you setting an order of priority and there's information to go on the "Contact us" page and, secondly, trying to build a picture of the success/selling points. Thirdly: "'Our Team' -- Photos and short bios of the people at LCF, including partners, to make this section look extensive."

This is the sort of thing you were just referring to, isn't it?

A. Yes, because they showed us the brochure they were currently using with SAFE and we just didn't think it looked that good. These were our suggestions to make it look better. If they had a small team, then under "Our Team", including their advisors would make the team look bigger and just make the whole operation look more professional. They're the oldest tricks in the book if you are a marketing company. You are not saying anything that isn't true, but you are framing it in a way that looks more appealing.

Q. To summarise what you just said, you thought their branding was very novice?

A. Yes.

Q. And you wanted to get them in a position where they had the look and feel of a financial institution?

A. Yes.

Q. <MDR00227545>. We can see at the top John Russell-Murphy's emailed you and he says: "Kerry, further to your email on Friday please find attached the FAQ document and a proposed letter from Buss Murton Law."

Do you remember the letter?

A. Yes.

Q. <MDR00227547>. That's the draft letter, isn't it?

A. Yes.

Q. Do you remember Paul suggesting that the reference in the paragraph to £1.1 million should be deleted?

A. I don't remember him saying that; however, it's highly likely he would have, because I would have been thinking the same thing.

Q. This is the sort of thing that you would say is legitimate marketing?

A. Oh, yes.

Q. It's not misleading the public, it's just putting your clients in the best light?

A. Oh, you could get into a whole debate about, is marketing misleading and what's the morality of it, but are we making a lie? No. Are we simply choosing which facts to accentuate? Yes. Is that illegal? No.

Q. But you agree you're taking out something that might put a lot of people off investing?

A. Definitely, and accentuating things that might make people more interested, such as the pedigree of the team. We wanted to add more on that.

Q. We saw on the previous document that you were sending the information to John and John was forwarding it to Andy. I don't think you'd actually met Andy by this point, had you?

A. No. We actually had got things quite advanced through John as a conduit before actually ever meeting Andy face to face.

Q. I think you first met Andy at John's office; is that right?

A. Yes.

Q. Do you remember that you and Paul also advised Andy on LCF's web presence?

A. Yes.

Q. In particular, on ensuring that the public would find the right sort of things if they Googled it?

A. In marketing, you call it a signposting, is the term for it, and, yes, you want to have a wealth of online information that builds to the credibility of the organisation that you are promoting.

Q. I think we have seen a reference to the term "validation material". Is that what you call it?

A. That's another way of putting it, yes.

Q. Can we look at <MDR00019633>, please. This is from you to Mark Ingham and Rocky O'Leary. Did you ever meet them face to face?

A. Yes.

Q. You say -- and it is to Mr Thomson. You say in the second paragraph:

"As discussed, please find attached my notes regarding the three documents which we need to produce: branded IM, brochure and application form. As requested, I have provided information from a sales perspective ..."

Then you say:

"The recurring theme we should present: substantial, safe and secure. Branding and content that ooze financial institution, verified by trusted, regulated, independent bodies."

This is fairly typical, isn't it, of the sort of advice you gave to Mr Thomson at the time?

A. Yes.

Q. Could we look at <MDR00021862>. You're emailing Mr Thomson. We need to go to the previous page to see -- it's the bottom on the left, the "Contact us" page. We have got "Head office" and then, underneath the "Email" section, there's a lot of different email accounts: info, careers, press and accounts. Then you say to Mr Thomson at the top:

"We did this to create the impression that the organisation is larger than it is.

"This creates gravitas. Prospective investors are more likely to assume the organisation is larger and associate other perceptions with that such as safer, robust, longer term, et cetera."

If you are creating the impression that it's larger than it is, would you say that was on the "misleading the public" side of the line or on the "permissible marketing" side of the line?

A. This is permissible marketing. However, it comes back to what I said earlier about we could question the morality of marketing, because the essence of marketing is you're trying to frame something in its most attractive light, which means that you might ignore negative features and you might shine a light on positive features. When you ignore a negative feature, is that misleading? There is an argument to say that that is misleading, but this is quite normal in the world of marketing.

I put it to you it's exactly the same as what you are doing with me today. So, you're taking facts and you're framing them to try and make it look like a fraud has been committed. But I'm taking facts and trying to frame it to show this was just our everyday normal.

Q. I'm sorry if you got that impression from my questions so far.

A. Not yet, but I realise that that's sort part of how this process would work, generally.

Q. Your understanding, at around the sort of time we are looking at, autumn 2015, was that Mr Thomson ran LCF on the day-to-day basis, but Mr Golding was ultimately in charge. I'm focusing on this period specifically, autumn 2015?

A. From the first meeting, it very much looked like Spencer was in charge. That view changed over time. But, initially, he did look like he was in charge because he was the one holding court. He was the more dominant character. He was the one answering questions in meetings where Andy was also there. So, I made an assumption that Spencer had a bigger role than Andy. Over time, as your evidence will show, I was told that my assumption was incorrect: so, at different points in time, I took a different view.

Q. From that first meeting, you thought that he was the king pin?

A. Yes.

Q. You dealt with him on the basis that he was the king pin?

A. Yes.

Q. So, if we look at <EB0006648>, we can see, in the middle of the page, you're emailing Spencer, 13 October 2015. You're forwarding an email that you'd previously sent to Andy Thomson, you're forwarding it to Spencer to say: "As discussed, I have been waiting for the case studies for some time. I had a look back through my emails and can see I first requested this on 29 July." At around this time, if you thought Andy was failing to deliver the goods, you were going to raise that complaint with Spencer?

A. Yes. I would even try -- even at a point where maybe I thought Spencer wasn't in charge -- although I did, there were times when I thought Spencer was in charge. But even if I suspected he wasn't in charge, I would still probably go to him because I would have been trying every tactic, every which way, to get these case studies because they would have helped with the marketing.

Q. And because your experience was, on most occasions, that if Andy wasn't delivering the goods, you could go and tell Spencer to put a rocket up him and he would then jump to it and you could get what you are looking for?

A. It is a bit like, if mum doesn't give you what you want, go and ask dad. It is a little bit like that. They both could be equally in charge, but you'll try and go around one to the other to get what you ultimately want, yes.

Q. So <SUR00002637-0001>. You're emailing John Russell-Murphy, on 13 October, saying: "As requested I phoned Spencer. He had a moan about two things."

You told him essentially it's Andy's fault. At the bottom, you say:

"Ultimately I don't think he is pissed off with us, I think he is pissed off with Andy and he asked me to keep the pressure on Andy and 'chase him harder'." Your impression at the time from the things Spencer said must have been that your first impressions were correct: he was the king pin?

A. Or -- because I -- this is now putting today's "with hindsight" view on it, you see. Unfortunately, that is the only way to do this, because, at the time, I didn't think, "What is everyone's actual role and responsibility?", you know, "Who owns what percentage of this business, or who has what senior position and who has the most influence?" I did not have that mind-set at the time. So, at the time, I knew that Spencer had a good influence on Andy. Did I assume early on that that's because actually he had control, ownership, or something like that? Yes, I made that assumption. But, over time, I also -- in the times where I thought Andy was actually in charge, I would still communicate with Spencer if I had the opportunity to because I -- another assumption I made was that -- when Andy told me that it was his company, "Don't speak to Spencer", well, I could clearly see, well, Spencer does have a big influence here. So, my thoughts were, okay, Spencer has an influence, so I've got it wrong. Maybe he doesn't own the company, maybe he's not the king pin, but maybe he's a mentor of some kind, maybe he's got something on Andy personally, maybe there is some kind of politics. I didn't think it through as to exactly why, but I knew always that Spencer had some kind of influence on Andy. Therefore, it didn't categorically mean Spencer was officially the king pin. It meant at times I thought he was. I always knew he had an influence. So this was something we oscillated over and it's become important in this case, but, at the time, it wasn't particularly important in my mind. I made assumptions, I was told my assumptions were incorrect. I thought, "Fair enough", and I didn't think about it much.

Q. If we look at <EB0007893> and the page after. On the right-hand side, you emailed Paul to say that there's an appropriateness assessment. In the second paragraph, you say you're raising a red flag about the appropriateness assessment that's been formulated by Andy and his advisors and, in the third paragraph, you say it's more onerous than you would like and it will result in less sales.

Then, on the left, we can see Paul sends that on to Spencer, saying:

"It seems we are required by your lawyers to have a much harder sign-up process than our (much larger) competitors ..."

Is this the sort of thing you were talking about a moment ago, where, if you don't get what you want from mum you go on to dad?

A. Yes.

Q. Do you remember Spencer agreed to the simpler appropriateness test?

A. Yes, but Andy, now we know, had to get section 21 sign-off from Sentient, and they were only going to sign off the process that they believed was appropriate. We knew that you could have a different process, because Wellesley was a credible brand and they had a better process, so we didn't see why they couldn't. But Andy's hands would have been tied because he could only approve what Sentient were willing to approve. We didn't know all of that at the time. We thought Andy was being difficult because Andy didn't articulate to us, "I don't have free rein on this, I have a section 21 sign-off partner who I have to bow to", and he didn't articulate any of that. Whereas Blackmore would tell us. They would say, "I'm sorry, there is a reason we can't do it the way you want. Our professional advisors won't permit it". Andy wasn't transparent and talkative with us, he just said -- it was almost like Andy was, "Computer says no", no explanation. Whereas Pat, he would explain, "This is what my lawyer said and this is the reason why we can't do it the way you want to do it". So that caused headaches between me and Andy. If he'd only said, "Our professional advisors say it's more compliant to do it this way. Therefore, if we are more compliant, there's less risk to my business or to me personally", I could have understood him better, but I just felt he was putting up walls for no reason.

Q. Can we look at <EB0007944>. You're emailing Elten Barker. I think you had met him after the meeting on 25 February at the Barn, had you?

A. No, I was asked about this. When I've been interviewed in various places, they asked me, "Was Elten at that meeting?". I genuinely can't remember if he was at that very first meeting or not. It seems to be important because people keep asking me that question. The SFO kept asking me. I don't know why it's important. I can't remember. But he was definitely at future meetings.

Q. So when he says "Thank you for your help yesterday", that wouldn't have been the first time you'd spoken to him?

A. It might have been. I really don't remember the first time I met Elten.

Q. You go on to say:

"I understand we can go ahead with our proposed/simpler appropriateness test." From your understanding, if Andy said, "Computer says no", Spencer had the power actually to override him?

A. It came across that way, that he had -- you could -- it seemed like override, but it could have been influence. It could have been -- I don't know what happened behind the scenes. This is speculation to say "override" and it is also speculation to say "influence". Spencer was the more experienced entrepreneur and Andy would have been wise to seek his guidance, so it could have been influence or it could have been override. I can't speak to the exact answer because I wasn't privy to their private conversations. But the results pointed to the fact that we did get decisions overturned because of the influence of Spencer.

Q. Can we look at <SUR00003170-0001>, please. This is at the bottom of the page, an email from you to Ashleigh Newman-Jones. I think this is Steve Jones's son?

A. That's correct.

Q. In paragraph 2, you say:

"The sign-off to use our shorter assessment is a commercial decision taken by Spencer and has not been agreed by Andy who runs LCF day to day and equally has not been agreed by their corporate advisers who signed it off for section 21."

That's a reference to Sentient, isn't it?

A. Yes.

Q. Do you think you did understand that it was something that Sentient hadn't signed off?

A. Yes, at this point, because I've said that.

Q. Then you say:

"Ultimately it is Spencer's business so it's almost certain we will be able to use our shorter version test. However, there is a little politics with Andy that I will iron out today/tomorrow."

So, you thought that if Andy says, "Computer says no", then Spencer had the power to take a commercial decision that overrode him?

A. I thought that. However, I can't remember what the outcome was and whether Spencer did manage to assert that authority or not, unless you've got the next piece of evidence that shows which way it went.

Q. Well, from your perspective, you thought it was Spencer's business?

A. I did, at times, think it was -- that was my assumption, as opposed to what was being told to me. But, early on, it was my assumption, that Spencer was -- we're using words like "king pin" because it was never expressed to me he has X per cent shareholding or he has a key official position or he is a mentor. I never knew his actual role so I made assumptions based on interpersonal relationships, conduct, outcomes. I just made assumptions by that kind of filter of what went on at the time.

Q. When you say in the final line "There is a little politics with Andy", do you think you were referring to what you said a moment ago, about how he could be a bit difficult on an interpersonal level?

A. I'm talking here probably about the fact that I want to do it one way, Andy wanted to do it another, Spencer seems to agree to side with me. That's -- I'm calling all of that "politics".

Q. I see. If we look at <SUR00003280-0001>, please, we can see, in the middle of the page, Andy's emailed you. He's talking about the accessibility of the information memorandum on the website. Effectively, he's saying it's not accessible enough. The final sentence, he says:

"In short we need a clear link to the IM before this site can go live."

At the top, you're saying:

"We need to override him and speak to Spencer." It is fair to say, I think, isn't it, that, in November, you were still under the impression that if Andy said no you'd go to Spencer to override him?

A. Well, it's worth a try, isn't it? It's worth a try. If Spencer had influence previously, why not? What I didn't realise here is that Andy was probably acting on the legal and compliance advice he got and, if he'd only told me that, I would have backed down. But he's not really telling me why he wants to make a more compliant process, he's not explaining that it's about -- what it's about, really.

Q. If you wanted to get LCF to offer compound interest, you understood that was something that you could go to Spencer about and get him to agree it?

A. I would go to Spencer on any single large or small point that I couldn't get past Andy that I couldn't understand why Andy wouldn't agree to it. I did that when I thought Spencer was in control, and I also did that when I thought Spencer was not in control. I would always just try. I did this with Kobus.

I would go to Kobus if I didn't get a clear answer from Andy. I have also spoken to the Katies. There were two Katies. If I wasn't getting what I wanted and I didn't understand why and I thought they were making a bad decision, I would try inroads with other people that were at LCF, including Spencer -- predominantly Spencer.

Q. Was your experience also that sometimes you could leave Andy and Katie out of things altogether and just go to Spencer and get him to agree the commercial decision?

A. We have done that. It probably wasn't proper of us to do that. But I'm sure we have, at certain points in time, done that.

Q. Do you remember that happening in respect of compound interest?

A. No. I'm not saying it didn't, I just don't remember.

Q. Let's have a look at it and you can let the court know what you think about it. <MDR00022129>, please. Katie Maddock has emailed Jo and Steve and you and Andy and John. You can see from the second paragraph she's talking about receiving an application form for Norris which has been amended without permission: "It is using an old application form with incorrect wording, missing important information and fundamentally a change to the way the interest is to be paid to compound interest which we have never offered." And then the attachment was <MDR00022130>. If we look at the next page, we can see someone has highlighted the wording and it includes the reference to the second line to interest being compounded and there is some handwriting "Who authorised this? What is this? We do not compound interest."

I don't know if you recognise that handwriting? Is that familiar?

A. No, it's not my handwriting.

Q. I wasn't suggesting it is --

A. And I don't recognise whose handwriting it is.

Q. Okay. It looks, from the covering email, like it is probably Katie or Andy, but you're not able to assist?

A. I'm not familiar with either Katie or Andy's handwriting.

Q. Your response is at <MDR00022136>. In the second paragraph, you say to Katie:

"Re the compounded interest: John Russell-Murphy agreed this with Spencer two weeks ago. It was conditional on us paying the difference between the interest and the compounded interest. This payment is to be deducted from our commission."

Your understanding at the time was that if you wanted to offer compound interest on that sort of basis, it was something that could be agreed with Spencer?

A. This is vaguely coming back into my memory because you're showing me these documents, but I don't trust my memory on this. I might be mixing this up with another issue. But I seem to remember being blindsided and wrong-footed because I didn't know about this and I would not have put this live myself, had I known. So, I think we received this and I went, "Why are we using the wrong form?", and went around asking, only to find John telling me that he'd agreed this with Spencer and I didn't know about it, and I would never have put a product out there that actually wasn't approved. So, I think this is one that did quite blindside me.

Q. If we look at <SUR00130016-0001>, you're emailing Scott and telling him you are still using the old LCF application form. Then, in the next paragraph, you say: "NB: don't worry about Katie's comments re compound interest, I know this was agreed between JRM and Spencer and have pushed back on this point."

Is it your evidence that this is something that John has effectively just told you about, it's --

A. Yeah. I think I've seen Katie's email, phoned up John and gone, "What's all this about?", and then written to Scott. That's what I -- I can't tell you with certainty, because it's sketchy memory, and I haven't -- when I've gone back to prepare and looked at documents, this isn't something that came up on my radar. So I'm really not quite sure. But I do remember there was a debacle about compound interest. Either it was at this point or earlier or later, where it was contentious, and I think it probably was this one, actually, that this was contentious and they had gone ahead and we didn't know about it.

Q. In light of everything you've said about your perception of Spencer and his role, is that why you wouldn't have been going back to John to say, "What are you talking about? This is Andy's company. Only Andy can make these decisions". Your understanding is, if that was agreed between John and Spencer, then that's what was going to happen?

A. I would, at times, have taken that stance, yes.

Q. Then <EB0009131>. There's an email from you to Paul and John at the bottom:

"Shocking potential issue!". You say you want to keep them in the loop regarding a potential looming problem:

"I have just got off the phone from Andy ..." What he's said essentially, and we can see it if we look at the next page, is that he's not sure it's going to be compliant for you to have sales assisted by a sales team. He thinks it's only going to be possible to have hands-free sales via the website. You're saying, at the end of that paragraph:

"I said that contradicts our last meeting with Spencer when he suggested we expand our sales team to have bigger capacity for face-to-face meetings. We have two definite routes to market."

Then you say you think Andy maybe made a mistake, there might be an issue, he's "trying to cover his arse". And then, in the next paragraph, you say he's contradicted himself. Then in the penultimate paragraph, towards the bottom, you say: "I'm glad we are meeting Spencer tomorrow and can clarify/correct this madness!"

Would you say this email gives a fair reflection of the difficulties you encountered in your dealings with Andy and the way in which you went to Spencer to clarify or correct the madness?

A. Yes.

Q. If we look at <SUR00003797-0001>. At the top, you say to John -- it is about the same topic. You say: "Let's put it down to Andy being Andy and see if it actually gets raised with Spencer tomorrow." Is the reference to "Andy being Andy" a reference to him being rather difficult to deal with?

A. I thought Andy was being obstinate and I have since realised that, actually, Andy was following the advice of his professional advisors but not explaining that to us, so it looked like he was being obstinate. Also, I don't think Andy liked me. I didn't actually dislike Andy, but his treatment of me was quite misogynistic, and I say that in the context that every woman within our company who had a

position, senior position, he treated the same way, quite negatively. So, I just thought, "Andy doesn't like me". It didn't make me dislike him, but I just sort of felt like I could never really have an honest or clear or decent conversation with Andy. He always seemed to make life difficult. Whereas Pat was a delight. Pat from Blackmore would explain that his professional advisors had said it had to be done a certain way for legal or compliance reasons and I accepted that. But it seemed like Andy was being difficult all the time because it was "Computer says no" all the way, coupled with him being very misogynistic, so it was just hard for me and him to communicate.

Q. Let me show you the email that I think you were referring to a short while ago. It's

<SUR00131168-0001>. It's an email you sent to Paul, John and Steve. At the bottom, two paragraphs from the end, you say:

"Andy stated that he owns LC&F, he said: 'Spencer does not have ownership at all, I have a symbiotic relationship with Spencer we assist each other and we are vital to each other but he does not own LC&F. Please stop communicating key information without me.'" In the next paragraph, you said:

"There has been a misunderstanding, we have been led to believe that whilst you are officially the business owner as registered at Companies House, Spencer is a driving force behind LC&F and a key decision maker. You really need to take this up with Spencer ..." The first question is, this is a reasonably accurate record of your conversation with Andy, is it?

A. Yes.

Q. It looks from the way you phrase it, when you said this, you were a bit surprised or taken aback. Is that fair to say?

A. I was, because, prior to this, I had thought Spencer was the king pin, and Andy allowed us to have that impression because he always invited Spencer to key meetings, Spencer did more talking than Andy and, when decisions were made, Spencer seemed to hold court and answer key, critical questions that the owner of the business was likely to answer. So, I made an assumption that Spencer was in charge. After this, I questioned my assumption and started to think, maybe Spencer is more of a dominant character and maybe Andy, for whatever reason, is just a bit subservient to him, and I've made the wrong assumption to think that Spencer is in charge. But we were certainly given the impression that Spencer was in charge, and Andy allowed that impression, and here is Andy now telling us Spencer is not in charge. I don't know why he didn't assert that at an earlier meeting when Spencer was holding court. I don't know why Andy didn't sort of jump in and hold the court himself.

Q. Did you think possibly he was just saying this because he was feeling a bit left out? In the first paragraph, you say, Andy said in a meeting last week Paul communicated information about GCEN. You were quoting or recording what Andy said, and you say: "He said in a meeting last week Paul communicated information about GCEN and your objections to how it works to Simon Hume-Kendall, he is my customer and it is inappropriate for you to have disclosed the working of my business to him and also inappropriate not to include me in the meeting. I was not made aware of these issues with GCEN."

Do you think he was possibly just sort of complaining about the fact he was being left out of the loop?

A. I think that is also true.

Q. If we look at the next page, you say Andy said to you, "I will take it up with Spencer, just so you know, there is no side agreement/legal contract behind the scenes. I own LC&F and Spencer does not. However, Spencer is very important to my operation ..."

Then you said:

"So you understand the tone, Andy wasn't really complaining or annoyed, he was just trying to express to me a frustration that he mustn't be left out ..." Is that the sense you got at the time, that he was just frustrated that he was being left out?

A. Yes, but clearly that's only part of it. It's being left out, but it's also a complaint that we're giving private information to Simon Hume-Kendall, in the previous paragraph. So it seems he was complaining on two fronts: don't leave me out; but also don't talk about my business with others.

Q. When he said, "I own the business, Spencer doesn't", you were left thinking, well, I don't know what to believe, weren't you?

A. I was left realising that my assumptions were incorrect and I shouldn't make assumptions.

Q. In the final paragraph of this extract on screen, where you said:

"I don't know what to believe? Is this a bit like if I said yes this is my business, nothing to do with Paul, check at Companies House. Companies House would just show me but we all know Paul is the visionary and I just create systems to action the practicalities." Did you think, possibly, in LC&F's case, notwithstanding what Andy had said, Spencer was the majority owner?

A. I got a sense early on that Spencer was the majority owner and this conversation with Andy absolutely floored me because I believed my assumptions because of lots of evidence at the time about how Spencer conducted himself, about how Spencer unstuck issues and about how Andy seemed to defer to Spencer. So, whilst not formally introduced as, "This is my role and here are my responsibilities", it did look like he was in charge", and now I was being told I was wrong and, "Actually, you have been wrong because you are talking private information about my business to someone who is not part of my business". So I sort of felt guilty and embarrassed, I suppose, as well as confused.

Q. I think you said earlier, even after Andy had said this, you would carry on going to see Spencer to get him to unstick issues because he could?

A. We went through a period of time of not communicating with Spencer but JRM and Spencer had this, sort of, what could be described as a back channel, in the sense they had had a longer-term relationship, they communicated regularly, and Spencer still got things unstuck. So in no time at all, we went back to communicating with Spencer.

Q. If we look at <SUR00080533-0001>, you're talking about the draft contract between LCF and Surge. Do you remember there was an issue about how to define services and it raised the concern about VAT?

A. Yes.

Q. You can see, about a third of the way down this page, John Russell-Murphy has emailed, saying: "Thanks Kerry.

"I should have responded earlier but I was travelling, I think we should be harder with Andy on the points raised. They need us, we can flourish without them. The contract should be in our favour.

"Again, Paul and I can discuss this with Spencer on Tuesday and get him to squeeze Andy if required." Is this the sort of thing you were just talking about? It became apparent, notwithstanding what Andy had said, Spencer could squeeze him?

A. Yes.

Q. I have shown you -- we will show your response. <SUR00140352-0001>. You note that point in the second paragraph of your email in the middle of the page: "Alternative is if you can get Spencer to make him accept the services section as it is but honestly I don't think that's fair to Andy if there could be a regulatory problem for him."

Your understanding at the time was that, even if it was something that could cause a regulatory problem, Andy could make him accept it -- sorry, did I misspeak? Spencer could make Andy accept it?

A. Well, it looks like I think there's potential for that. But you'll also notice I'm thinking that that wouldn't be the right thing to do, and I think that -- I don't believe that Andy would have been under pressure from Spencer to do something non-compliant, but I think if -- the compliance doesn't seem to be black and white, it seems to be within the guidance of -- within the sentiment and guidance of the FCA regulations as opposed to the FCA dictating, "You must do this or do that", it must be in the spirit of, which leaves it open to interpretation, and he could have further discussions with his compliance partners which could still get something compliant but mocked up differently.

Q. In the grey areas Spencer can squeeze Andy?

A. Yes.

Q. Do you remember a similar sort of squeezing of Andy happening in connection with the ISA transfers?

A. No, but if you show me the documents, hopefully that will jog my memory.

Q. Let's have a look at <MDR00160744>. At the bottom of the page, Jo Baldock is emailing Katie to say, in January 2018:

"Further to my email this morning we have since had 2 dissatisfied clients regarding their transfers." It is Francis Cann and Barbara Baker. Barbara Baker has actually cancelled her application because it's taken too long and she is going to buy a car instead.

A. I actually do remember this.

Q. Can we look at <D7D9-0007547>. Paul has asked, "Why is this happening?", Jo explains:

"The admin system for ISA transfers is terrible, they run it all on an Excel spreadsheet which is not updated at all and often has mistakes which also affects our numbers and invoicing."

Is that what you remember about it?

A. Yes, we were getting complaints. What we wanted to do was for them to up their game and improve the process or outsource it to us because we had a good process.

Q. That's what Jo seems to suggest as well: "I have suggested many times we take it over so everything is in one place and we can offer a better service to the clients but it always falls on deaf ears."

But that was, what, something you'd discussed with Jo or do you think you both independently had the same idea?

A. I think, as a business -- I think Jo being in direct contact with the consumers would have seen the issue first and come and told Paul and I and John about it, and we would have all said, "Well, what's the process? Oh, that's a bad process, it's on a spreadsheet". We had quite sophisticated technology. We would have seen an opportunity for ourselves to have another string to our bow, another piece of work with them, but also we were maybe quite likely wanting to do that so we didn't get complaints because we knew we could provide a better service and complaints were a disadvantage not just to LCF but to us as well because our income was tagged to LCF. So we would always want good reviews. We wouldn't want an opportunity for bad reviews out there.

Q. When Andy is saying no to this sort of thing, which you and Jo think is a good idea, even in July 2018, the answer, from your perspective, was, let's take it to Spencer and see if he can squeeze Andy?

A. Yes.

Q. If we look at <D7D9-0007543>, the second email down, you say to John Russell-Murphy:

"Worth forwarding to Simon and Elten so they can see first hand the issues around Eridge being slow? Or perhaps that's too much of a dig?"

And John replies, "Already have".

You weren't suggesting that it be forwarded to Simon and Elten because you thought they were in charge of LCF and able to squeeze Andy? They were presumably just the channel of communicating the message to Spencer?

A. I would have thought maybe -- I'm speculating because I can't remember writing that, but I would have thought that I would also have done the same with Kobus or the Katies. I'm just trying to have the people around Andy work on him because that would help the outcome that we desired.

Q. But in terms of the back channel that you mentioned, if you are saying to John, who's got the back channel, "Why don't you forward it to Simon and Elten?", presumably that's a means of communicating it to Spencer?

A. No, not necessarily, because you could just say, "Why not tell Spencer?". I think the inference here is that Spencer -- we have already tried Spencer, maybe we should try some others. Let's work on Andy from multiple angles. Or maybe Spencer was away or something, so we thought, well, next best thing. I'm speculating a bit, but I think my speculation is a fair representation of what I would have been thinking at the time.

Q. Let's look at <D7D9-0007542>. John emails Paul and you and others, and says:

"The transfers will be dealt with by us very soon. Spencer is instructing Andy to pass the work to our office next week."

In fact, the ISA transfers did end up being dealt with by your office, didn't they?

A. They did.

Q. Going back to December 2015, Surge is a pretty small company, for about a month and a half, you worked in a sales role?

A. Mmm-hmm. Probably not a month and a half, I'd say that's a bit long. When maybe we just had low staff -- a low amount of staff or a sickness. So I would probably count on my two hands how many days I worked in sales. It would be less than ten days. It might be seven days. Maybe that was over that sort of period of time, but I really don't recall it being as long as a month.

Q. Let me show you two things and you can comment on it. You will see why I asked the question I did. <SUR00004155-0001>. This is 8 December 2015. You say: "I have had such a good day, working in sales is a dream with leads this good!"

That was the first day you worked in sales. Does that sound about right?

A. I honestly couldn't tell you, but, by the sentiment of what I'm saying, it would sound like it was either the first day or it was a particularly good day.

Q. Okay. Then <MDR00025611>. This is Paul on 28 December setting out his plans for the new year. On the next page, under "BSR", he says:

"Jo, Scott, George, JRM and Kerry if required. That is 5 LCF account managers dealing with BSR enquiries. Ideally, JRM and Kerry will not be needed as LCF account managers by the end of the month every day ..." That's why I was thinking it's probably about a month or a month and a half?

A. No, I really think this was just a handful of days. What Paul was probably doing here, and he does emails like this from time to time, is, he's thinking out loud, he's setting out his strategies, and some of the things in here will have happened and some of them won't.

Q. I see. So, <SUR00130462-0001>. We need to look at the third page, please, and the previous page. This is 8 December. You are emailing a member of the public called Terence. You wouldn't have drafted this email yourself from scratch, I'm assuming? This is a template that was in use at the time?

A. I don't really know. I sometimes wrote content but had to obviously share it for approval. It's quite -- I would say it's quite a long email, so it may well be that I've taken a template and added some content to it, personalised it. I don't really know.

Q. The second paragraph, you say:

"Regulated products such as ISAs, et cetera, are covered by the Financial Services Compensation Scheme. Whilst this is very good, the regulated products that the FSCS cover are currently offering very low rates of interest: it is also important to note that the FSCS does not cover poor performance of an investment. It covers you for bad advice and also if the investment company goes out of business."

Do you remember probably the most common question from members of the public was, "Are you covered by the FSCS?"

A. Yes.

Q. Do you remember the answer to that involved saying, "Well, we are not covered by the FSCS, but we have got our own asset-backed scheme managed by an independent security trustee"?

A. Yes.

Q. And, in your experience, that response to the objection worked unless the member of the public Googled "Global Security Trustees"?

A. Yes -- well, it's wrong to say it worked unless they Googled them, but it's right to say that they didn't have a good online presence, and so, at that point, that may have put someone off, and we didn't want people to be put off, so, as long as we were operating within the law, we would like to have had a better online presence for that company.

Q. Let me just show you why I phrased it the way I did. <SUR00019516-0001>. This is May 2016. You are emailing Paul, saying:

"When I was doing AM work, almost every enquiry asked me about FSCS. I quoted GST saying that we had elected to be part of this 'better' scheme. That really worked, apart from when they Googled it. Had the firm been better, they might have then been satisfied after their Google search."

What you say there is a fair reflection of your experience in sales, isn't it?

A. Yes.

Q. Then <SUR00004453-0001>. You're emailing team@infoconnections. Paul Careless told us last week that he was on that email address. Do you remember who else was on it?

A. What, the team@ email address?

Q. Yes, team@infoconnections?

A. I think that would have been core staff at our early days, and that would have included Ashleigh Newman-Jones, Ryan Holdaway, maybe Steve Jones. It would be wrong to say there might not be others, but those would be the most likely people to be on there, our sort of core team that were with us from the beginning or the early days.

Q. You then say, second paragraph, you're starting to build a picture of trends:

"The same questions come up again and again: "Not covered by FSCS.

"How credible is your asset backed security scheme? "Not much track record after only 2 years trading. "Global Security Trustees Limited don't have a track record.

"No independent references/not much independent information found on Google."

Then you say:

"I have answers for all of the objections ..." To be clear, so we understand, when you say "objections", you're referring to the sort of things that members of the public might say when explaining why they weren't keen to invest?

A. I'm referring to the questions above as objections, because people are saying people might not invest without a satisfactory answer to those questions, so that's why I'm -- they're not necessarily objections but that's what I meant.

Q. I see. From your experience, I know you said it was limited, but from your experience in sales, is that a fair reflection of the most common objections that you encountered?

A. At that time -- "How credible is your asset backed security scheme"? Honestly, I -- yes, sorry, that would have been, but something like questions about Global Security Trustees, I don't think that was a major issue, but because it was an issue within our control -- because Andy could change supplier and/or we could give them, the current supplier, a better online presence. Because it was within our control, that's why we had homed in on it.

Q. <SUR00004463-0001>. John says in response: "I am experiencing similar objections, I normally suggest they start with a lower investment amount and increase the amount after the first few coupon payments are made.

"This works and gets us something rather than no investment.

"I also try to turn the lack of FSCS coverage into a positive -- by saying.

"We have our own protection scheme in place, which is not limited to £50,000 like the FSCS. 100 per cent of the amount you invest is protected by our underlying assets, which are properties.

"The security is checked and monitored by a third party company -- Global Security Trustees who ensure that in the event of the company defaulting the assets are liquidised to meet the company's liabilities", et cetera.

Do you remember using the same line to deal with the FSCS objection?

A. He is very comprehensive here, but I would have been along the same lines, maybe picking out one of these points or, if you have a detailed conversation, maybe going into all of them. Because all of these things are true, of course, and all of these things were approved content by LCF.

Q. <SUR00004471-0001>. You say:

"Thanks JRM. I'm using exactly the same line re the FSCS. Re the start with a lower amount, good tip, I'll start using."

Do you think you started using that tip?

A. I don't think I actually did because I wasn't really selling for long enough to get into any kind of groove with it. You know, I think I was just there fleetingly.

MR ROBINS: My Lord, I see the time. I don't know whether that's a convenient moment?

MR JUSTICE MILES: Yes. I'm sure this has been explained to you, but, for the whole of the period for which you are giving evidence, you must not discuss the case or your evidence with anyone, any other person at all. Do you understand?

A. Yes. That was explained. Thank you.

MR JUSTICE MILES: We will come back at 2.00 o'clock.

(1.03 pm)

(The short adjournment)

(2.00 pm)

MR ROBINS: Can we look at <SUR00130540-0001>, please. At the bottom of page 1, 16 December 2015, an email from Terence Bendixson. He is emailing in response to an email you sent out. He says:

"Many thanks for your message below and the attached brochure."

On the next page, he says:

"I note that your current bond (at 8.5 per cent) ..."

At the beginning, it was just one bond from LCF, wasn't it? It was a two-year bond paying 8.5 per cent?

A. Do you know, I can't remember which bond they started with, but I'll trust you on that. I do know that more products came out over time.

Q. He says:

"Am I correct in thinking that you were reluctant to tell me how many borrowers you have on your books? Depending on the number depends the risk (if you have 10 borrowers and one goes bust, that could be serious; if you have a hundred and one goes under, it is unlikely to be serious)."

That's a valid point he's making, isn't it?

A. Yes.

Q. He says:

"So I am keen to understand the extent of your customer list. If you cannot tell me the precise number can you tell me how much you lent in total and what is the average sum per contract? I can then get an idea of exposure to risk."

Do you remember feeling a bit frustrated that LCF weren't giving you the information that you needed to maximise conversions?

A. Yes.

Q. On the left, we see your response:

"I hope you found the investment memorandum to be interesting? However, the information that you were hoping to receive regarding the number of borrowing companies is not forthcoming. I apologise but the company feel that this is commercially sensitive information and are not willing to disclose." You wouldn't have wanted to reveal to a member of the public, a potential customer, no doubt, that presumably you were rather frustrated that was information that you weren't being given?

A. I don't remember who Terence Bendixson is. He is a potential investor, is he?

Q. That's right. He is a member of the public who you have dealt with.

A. Yes, I mean, I was very frustrated not to have information that could answer a very standard question. I did ask Andy.

Q. So Terence says:

"What about telling me how much in total you have lent and what is the average sum per contract?" You're forwarding that to John Russell-Murphy. Is that because he was the person with the most sales experience? You'd only been doing it for, well, barely a week, if that?

A. I can't remember this, but there would be two reasons. It would be in case John had additional information, but very likely it would be because John had the relationship with LCF and John would be able to communicate with Andy and impress upon Andy that we really do need information like this.

Q. So you think you would have asked Andy?

A. I'm pretty sure -- I don't remember this moment and Terence, but over the time I have asked Andy for more information about the borrowers and, when it hasn't been forthcoming, I've dealt dissatisfied and I've also asked John if he could do anything to extract this information from Andy.

Q. Let's look at <SUR00004510-0001>. On the second page, we can see, just above the middle of the page, same day as the email we were just looking at, 16 December, you're emailing:

"Hi Andy.

"How would you like us to answer this question: 'What is the size of funds under management currently?'. "Another question regularly asked is: 'How many borrowing companies are there at this time and what is the average loan size please?'. "

So, if John didn't know the answer, you'd go to Andy?

A. Well, it wasn't that there was a pre-defined chain of command. Upon not knowing the answer to this, I may have picked up the phone to John or Jo or -- if I couldn't get an answer, or go to Andy. I'm not saying I would definitely have gone to John first. So I'd have to see what the email trail shows. Because I may well have just gone straight to Andy or I may well have tried John first and there'd be no rhyme or reason or particularly why I would try one before the other. But, yes, either way, I'd eventually -- I'd try and get the answer internally first, probably, and then go to Andy, probably.

Q. Then on the left, if we can see what Andy says in response, he says:

"The first is easy to answer. To date the company has £5 million under management ..."

He says they have secured regulatory approval for a further £125 million. Then he says:

"The second is a little more complicated as we put together larger funding lines which are cash flow dependent, ie we have secured an immediate placing for the funds we raise thus ensuring the funds are used from day one. Doing this eliminates the coupon risk (the risk that we may not be able to service the bond if we haven't managed to find sufficient lending opportunities) for the investor. Currently we have in place funding lines for an additional £10 million split over five companies. We have a pipeline for much more but it's not worth progressing these until the funding increases as we already have a home for the level of funds coming through."

That's not really, I suspect, the sort of answer that you were looking for, was it? It's not something you could use to sell to the public?

A. It wasn't a direct answer to a direct question. This was my problem with Andy. This was very common, that he wouldn't just answer a simple question with a simple answer. I came to know this was just Andy's personality because he very rarely just answered a question as posed.

Q. Do you remember looking at this, thinking, "I wonder if those five companies that he mentions are under the same or connected ownership?"

A. It wouldn't have crossed my mind.

Q. Can we look at the top left. You forward it to Paul and Mark to say:

"See Andy's comments regarding the £10 million over five borrowing companies. I'm interested to know if all five are ultimately under the same/connected ownership."

A. Oh, okay, so I did think that. I just don't remember.

Q. You were sending that to Paul and Mark, Mark in particular, because he's the accountant that could look into this sort of thing?

A. Yes.

Q. Can we look at <MDR00025395>. In the middle of the page, you email Andy on the 22nd and say: "Generally I have been trying to steer customers away from questions about our lending book ..." Looking at the date on this, you were in the sales for at least a couple of weeks, weren't you?

A. I don't think I was in it for a couple of weeks. I think it's a handful of days maybe over a period of time.

Q. I see. You say:

"Generally I have been trying to steer customers away from questions about our lending book ..." That was essentially because Andy hadn't given you any usable information?

A. Yes, or he'd given me usable information that I thought was too complicated to use. So I suppose, yes, it's not usable, but he'd given me content, he'd answered my questions, but it wasn't a very easy conversation to have with a general member of the public. So I found it wasn't usable for marketing purposes.

MR JUSTICE MILES: He hadn't told you how much had been actually loaned or the average size of the loan, had he?

A. No, he didn't answer my question directly.

MR ROBINS: So, you're telling him that one particular chap is very persistent, and "wants me to answer the following question, can you please suggest a reply that you are comfortable with: 'What about telling me how much in total you have lent and what is the average sum per contract?'"

At the top of the page, he then says:

"Sorry it's taken all day to get to this, let me have a think and I'll email you something in the morning."

Your experience was that it was actually sometimes very difficult to get anything out of him at all?

A. Yes.

Q. Do you remember if he did answer your questions?

A. Over time, I had plenty of questions answered by him.

Q. In terms of these particular questions?

A. I actually honestly don't remember this particular email exchange, so I don't know the outcome of this particular email exchange.

Q. Okay. It's only about a month or so later that we see <SUR00131168-0001>. 25 January 2016. You're emailing Paul, John and Steve, and you say in the first paragraph:

"I have just spoken with Andrew Thomson, we discussed some quite sensitive information which he initially didn't want to be communicated by email but has given me permission to relay this information assuming your commitment not to mention the details outside of this small group.

Please don't even mention to the sales team yet until we decide how best to communicate the key changes we have been asked to introduce."

It was another feature of your dealings with Andy, wasn't it, that he'd often say, "I can tell you this, but it's confidential, you're not to pass this on to anyone else"?

A. No, that wasn't a regular thing that he would say, "This is confidential, don't pass it on", but what he would regularly say is, "This isn't for release to bondholders yet because it's not confirmed by my accountant", regarding things like the value of security. So it wasn't that Andy was always, "Do things on the quiet and don't tell people", that wasn't a regular feature of Andy, but it certainly was a regular feature of, "I'm not ready for this to be in public circulation yet, the facts and figures are still being checked with my accountant, but I'm just letting you guys know what's coming". He'd often say that about, say, the value of security.

Q. So when he says, "Please don't even mention to the sales team yet", that was a pretty unusual thing for him to say?

A. That was unusual, but I don't find that -- I don't find that problematic, because, if he's telling us something that's slightly in confidence, you don't want it said to a whole team of salespeople who could not know not to convey it to the public at large. I don't think it is unusual if there was something sensitive here. We will have to read on to see how sensitive it is. But if there was sensitive information, you might want to keep it to a closed group.

Q. To avoid the risk of the salespeople inadvertently mentioning it to the public?

A. If you have a team of 20 salespeople and say, "Oh, I'm telling you this figure, but don't mention it to anyone", the risk is they will mention it to someone.

Q. If we look down, it says "The loan book", and then: "Since inception, LC&F (formerly SAFE) has lent 4.2 million.

"Currently there are 80 loans.

"The average loan size is £75k.

"The largest loan ever was £220k.

"The terms range from three months bridging finance to two years property development finance.

"Crucially all 80 loans are to Spencer-related businesses ie they are funding their own operations."

You would have understood at the time that that -- you use the word "crucially" -- was the key point that Andy wouldn't have wanted to get out to the public?

A. That's not correct. Andy was very guarded about even how much he was lending out. So, any of these facts and figures may have been something that, in Andy's mind, he didn't want to be discussed and couldn't -- I can't speculate for which one of these bullet points is the problem for Andy. The inference on "crucially" came from me, and that was because I was surprised they were all Spencer-related and I thought that was significant information and, therefore, the team would be -- I would draw the team's attention to this fact.

Q. It is significant for the reason you give, ie, they are funding their own operations?

A. Yes.

Q. In your mind -- I'm not asking you to speculate about what other people might have thought -- you would have had the thought this was a bit strange, funding their own operations, might they possibly be a Ponzi scheme?

A. No. In my mind, I thought, "Why would you do this?" I didn't sit on that. I said to Andy, "Why are you only funding your own operations? Why are you not diversifying your risk?", and he said that his company had taken -- before he met us, it had taken him 18 months to raise something like 2 million. He said he can't advertise that he's a lender and have people knocking on his door, metaphorically, knocking on his internet, saying, "I'd like to borrow money", when he never knows how much he's going to raise every month and that would become a problem for him. So, his business was at an early stage and, until we could consistently raise a certain amount of money every month, he can't have a queue of borrowers. Borrowers, typically, have projects that don't sit and wait. So he said he started by lending to people that he knew who understood his reason for having inconsistent funds to lend.

Q. So that's the next bullet point:

"I asked about the strategy for when they will open the opportunity to SMEs generally and he pushed the question back to me: 'When can you guarantee a consistent flow of funds? I turned down a £2 million loan last week because I didn't know if we would get £2 million in this month'."

Is that essentially what you were just describing?

A. Sorry, that is actually exactly what I was saying. His answer to me, that answer, fully satisfied me. So, at first it was, shock, horror, "I thought you were lending to lots of SMEs", and then he explained, well, no, there is a very good reason why I'm only lending to a handful and that's because I know these people and they know my circumstances. But, also, he did go on to tell me, I'm remembering, that this was good for his due diligence because he knew the owners of these companies personally and, therefore, he could get a little bit more due diligence insight than if he was an arm's-length lender. So, he positioned it to me as actually a very good thing that he had started close to home -- my words are "close to home" -- but he was positioning that, you know, he could have better knowledge of the companies he was lending to because he actually knew them personally.

Q. You see, you just used the term "just a handful", but in the email it refers to 80 loans. Are you saying he explained to you it's not 80 borrowers, it's just a handful of borrowers? Or do you think that's possibly something you came to learn later?

A. Well, Spencer doesn't have 80 businesses, so, yes, kind of the inference is there's only a small number of companies. Spencer is clearly a big serial entrepreneur with lots of businesses, but not 80.

Q. So, possibly, Mr Thomson didn't explain that in terms. It was your inference?

A. It could have been my inference. If I haven't put it as a bullet point, I probably don't have the number of how many he's lending to.

Q. Your understanding was, as soon as we get decent monthly bond sales, as soon as we are bringing in decent amounts of money, he's opening it up to --

A. And that would have been --

Q. -- SMEs generally?

A. -- very soon. He was saying, "Of course I would need to do that. It's linked to how much money you guys could raise, but also how much you could raise consistently before I would be willing to advertise myself as a money lender", publicly far and wide advertising.

Q. We have seen the numbers before. You start selling for LCF in August. By sort of November/December, it's, I think, over a million a month. And then into the new year, Paul's setting ambitious targets, 4 million a month. You were thinking, well, he's on the verge of opening it up to SMEs generally?

A. Yes.

Q. But in terms of funding their own operations, surely the thought flashed through your mind: is this possibly a Ponzi scheme?

A. Oh, no, I never thought it was a Ponzi scheme. But later on I questioned the morality of it, because I don't think they declared in the IM the interconnected relationships, and when I got to learn more about how IMs are written, because Blackmore were more transparent with me, I then went back to Andy and I said, "There are some things you don't spell out", and he said, "Oh, that's fine, I have been pulled up on that by the FCA and had to give them a register of conflicts of interest", or something. So I felt like he had that covered. But, yes, it did occur to me. Not Ponzi scheme. But it did occur to me, morality issue.

Q. What date is on this email? This is the 25th. Can we have a look at one you send four days later, <SUR00158422-0001>. You're emailing Paul, 29 January 2016, and you say "As discussed", so it looks like there has been a discussion between you: "As discussed ..."

A. "Fact find" -- what are we fact finding? We've been asked to do --

Q. I'm going to take you to number 3, "Missing piece of the" --

A. Oh, "the Ponzi jigsaw". Mark and Paul have a really big sense of humour. They're very funny with each other. And they -- in -- "Ponzi" became our internal joke for, "Let's just make sure these guys are doing things properly because Andy seems a bit incompetent", and we were putting a lot of money their way. It wasn't, "Oh, we think it is a Ponzi if a Ponzi means fraud". You know, it wasn't that we thought there was fraud. It was our casual way of saying, "Let's check these guys out because we don't feel entirely comfortable with Andy".

Q. Have you read the transcripts of the evidence last week?

A. Not everything, because you can appreciate I have to work and it was hours and hours of content. But I have been through some of it.

Q. You go on to say:

"We need access to the lending book, inclusive of details re the security in place, what percentage is property and at what gearing, if not property what is it and how was it valued? Is Mark following up, I put him back in contact with Andy and Andy's new email address." You agree that that's not the punchline of a joke, is it? That's a serious point you're making?

A. Yeah. I felt that we needed to check them out more closely, but I also have to acknowledge that's a big overstep or a big ask. At the end of the day, they're outsourcing business services to us, predominantly marketing. Now, a marketing company should always check out their client, but I recognise I'm probably asking for more information than they would normally give to their marketing

company. But, out of curiosity, and because bondholders ask detailed questions, this is what I would really like to know, and I was hoping that Mark might be able to extract it.

Q. Isn't it the case, Andy's told you, contrary to expectations, they're funding their own operations. You thought, yourself, you questioned the morality, you think maybe it is a Ponzi, and you're just setting out here fairly and squarely what you need to see to put those doubts to rest?

A. No, I don't think it is a Ponzi as in I don't think there is any fraud going on. Literally never crossed my mind. The use of the word "Ponzi" is unfortunate because it makes it look like we thought there was fraud. But that's a very -- that's the kind of style of communication between Paul and Mark and I was trying to speak their language back to them. I was trying to join in on the joke. So I used their word, "Ponzi". But, really, we didn't think it was a fraud, but we did think, "Let's just check this out because Andy doesn't answer our questions clearly. They have got this weird politics inside, I feel slightly uncomfortable with them, let's just find out as much detail as we can".

Q. Do you know, in technical terms, what a Ponzi scheme actually is?

A. I believe it's when new money, new investors, coming in, that pool of money is used to pay the interest to existing investors so the existing investors feel comfortable that the investment is working well and then the people who have taken the money, the bond issuer, in this case, will spend the money however they like. So they won't be lending to companies, they will be buying helicopters.

Q. And so, to understand that the business was bona fide, you'd need to understand that the borrowers were bona fide and that they had valuable assets, that LCF had security over those assets, that sort of thing, wouldn't you?

A. Yes.

Q. So --

A. And also just to make sure that this isn't -- it's not fraud that was the red flag worry, it was, does this all stack up well? If some of these companies go bust, is LCF going to go bust? What can it withstand? You know, we wanted -- our biggest client, we had quite a dependency on. The lion's share of our income came from LCF so we wanted to make sure that it wasn't at risk of any kind of failure, you know, getting into its own cash flow difficulties. It was really more of a concern to me than fraud because fraud wasn't in my thoughts in the way that business failure due to cash flow was in my thoughts.

Q. From your perspective, these were sensible questions to ask and it was really for Mark to follow up?

A. Yes, because I felt I'd already asked these questions and not got clear answers back. So I thought Mark could have a stab. But I always acknowledge it's not really -- I shouldn't expect to have these answers to these questions. Andy, of course, doesn't have to share this level of detail with me when I'm his marketing company, but I wanted to know, and I thought I'd try and find out.

Q. I'm going to move on to ask you about the draft agreement between LCF and Surge. As you know, there's an issue as to whether you actually signed it and we will come on to that. But before doing that, I just wanted to take you to <SUR00048166-0001>. This is from the subsequent discussion about the VAT analysis. Do you remember preparing a list of the activities that Surge actually did so that the VAT specialist could advise?

A. Yes.

Q. If we look at the attachment, <SUR00051622-0001>, this is the document you prepared, isn't it?

A. Yes. It's probably not as comprehensive as it needs to be. It might be an early draft.

Q. Okay. Then the first heading is "Marketing/digital activities" and you say:

"Outsourced? Do we reference InfoConnection? Or do we say we do it ourselves? But could come unstuck because our digital team are employed by InfoConnection, they sit in a separate office and the work they do can be linked to our lead generation work which we want to ringfence.

"Same with development of dashboard, API and continued maintenance of the website."

It is fair to say, isn't it, that you were unsure as to how that should be presented?

A. Yes.

Q. Then you set out the standard activities: "Percentage relates to how much time we as a company spend on these key activities.

"80 per cent -- answering customer questions arising from:

"Live chat.

"Incoming calls.

"Emails.

"Submitting applications."

Obviously, this is something that you had worked out mathematically, but, broadly speaking, would you say that's about right?

A. Yes, but somebody else could sit here and argue not because our tech team spent 100 per cent of their time advancing the things like the sign-up process. But it's a fair stab at what we did, yes. It was my opinion.

Q. Okay. Then:

"3 per cent -- sending out brochures and apps by email and post."

Presumably that's because it doesn't take very long just to send something out?

A. That was my logic.

Q. Then:

"15 per cent -- assisting GCEN ..."

They had the payment collection function, didn't they?

A. They did. The way we would have to assist them is we would need to give AML information to them, which means copies of people's passports or driving licence, and follow up any questions they have. So that all takes time.

Q. For example, someone might not have photocopied their driving licence very clearly?

A. The best one is, people take a photograph of their closed passport and they don't open it at the photo page and take a photograph of that page. Silly things like that.

Q. So you have to go back to them and say --

A. Yes --

Q. -- "Can you open it up" --

A. -- "Passport out of date, can't use it. Driver's licence has your old address". These kind of queries.

Q. Then:

"1 per cent -- manually uploading paper applications."

Presumably, that's because they weren't very common. Most people were making electronic applications?

A. Yes.

Q. And then 1 per cent on the dashboard. Presumably, that's because it wasn't something that really took up very much time?

A. Yes.

Q. I think there's a later version. Let's just look at it to see if it's the same. <SUR00051621-0001>. This is now 28 October, so not more than a couple of weeks later. You say in the third paragraph:

"As per plan A: you asked me to document a list of what activities Surge actually does so that they can be reviewed to see if they are exempt as a whole or not. "That list is attached albeit I have a big question mark over how best to represent the digital side of what we do."

That was the first bit of the document --

A. Correct.

Q. -- wasn't it? Then the attachment, <SUR00051622-0001>. I think it's the same. I'm not sure. I don't know if you can spot any differences?

A. It does look the same, without scrutinising each line. Broadly, it looks the same.

Q. Thanks. Then we get on to the draft agreement between LCF and Surge. Do you remember Andy getting in touch with you in late September 2016, saying, "I need you to sign this today because my auditors need it"?

A. Yes.

Q. Do you remember him putting you under a bit of pressure to get it signed?

A. Yes.

Q. But your position was, you wanted it to be reviewed by solicitors?

A. Yes.

Q. So you weren't going to be pushed into signing something that you thought wasn't commercially appropriate for your company?

A. Yes.

Q. Can we look at <D7D9-0006795>, please. It is a screenshot of an exchange between you and Paul. You have in turn screenshotted parts of your conversation with Andy. We can see at the top he's saying -- this is the end of what looks like a much longer message. He's saying:

"I really needed it yesterday morning, not having it has created additional work and has prompted PwC looking into us in more detail", et cetera.

Do you remember him bombarding you with demanding messages?

A. Yes.

Q. You say, "Now he's being a twat". It is fair to say you thought he was the sort of person who was entirely capable of being a twat?

A. Yes.

Q. Then he goes on to say:

"You have completely missed the point of why I needed it, this was the contract we agreed last year, I thought it would be a simple request to simply sign it. I needed Surge's support to get the audit concluded and it didn't happen and has had knock-on issues." Did you feel a bit like he was berating you?

A. He's saying I missed the point. I thought he missed the point: don't ask me to sign a contract I haven't had a chance to get reviewed by a lawyer.

Q. I think that's the point you're making at the bottom?

A. Yes.

Q. "I'm not signing a contract that a solicitor hasn't reviewed."

So he was pretty -- he would have been in no doubt that you wanted a solicitor to look at it before you'd sign it?

A. Yes.

Q. Do you remember finding out that, when he was getting nowhere with you, he had a go at seeing if he could persuade Paul?

A. He did that all the time.

Q. <SUR00135762-0001>. If we look at the bottom of the page, he's emailing Paul:

"I tried to call earlier to talk you through the position with PwC ...

"Just for your info I've attached two documents ..." And he says basically they're the same. Paul then forwards that to you. On the left, we can see, just at the top, you say:

"All he has to do is call me.

"I will explain why I want the clauses he added in removed and why."

Then you say:

"He's really making a meal of this."

You say you're shocked he would send a contract where liability re FCA is a big exposure "and expect me not to get a solicitor to review". It's fair to say you thought he was being unreasonable in his approach?

A. Yes.

Q. Then <SUR00135766-0001>. We can see Mark responds to Paul and then Paul sends it on to you. Paul is saying "He just talks out of his arse". You probably saw, when you looked at the transcript of last week, we saw a few of these. It is fair to say, isn't it, that quite a few people in the Surge camp were not exactly fans of Andy Thomson?

A. Yes.

Q. People didn't necessarily trust what he said?

A. Yes.

Q. People thought he was very capable of talking out of his arse?

A. Strangely obstinate because he wouldn't explain why no. Don't just say no without telling us, well, why would that be and engage in a reasonable, collaborative conversation, like we would have with Blackmore.

Q. Yes. But this is one where Andy said the two agreements are identical, and Mark is saying:

"He talks out of his arse. The original agreement is fine the other one is fundamentally different." It is not just that he was obstinate, he would say things that you couldn't agree with?

A. Yes.

Q. Do you remember you did have a solicitor, Steven Kinch, look at the document?

A. Yes.

Q. And you sent a revised version back to Andy?

A. Yes.

Q. Do you remember he would then send whatever you sent him on to his solicitor Alex Lee at Buss Murton?

A. I don't know what he would do. I know that there was a solicitor, Alistair -- Alex --

Q. Alex Lee?

A. Yes, and there was Graham at Lewis Silkin. They were the two names he often referenced.

Q. Yes, well, this was Alex Lee. The reason I was asking is because a slightly odd thing we see is that, when Andy gets a message from Alex Lee, he just forwards it on to you, often before he's even read it. Did you have a sense that he was engaged with the detail or not?

A. I didn't know that, that he was forwarding things on to me without having read them. That does surprise me.

Q. Let's have a look at <MDR00060631>. This is from Alex Lee to Andy and he says:

"... please find attached the Surge agreement. I have accepted the changes that we don't find problematic but have left some in that are problematic." The attachment to his email is <MDR00060632>. It is a markup. On page 4 -- I don't know if you remember this -- he stuck in a new clause about insurance?

A. Yes.

Q. Does that ring a bell?

A. Yes, because we didn't have it and I had to go and source it.

Q. What he's saying is that it should be insurance: "... in an amount each year of not less than Five million pounds for any one occurrence or series of occurrences arising out of one event for a period of twelve (12) years after the last date upon which the intermediary carries out the services ..." So it's not just 5 million, but it is 5 million that has to continue for 12 years even after the termination of this contract?

A. I remember reading that and thinking, "I don't know where I will find such an insurance policy", and, if I did, it would be so expensive it wouldn't make sense.

Q. Then <MDR00060633>. Andy forwards it to you, saying: "I've just received this, I haven't opened the doc yet as am in the car ..."

That's what I was referring to. It must have seemed strange at the time?

A. Ah. No, that wouldn't seem strange. Now I see the context, that's not odd at all. He's trying to get something done quickly and he's trusting his professional advisor, so he's perhaps not feeling the need to double check what his professional advisor has said and, when he comes to read it, I presume, if he disagreed with anything, he'd be right back to me. So I don't find it odd that, on this occasion, he's just trying to speed things through and not let his car journey be an obstruction.

Q. So do you think you would have understood it to be a reflection of the urgency that he felt in needing to get this sorted out for the audit?

A. Yes.

Q. <MDR00060649>, please. You reply and say: "I have read and made comments. Your solicitor makes helpful revisions; I am sure we can work this out quickly.

"We don't currently have the PI insurance at that level, I will look into it immediately. A 12-year policy might not be commercially viable ..." I think that's the point you were just making a moment ago, isn't it?

A. Yes, it was something without research. I wouldn't know if that was standard. But it struck me that it probably wasn't.

Q. Then, if we look at <MDR00060723>, we can see that Andy sent your comments to Alex Lee, who sent comments back, and Andy is forwarding that to you and he says: "I'm on a train at the moment ..."

Would your answer be the same: this is just a reflection of the fact that he's trying to sort this out urgently for the auditors?

A. Yes, I think it shows trust in Alex Lee, as opposed to anything else.

Q. Then <MDR00060823>. You're asking him, "Did you get any more information re if the PI cover has to be for 12 years after all?" That seems to suggest that he might have said, "Well, maybe it doesn't have to be 12 years. I'll see if I can get Alex to agree to a shorter period", is that --

A. I hope so, but I don't remember speaking to Andy. I think I had a problem he wasn't speaking to me. I'd called and not received an answer. So it might be that I'd made a presumption that I'd asked the question. Because I raised the point about 12 years, maybe I didn't explicitly say, "Andy, please could you ask Alex Lee to clarify". I think I was hoping he could see that could be a sticking point and it was well worth him contacting Alex Lee about that particular point.

Q. Do you think that would have been by -- if you had got in touch with him in a way that wasn't email, do you think that would have been voicemail or WhatsApp or something else?

A. Although you've showed us exchanging text messages, we didn't usually exchange text messages. I don't think we ever exchanged WhatsApp. I could be wrong. I could be misremembering.

Q. We saw one a moment ago.

A. That was text message, wasn't it? Maybe it was WhatsApp. I thought it was text because of the colour of it, WhatsApp was more green --

Q. At this point in time, talking about eight years ago --

A. I didn't have a lot of direct contact with Andy. We weren't having lots of text exchange. We had a handful of phone calls. So for something like this, it's more likely to be a phone call, but I'm speculating and I think the problem was I wasn't having enough contact with Andy to clear things up quickly that, on a phone call, would have been fast to resolve.

Q. <MDR00060845>. We can see at the top of the page, Andy says:

"This is the clean version my solicitor sent over. I have been messaging him over the 12 years and he has confirmed a lesser period that he believes would be okay is the term of the contract plus 6 years." Presumably, you would have been happy to have made progress in that direction --

A. No, because I still don't think that's commercially acceptable. I mean, maybe for the lifetime of the bond, but post bond -- to me, that -- I don't have anything to benchmark it against, but that still doesn't look very doable.

Q. If Alex Lee said 12 years and Andy -- you said you're not very happy with that, Andy has come back and said, "Well, how about six years?", presumably, you can say with reasonable confidence that you wouldn't have, in those circumstances, agreed to 12 years?

A. Correct.

Q. So this is --

A. I probably wouldn't have agreed to six years. It would have depended on what policy I could get when making investigations.

Q. This is 6 October at 5.44. The next thing I think we see is <MDR00060881>. It is not an email to you, but I think you have been shown it in connection with these proceedings. It is from Andy Thomson to Jessica Miller at PwC, the 7th, the very next day, at 8.31 in the morning. He says:

"I finally got back to the office this morning (it's been an entertaining week!!) and have scanned in the agreement below."

The attachment is <MDR00060883>. At page 6, we can see the insurance clause. In 6.1, the period of 12 years.

A. Yes.

Q. Page 12, we can see what looks like your signature. But I think you're entirely confident, aren't you, that you haven't signed this?

A. Oh, I 100 per cent have not signed this. But that is my signature. So I think it's been snipped from one document and entered onto this document.

Q. But you hadn't authorised anyone to --

A. No.

Q. -- take your signature from another document and apply it to this?

A. No, no, no.

Q. So you didn't know that he'd sent this to PwC at the time?

A. No.

Q. As far as you were aware, there wasn't any signed agreement in place?

A. I did sign the other agreement. If you notice, when I sent him the email, I said, "I've -- here's your contract with my track changes in Word and here is my PDF of where I have accepted the changes and signed". So that's probably how he got my signature. But the version I signed was the one where he accepted all of my track changes, not his version because he didn't like my track changes, and so the version he's used here is his version with my signature applied to it without my consent.

Q. But, as far as you were aware, he hadn't countersigned the version you sent across. He'd got Alex Lee to make changes to it. You hadn't agreed Alex Lee's changes and there was no signed written agreement in place?

A. No signed written agreement. In fact, we then went on to have years of discussions about what the signed agreement should be.

Q. So when we look at <SUR00051295-0001>, we can see that on 26 October -- this is about two-thirds of the way down the page -- you email -- sorry, Andy emails you and says:

"Hi Kerry."

In the second paragraph, he says:

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

So, as far as you were aware, you hadn't signed anything, you hadn't gone back to him, and nothing he was saying here made you suspect that he -- or that someone had applied your signature?

A. No.

Q. So, in the middle of the page, you then tell him: "Re the contract. This has been parked for a while to allow our accountant to investigate the VAT issue. I will chase for an update."

Just to be clear on that, I think your concern was that you didn't want a definition of services that could inadvertently attract a VAT liability?

A. Yes, it was slightly more than that as well. In Andy's version of the contract, he wanted some intellectual property that I believed was under the ownership of Surge and not LCF, so there were other -- and the insurance you have pointed out. So it wasn't solely to do with that, but that was the one that could have had the biggest economic impact and, therefore, that's the one I homed in on.

Q. Yes, because Surge wasn't charging VAT and you didn't want to get into a situation where you'd inadvertently got to put 20 per cent on, on top of the commission?

A. Who would know this was so complicated? Our accountant couldn't tell us if we should be VAT-registered or not. Blackmore's lawyers couldn't tell them if we, or they, should be VAT-registered or not. Blackmore had to pay for some kind of Queen's Counsel thing to find out if they should be VAT-registered or not VAT-registered. And we had to spend a lot of money with Macfarlanes to get to the bottom of whether we were VAT or not VAT. It was all very complicated for what I -- I was very frustrated. It should be very clear so a company can't make a mistake.

Q. You certainly wouldn't have signed something that had 12 years that you weren't prepared to agree to and could potentially get into a VAT mess?

A. Definitely not.

Q. You don't think anybody else at Surge would have applied that signature on your behalf?

A. That wasn't how we operated. It wasn't like I had some kind of assistant, or some kind of colleague, who was given consent to use my signature. That wasn't a process within our business. We did not do that.

Q. I don't know if you read Andy Thomson's evidence, but he was suggesting that someone with access to your electronic signature, Paul or John, someone in the office, would have just done it without your knowledge. Is that likely or unlikely, in your view?

A. Unlikely, to the point where preposterously unlikely. I didn't see his evidence so I didn't know he said that. But that definitely would not happen unless John or Paul were committing some kind of fraud and looking at a document on file that had my signature on, which -- they have access to all my documents, but I can't see their advantage in doing that and I would never imagine they would do that. I think this is Andy that's done this.

Q. At the top of the page, he says to you: "Appreciate that you need to speak to your advisers but it's been weeks now and I haven't heard anything and we don't have any agreement in place."

That was your understanding at the time, wasn't it, that there still wasn't any agreement, written agreement, in place?

A. Correct.

Q. He says he was put in an extremely difficult position with PwC which had the potential to damage everything. Presumably, you wondered how he had managed to overcome his issue with --

A. No, I just thought it was a made-up issue. I thought he was trying to make me feel guilty for not being more helpful. I didn't think what kind of issue could it cause with PwC. I thought it was Andy trying to make me feel bad.

Q. Did you think he was a manipulative person in the way he acted towards you?

A. No, I think that's probably going too far. He was just dismissive rather than manipulative. You could say this is a manipulative act but I couldn't categorise him as a manipulative person from what I know of him.

Q. If we look at <MDR00224141> --

MR JUSTICE MILES: You thought he made up the whole thing about the auditors pressing for it?

A. No, I thought the auditors would want it, but to say I had put him in an extremely position, or he was put in an extremely difficult position, I thought he was overegging it, maybe. I thought he was trying to make me feel bad.

MR JUSTICE MILES: Why would he do that?

A. Because he was so offended that I hadn't just signed the thing and helped out and been -- you know, just responded to orders. You know, I think he wanted to tell me how to operate and he didn't like the fact that I wasn't just doing what was asked of me.

MR JUSTICE MILES: But back at the time, earlier, when he was asking you to sign it urgently, he was saying then, wasn't he, "My auditors really need that"?

A. Yes, I did believe that. I did think it would be perfectly reasonable that his auditors would want to see the contract. But this particular email just came to me as -- "potential to damage everything", that sounded to me like Andy just trying to make me feel bad. Because, otherwise, if he really needed the contract, why wasn't he speaking to me on the phone to understand what my objections to the contract were and collaborating with me to get a final version done and dusted?

MR ROBINS: Can we go back to <SUR00135646-0001>. When he first raised this and you said to Paul, "Andy has asked me to sign a contract between LCF and Surge ... He wants this signed today because his auditors need it", you believed that that was why he needed it to be signed?

A. Yes. I reviewed it that very day. I got a lawyer to look at it within 24 hours. Then he wasn't coming back to me on my suggested revisions, so how important was it? But, you know, I did accept that your auditor would want to see one of your bigger contracts.

Q. One of the reasons you wanted a lawyer to look at it would be to ensure you weren't unduly exposed if LCF was investigated or went bust?

A. Yes, for -- and many more reasons, but those were the ones that obviously came to mind first at this moment of writing this.

Q. Can we go back to <MDR00224141>, please. At the bottom, you're emailing Mark and Paul saying:

"Andy is chasing me to complete the contract. "(a) is there any progress with establishing if we are VAT exempt based on the list of services we provide ..."

Do you think that was the list we looked at earlier?

A. I really don't recall. It's likely to be. But I would have thought that there would be future lists that were a bit more detailed because we didn't explicitly decide on how we were dealing with the digital stuff.

Q. Then Mark replies and, in the second sentence, he says: "This really isn't something that can be rushed as it is crucial and arcane."

I think he's talking about the VAT position, isn't he?

A. Yes.

Q. Then:

"LCF will have to retrofit once we are happy with the treatment."

Is that about sorting out the agreement with Blackmore first and then applying the same to LCF?

A. Yeah, I think what he's saying is, if Andy needs the contract now before we have a decision on VAT, we probably can only give him the contract that we're comfortable with, and if he later wants -- "the retrofit" probably refers to, if he later wants edits, when we know the VAT position we can look at it then.

Q. Can we look at <MDR00092487>. At the bottom of the page, 30 June 2017, you're emailing Andy and you say:

"Some good news, long overdue but I do now have a services agreement for your review and signature. "I have been conscious that we were not able to get this in place before your audit last year and have now made sure this is ready well in time of your next audit."

So, from your perspective, this is something that hadn't been put in place before the previous audit?

A. We didn't have a contract in place. It was ongoing discussions for literally years.

Q. But you understood it's something that he'd wanted to get in place for the audit?

A. Yes, because of the messages we have just seen where he's impressing upon me how important it is for the PwC audit.

Q. Can we go to <C2/4>, I don't know which page, it is paragraph 96. [Internal page 22]. This is in your witness statement. You're talking about the nature of stories on the internet. Do you remember the post on the Money Saving Expert forum?

A. Yes.

Q. In the final sentence, you say:

"I remember that there were comments that we thought warranted escalation we usually asked John to speak to Andy to provide an answer and were always satisfied with the response."

Do you think you were always satisfied with Andy's responses?

A. Well, probably "satisfied" as in -- not -- I was never truly, "Oh, well, there's no issue here". There was always -- "satisfied", I'm going to expand on that to say loosely satisfied, which means he would have given me a response that I couldn't argue with and had to accept, and proved to me that there was no wrongdoing, but didn't really make me feel 100 per cent all good.

Q. What, like he was sort of fobbing you off in some way?

A. I felt like that sometimes but never to the extent that I thought there was a fraud going on; more to the extent that I thought he was being too guarded, not sharing enough information with the

public. I felt like sometimes it was personal and he just didn't want to share some information -- he didn't want to specifically answer my questions directly; that I was maybe asking too many questions, I was going above the remit of the marketing company and trying to delve too far into his company's private world.

Q. Can we look at <MDR00093505>. This is from July 2017. We see, on page 2, there's the beginning of a very lengthy post. I think it runs to about 12 pages in total. It is a post from Money Saving Expert. A member of the public called Paul Hammer has sent it to Scott Allen. He was one of the account managers at Surge, I think?

A. That's correct.

Q. So, it looks like Scott's been dealing with Paul in respect of a possible bond sale and Paul has said: "Just came across this on MSE which has many?????????. I have quickly highlighted in yellow background some key issues that need to put my mind at ease."

Do you remember this? I think this was the main post from 2017.

A. Yeah. I -- this -- I vaguely remember this. To be honest, I have seen this come up when I've looked at the information that has been shown to me when doing the witness statement, and this looks like it should have been a big deal, but it didn't feel like a big deal at the time. Negative comments from strangers on the internet, I didn't pay much heed to them.

Q. Can we look at page 7. In the first highlighted passage, the author of the post says:

"Unlike other SME business loan providers, there appears to be no available company website interface for LC&F business borrowers to apply for business loans." That was a fact, wasn't it?

A. Yes, we actually wanted to build that interface. We wanted that work. And we were never given it.

Q. I think you say in your witness statement you found that a bit strange?

A. Well, he also -- Andy's brother was in marketing and we thought the reason we weren't getting that contract to build that is because he was going to give it to his brother. So that was our speculation at the time.

Q. The point made in the post is true, isn't it, that there was no available --

A. Correct.

Q. Going on in the sentence:

"... no available names of existing SME borrowers." Again, that was a fact, wasn't it?

A. Yes, I asked Andy about it repeatedly and he said things like, "My borrowers don't want the public to know they're borrowing money. This is private". He would keep coming up with things like that, but I did think he should have at least been able to share that with us internally and that he should have been able to run at least one case study. I kept asking about case studies a lot.

Q. I don't think he ever provided one, did he?

A. No.

Q. A single case study?

A. No.

Q. Do you remember Andy providing his responses to this lengthy document?

A. I don't remember. Are you going to show it --

Q. Let's have a look. <MDR00094237>. He emails it to Jo, but I think we will see in a moment that she, or someone, maybe Paul, shares it with you. He says: "Please don't send it anywhere as it's been written for internal purposes."

Do you think you would have had a look at what he had to say?

A. If it was sent to me, I would have been highly likely to have had a look at it.

Q. I think it was. Let's check. <SUR00140130-0001>. No. Have I got the wrong -- that's the attachment.

MR JUSTICE MILES: That might be the end of an email.

MR ROBINS: I think that's the attachment, my Lord. I have got the wrong one. The document I was looking for is <MDR00094248>. There we are. We see Andy's email on the right. Jo has then forwarded it, saying: "Hi, please see attached from Andy with the answer to our client concerns."

On the top left, it looks like the distribution list has got John, Paul, Jo, Ryan and you. In fact, if we look at the bottom, Paul has said:

"John -- you need to address this.

"Cc ing Kerryb."

A. That would have been me.

Q. There is no-one else, "Kerryb"?

A. No, no, that would have been me.

Q. Do you think you probably had looked at what Andy had to say?

A. If you show me what Andy had to say, I can tell you if I have looked at it, but, honestly, anything sent to me, I would have looked at. You know, it is highly unlikely -- if there was something very busy, I might have missed something, but this seems like something that I wouldn't have missed. It looks important.

Q. The attachment is one we saw earlier, <SUR00140130-0001>. It is the post. Then Mr Thomson has put in his comments in red. So if we look at page -- let me just find a suitable example. Let's look at page 4, for example. He's put in his comments in red. He's commenting on a number of bondholders. And then he said:

"The company has been going since 2012 but has only increased volume over the last 2 years ... "We initially lent to SMEs but have chosen to lend to medium to large sized companies ..." This is the sort of response that he's put in. Do you remember looking at this?

A. Funnily enough, I don't remember reading this, but nothing in here surprises me.

Q. Page 8 maybe. Let's have a look at that one. In the middle of the page, this is where he says: "This is pure assumption and is information that you would not be able to find in detail from any company, our borrowers require discretion and we provide it." I was wondering if that's the bit you were referring to earlier when you mentioned him saying something along these lines?

A. Yeah, I don't remember seeing this written, but he said verbally to me that the reason he wouldn't give me a case study is because borrowers did not want to advertise that they needed to borrow money, that it might speak to the fact that their companies didn't have as much money as they wanted the public to think. I thought that was a reasonable explanation. I didn't feel -- I felt satisfied that it was a reasonable explanation. But I didn't -- if "satisfied" is a scale, it was weak. Weakly satisfied, instead of strongly satisfied.

Q. If we go back to what we looked at earlier, <MDR00094248>, we can see John replies to say: "I will speak with him tomorrow.

"Scott and I put a response back to one of his clients earlier today as we couldn't wait for Andy to reply."

That was not uncommon, was it, that you would want something out of Andy and you wouldn't hear from him for ages?

A. Yes, he's slow.

Q. And then:

"I do agree with Andy on making this an internal document though. He hasn't responded particularly well and we couldn't share the document the way it's written."

Is it fair to say that chimes with what you said earlier on about how he didn't give you any clear answers or information that you could actually share with members of the public?

A. We could interpret his answers and share them with the public, but you wouldn't forward that document to a member of the public because it's highlighting in yellow and written in red and written defensively. If you are sharing an official response with the public, it needs to be written -- well written. So, he hasn't given us something we can immediately publish, but he has given us content that we can now reshape and propose a response.

Q. Then if we go to <C2/4>, page 21. This is your witness statement. Paragraph 94. I think we probably covered this earlier, but let's double-check. This is the second line. You say:

"By 2017, I did not know who LCF were lending to, but I had understood from my previous discussions with Andy in late 2015/beginning of 2016 that LCF's borrower companies were connected to Spencer, and Andy had explained his reasons for this to me. I did not know exactly which companies these were and I did not expect this to still be the situation in 2017 after we had raised so much more money for LCF."

Is that for the reason you explained earlier, that when he said he was lending to Spencer, he said, "It's just until you can raise me more money". You then raised a lot more money and you assumed that it's no longer the case. Is that right?

A. Well, that's what he told us was going to happen, and also I believed that that had to happen because I thought it would be mad not to diversify your risk as a lending company. Again, that's an assumption I've made, but, I believe, in good faith and logical.

Q. Probably also because that's what he said he was going to do in the information memorandum and brochure?

A. Yes.

MR ROBINS: My Lord, I see the time. I don't know if that is a convenient moment for the shorthand writer?

MR JUSTICE MILES: Yes. We will come back in five minutes.

(3.15 pm)

(A short break)

(3.20 pm)

MR ROBINS: So, going back to the period before LCF is approved as an ISA manager, I think you were involved in some way with Blackmore's plans for an ISA bond.

A. I was.

Q. You went to meetings with Blackmore and their solicitors?

A. Yes.

Q. I'm not trying to suggest that you had any sort of specialist knowledge or became an expert, but you learnt what was needed to offer an ISA?

A. Yes.

Q. So, when you were told that LCF was progressing with ISA approval, you had some prior knowledge about what that involved?

A. Yes.

Q. If we look at <SUR00086380-0001>. If we look at the next page as well, we can see -- and one more page [internal page 3]. Top of the right-hand side. John Russell-Murphy emails everyone saying: "I have spoken with Andy this afternoon regarding the ISA situation for LCF and he has confirmed the following.

"The HMRC have approved them as an ISA manager and he expects to receive the written confirmation in the next few days."

In terms of your own understanding, you would have known that HMRC approval as an ISA manager didn't disapply any requirement about having a retail prospectus?

A. Correct. Well, I actually didn't know that. I presumed that.

Q. But based on what Blackmore's lawyers had said?

A. It was a fair presumption. I didn't know it for a fact. But I did make that presumption.

Q. Had Blackmore's lawyers told you that you needed a retail prospectus?

A. Blackmore's lawyers said that if you wanted to raise more than 5 million euros by putting a minibond in an ISA wrapper, you had to have a retail prospectus. However, the fact that LCF themselves were an ISA manager I thought might be some sort of -- change the status and make it different rules. You know, so I didn't -- I knew the rules as they applied to Blackmore. I didn't necessarily categorically understand IFISAs and all of the technicalities around it. But I did know categorically that Blackmore's lawyers said they had to have a retail prospectus. When Andy wasn't getting one, I was asking questions about that.

Q. So you thought he might have found another route?

A. Yes, and being an ISA manager might have been part of that route or being a money lender as opposed to a property developer might have -- you know, they might fall into a different category. So I thought Andy had done something that we didn't know at Blackmore how to do. But I also entertained the idea that Andy had got it wrong.

Q. That's why you wanted to check it, I assume?

A. Definitely.

Q. If we looked <MDR00115498>, at page 3, we can see you're emailing Kobus, 1 December, and you say: "When you mentioned that the bonds are not transferable and this is how you have been able to offer £50 million and not just up to the S21 exemption of 5 million euros; I just looked back at my notes to double-check and I found that our solicitor had given us contradictory advice:

"ISA regulations 8A(4a) state that bonds must be transferable to be offered as an IFISA. The only exception being to issue under the 5 million euros exception."

That's presumably what Blackmore's lawyers had told you?

A. Yes. I basically went to Blackmore's lawyers because I had become friendly with them by virtue of the fact that Pat had been more collaborative and taken me along to these meetings, and I said, "Our other client, LCF, seems to have got an ISA but they haven't applied for a retail prospectus, how could this be?", I thought maybe this would open the door to Blackmore also exploiting the same loophole.

Q. When you talk about Blackmore's lawyers, is that principally Roger Blears?

A. Roger Blears was the lawyer who was the expert in retail prospectus and IFISA, but he wasn't the only legal representation. They had Squire Patton Boggs day to day and they also had internal counsel at a very small company, Mark from Lithium. So they had three sets of lawyers who were all agreeing that you needed a retail prospectus.

Q. Then you say:

"I have just got off the phone to Roger Blears who has been advising Blackmore on their retail prospectus to double-check my understanding and he was adamant that this is the case."

Presumably, you wouldn't have been saying he was adamant unless he really had been adamant?

A. I kept saying to him, "Will you read LCF's IM? I will send it to you. They must have found some kind of loophole. Please, could you try to find out what it is?". He said, "I will read it and try to find out what it is, but I think they have got it wrong".

Q. You said:

"I thought I should let you know what we have been told, hopefully you have found a useful and clever exemption ..."

Was part of this you were trying to get Kobus to spill the beans as to what this exemption was so you could use it for Blackmore?

A. Exactly that.

Q. Then, if we go back to the email, I think we can see his response on the previous page. He says: "According to the guidance notes for ISA managers, this relates to Crowdfunding ISA debentures." I'm not sure I understand that. Do you think you'd have understood what he was saying?

A. Yeah, what he's trying to say is different categories of product have different rules surrounding them, and crowdfunding and peer-to-peer lending is different to a minibond. They appear to the consumer to be very, very similar, but then, legally, there is nuance as to why they are different, and so it would make sense there are different rules around them in terms of the IFISA regulations. So, this wasn't nonsense, but it certainly didn't satisfy me as an answer.

What he's trying to say is I have read the wrong bit about nontransferable, I must have read the bit that relates to crowdfunding.

Q. Right, but you knew you hadn't read the wrong bit?

A. I didn't know for certain because I trusted him more than I trusted me because my knowledge came from sitting in meetings overhearing things.

Q. But three separate solicitors had explained to you he wasn't exempt from the --

A. Two of those solicitors weren't qualified. They basically gave me their opinion but they knew nothing really about IFISAs. Roger Blears was the man. He really knew and he was convinced they'd got it wrong.

Q. You were in a position, as a result of what Roger had told you, to quote legislation back at Kobus, explaining why he wasn't --

A. Every time Kobus sent me something like this, I would forward it to Roger and say, "Can you help me formulate my reply?" because I didn't understand this well enough and if he started to quote COBS at me I wanted Roger to give me some COBS to quote back at him.

Q. You thought this was a pretty important point to get right, didn't you?

A. Well, yeah.

Q. You understood that there was a risk of a big issue down the line if LCF had got it wrong?

A. Yeah, but I didn't think that they could have got something this big wrong. It crossed my mind. But the most pressing concern for me was how had they done it, so we could get Blackmore to have the same success. It did cross my mind they really could have got this wrong and, if they had, what would the consequences be? I did ponder on that. But my overarching, real focus at this time was, they must have got it right because they're an ISA manager, Ernst & Young, Lewis Silkin, you know, all of the professional advisors have approved this, so they must have got it right and what have they done and how can I give that information to Blackmore? But of course there's a little bit in my mind going, "But what if they have got it wrong?"

Q. On that score, I think Andy had been saying, "Well, we are going to have a retail prospectus ready in two months", so you were thinking, "Well, if there is a problem, it's only really a problem over the next two months"?

A. I don't remember those thoughts going through my head, but the logic would follow those thoughts, so perhaps.

Q. Can we look at the next email up in the chain. Next page [internal page 2]. You say to Kobus: "Thank you for clarifying. It sounds like you are certain that this doesn't apply and this is extremely good news.

"We are very excited because the demand is proving substantial already."

Did the ISA bond launch on 1 December or do you think it went shortly before that?

A. I honestly have no idea about the actual date, but that should be a fact which shouldn't be too hard to double-check.

Q. Can we look at <MDR00115449>, please. It must be the next page, or the page after. Maybe I have got the wrong number. Oh, there we are. It is this one. Can we look at the next page. The page after as well. Pages 2 and 3. That's Kobus's email to you on the right. On the left, you forwarded that to John and Jo. You have said:

"Hi, Kobus is really sticking to this (strangely citing a different rule than the one I shared with him). I could quote the legislation back at him explaining why (as 3 separate solicitors explained to me) he isn't exempt from the EUR 5m limit. However, it's not appropriate for me to push it and ultimately we did our job by double-checking.

"So as directed by Kobus and Andy we do have a £50m limit which is really fantastic news."

Then on the top right [internal page 3]: "Is there a risk that could cause a big issue down the line having to repay bondholders over the EUR 5m and possibly having to write to all to explain? Possibly but I suspect this risk is low because he is nearly ready with his retail prospectus and once he submits that in two months he could have a new ISA offering anyway."

So, was your thinking, well, there is a risk, but it's a two-month risk?

A. This is what that shows. I just didn't remember having those thoughts. But, clearly, I did.

Q. On the left-hand side, after Paul has said it's great news, you said:

"Yes in a strange way this is fantastic news!" What do you think you meant by that comment, "in a strange way"?

A. I still felt there was a risk that they have got it wrong, based on my confidence in Roger Blears, specifically. The other lawyers didn't know much about IFISAs, but Roger really did. So I -- I mean, I couldn't really argue with the fact that Andy had very good representation and, when you write an investment memorandum, it has to go through verification, which means every single fact, figure, line by line in the IM has to have a supporting document to corroborate it and evidence it, and that's how verification for section 21 is done. He had Lewis Silkin doing that and he had Ernst & Young checking the numbers, and he was an ISA manager. At the end of the day, I'm not a lawyer and even the lawyers don't know about this, because it was new and specialist, specifically the IFISA. I had to concede, in all likelihood, he'd found a clever loophole or he fell into a different category of product than Blackmore did.

So, it's reluctant because nobody was ever able to explain to me the loophole that I believed there must be.

Q. You thought he and Lewis Silkin might have got it wrong?

A. Yeah, but Lewis Silkin and Ernst & Young getting it wrong is not really that likely, though. So, it's a risk, but it doesn't -- didn't seem too risky.

Q. Can we look at <SUR00159951-0001>.

MR JUSTICE MILES: Did he tell you Ernst & Young were involved in this?

A. Yes, and we saw that a minute ago in the evidence as well.

MR JUSTICE MILES: Sorry, I may have missed that.

MR ROBINS: I missed that as well.

A. It's where John Russell-Murphy, I think, says to me: "I have just spoken to Andy and he's approved as an ISA manager ..."

It is that message. It goes on to say -- it says: "The HMRC have approved [him] ..."

And goes on to say Lewis Silkin are just checking -- finishing the IM and Ernst & Young are checking the figures.

Q. Hang on. Let's go to <SUR00086365-0001>. I think, to be fair to you, we should bring it up on screen. I think this is what you are referring to. Third line: "Lewis Silkin have finalised the paperwork and EY are doing a final check on the taxation section." Is that what you were --

A. Well, yes, because ISA is the tax; right? It is tax-free investment. So Lewis Silkin -- sorry, Ernst & Young are obviously checking that. How can I really argue against those professionals because I overheard advice given to Blackmore and then asked Blackmore's lawyers? I didn't feel -- I felt like I knew half of the facts and not all of the facts. I knew enough to challenge and I challenged at least three to four times, but, in the end, I had to let it go because these professionals know more than me and I was becoming annoying.

Q. Can we look at <SUR00159951-0001>, please. I hope it's not an example of you becoming annoying, but at the bottom of page 2, Andy -- we see your response to Kobus on the right. Then, on the left, Andy says: "Just to clarify the IFISA has certain rules around transferability amongst other things. However, also included in the terms and conditions/guidance from HMRC there are allowances for the underlying product and the HMRC rules confirm that the terms and conditions of the underlying product can effectively overrule the ISA terms in certain circumstances."

It may just be me, but that doesn't seem particularly clear or persuasive, does it?

A. What he's saying is Blackmore is a completely unregulated business that does property development. He's not -- so, I mean, there could be that, and also, in terms of how the IM is phrased and written about transferability and secondary markets, et cetera. So, I understand it's an answer of sorts, and it's a satisfactory answer on my low scale of satisfaction, which means I have still got doubts but, you know, how can I argue with this?

Q. But you weren't by any means convinced?

A. Not 100 per cent.

Q. If we look at your response, you then, on the left in the middle, say:

"For the avoidance of doubt, is it correct that the IFISA limit is £50 million and not 5 million euros?" You were returning to this issue, again, that you can't be particularly confident in his response?

A. I kept banging on about it because I was so desperate that he would just give me the loophole for Blackmore and that I'd satisfy myself that he had got it right.

Q. To avoid being in any doubt about it, you wanted to be satisfied that he'd got it right, but also, if he had found a clever loophole, you wanted him to share that knowledge with you so Blackmore could benefit?

A. I was under a lot of pressure because I was helping Blackmore, and LCF had gone and got an ISA and I was helping Blackmore and failed. We hadn't got our ISA up and running yet.

Q. You tell him about the 5 million and he replies: "Not sure where you are getting the 5 million euros from."

Presumably you're thinking, at this point, he doesn't know what he is talking about, he doesn't know the basic rules?

A. That was odd.

Q. So let's look at a previous page. You reply and say: "Not to worry, Andy, if you have to ask the question, clearly this hasn't been an issue and that's good news, we are pleased it isn't capped at a lower level because the demand today has been phenomenal. "Just to answer your question however. 5 million euros is an exemption amount that a non-transferable section 21 bond can be sold as an IFISA. It is an annual limit of 5 million euros. We will proceed as we have started with a £50 million promotion." It does look, doesn't it, as though you know that he's wrong but you're happy to proceed because the demand has been phenomenal and £50 million is better than 5 million euros and, if there is a problem, it's Andy's problem?"

A. Well, there's a tiny element of that, but there's a much bigger, overarching element of, I have challenged this again and again, coming at it from different angles. He's -- I'm not a professional with expertise in this. He has answered my questions. He's unwilling to give away a competitive advantage to Blackmore. But I'm not going to argue with his legal advisers because they will know more than me, and it is quite true, as he said himself, that his product is different to Blackmore's product. Well, he hasn't cited the word "Blackmore", but he's basically said it's the underlying product. What he's doing there is saying his underlying product is different.

Q. You thought, possibly, it was just a mess that he wasn't willing to confess to and that he was being an idiot?

A. It crossed my mind but that wasn't actually what I thought was going on. That was just the sort of -- you know how sometimes worrying things that are very unlikely to happen can cross your mind, but actually they're very unlikely to happen and there are much more likely scenarios. The much more likely scenario is that Ernst & Young, Lewis Silkin, HMRC, had got it right and he just wasn't telling me his secrets because that would have advantaged his competitor.

Q. But you thought there was at least a real chance, a non-negligible chance, he'd got it wrong?

A. Yes.

Q. Is that, do you think, what you were referring to at the top left where you comment to John:

"What a first class twat.

"If he has found some clever exemption then he should let us know how clever he has been. If he hasn't and this is a mess he isn't yet ready to confess to then what a complete idiot.

"The way he communicates is simply not collaborative, it's mildly offensive."

A. I agree with everything I've said there.

Q. I think you decided to check again with Roger Blears, didn't you?

A. Yes, I just kept going and going and going because I wasn't getting answers that made me feel 100 per cent secure.

Q. Let's look at <SUR00143410-0001>, page 10, please. At the bottom, we can see you sent the LCF ISA information memorandum to Mark Holleran at Lithium Capital. Given the name, Lithium Capital, I would assume he was some sort of investment banker type. Was he actually a solicitor?

A. He's a solicitor. He's a one-man-band solicitor and was in-house legal counsel for Blackmore.

Q. Okay. You forward that on and you say: "Please let me know if on reading this you find whatever loophole they have used."

Is that a reference to what you said earlier about trying to find the loophole so you could exploit it for Blackmore?

A. Yes.

Q. In terms of the email we just saw, "If he's found some clever exemption, then he should let us know how clever he's been", one of the things going through your mind was, he's just being difficult about this because he doesn't want to help a competitor?

A. Yes, because I can't -- I didn't know why -- well, yeah, I suppose so. Because, why else wouldn't he tell me? But then I suppose he didn't tell me things. He wasn't collaborative and transparent at any point, and that didn't mean that he was doing something fraudulent, that just meant that, why would he tell us?

Q. But you deduced that he could see you wanted this loophole so you could confer an advantage on Blackmore, who were his competitor, and that's why he wasn't giving it to you?

A. I made an assumption, but I thought that was what was going on there, yes.

Q. Then on the previous page, we can see Mark has forwarded it on to Roger Blears. Then the previous page again, we see, right at the bottom, Roger's response to Mark, and then over the page, [internal page 9], he says: "There are two offers: (1) non-transferable securities -- series 1 ISA, 3-year 8 per cent bonds; and (2) non-transferring securities -- series 2 ISA, 2-year 6.5 per cent bonds.

"Both IMs have been approved as financial promotions pursuant to section 21 FSMA. The target raise is £50 million in each case. They are not prospectuses. There is no need that they should be because the bonds being issued are not transferable and the prospectus rules only apply to transferable securities. "On page 7 of each IM there is a statement that investors are able to hold the bonds in an LC&F innovative finance ISA. However, the ISA regulations provide that debentures (ie bonds) may only be held in an innovative ISA account if the conditions in regulation 8A(4) are met and the first condition is that the debenture is a transferable security. See page 54 on the attached document which is a consolidated version of the ISA regs which I printed off in April when we were first instructed."

You understand what he was saying was, to avoid having to issue a prospectus, they have made bonds non-transferable, but the non-transferability means they don't qualify for the tax-free treatment under the ISA regulations?

A. Yes, I think that's what he's saying.

Q. He says Jake is the ISA expert. Was Jake someone who worked for Roger Blears?

A. No, Jake Wombwell-Povey was working for a company, the name of which I forget -- I will tell you when it comes to mind -- who were the ISA manager for Blackmore because Blackmore didn't have their own ISA manager status like LCF did, they had to use a third party who was -- had the permissions to be an ISA manager.

Q. Roger says:

"... in case there has been a recent amendment to the ISA regs ..."

He is copying Jake into the email with the request that he confirms whether or not he knows of any rule change. Then he says, a couple of paragraphs down: "I have confirmed this advice to Kerry on several occasions in the last few weeks. If LC&F are doing something clever which we have missed then we should learn what it is and copy them."

A. He's still entertaining the idea that they could be doing something that we have missed. So, whilst, on the one hand, he's quite confident they have missed something, he is also saying maybe there is something clever which we have missed and we could learn. So, with professionals, who are expert in this, giving a seed of doubt and Andy telling me his advisors, who I do highly rate, are saying it's all fine, I was like a dog with a bone, but I had to let go of the bone, didn't I, because, at the end of the day, what would you do?

Q. I don't think you have let go of it yet. If we look on the left, we say Mark saying:

"Massively appreciated Roger. I was concerned about the transferability point but would welcome Jake's views ..."

If we go back a page, Jake emails and says: "Good morning all.

"Mark -- in the ISA guidance notes, paragraph 9A.9a states the following criteria for crowdfunding debentures ..."

He's underlined "be transferable" and then says: "I would urge you to consider and resolve this issue carefully and promptly. Ineligible securities being held within an ISA can result in the ISA manager receiving penalties and the tax saved being charged to the ISA manager; the aggregate of these can create a large potential liability for the ISA manager." You understood that, in the scenario where it's a mess that Andy isn't yet ready to confess to, then it was going to be a pretty serious mess for LCF if that turned out to be the case?

A. Well, this answers the company Jake is from, it's Goji is the name of the company. What you have just said is, yes, Jake points out LCF are an ISA manager so they would have to repay that tax to a bondholder and a fine like that could ruin a business. So I could see it was very serious. But he also says:

"I am not the expert on the legals, but we can approach Roger."

Now, Roger has just said to me, "Well, there might be something clever. I don't think so, but there might be". So you can see nothing is 100 per cent clear on anyone's side --

MR JUSTICE MILES: You may have misread that, actually, I think, Ms Venn. I think he says:

"We can approach our lawyer who Roger has dealt with previously."

A. Right. I did misread that.

MR JUSTICE MILES: Sorry, you were just making a point before?

A. Well, just the point that I am not the expert on the legals, so Jake gives us some clarity, but then he takes it away. So there's still this small percentage chance, and I'm -- whilst I didn't get things in black and white, locked down, watertight, I had enough evidence that what Andy had done is right. I couldn't disprove it.

MR ROBINS: If we then look at page 5, I think it is, at the bottom, it is an email from you, on the left, to Mark and Pat, where you say:

"Hi.

"It is not my lawyers that have created this. It is LCF's (Lewis Silkin) and they won't let me into the secret because they know I will immediately exploit it for Blackmore."

Is that the point you made earlier, you thought Andy wasn't willing to help a competitor?

A. Yes, well, about this ISA. He helped them in other ways at other times, but this ISA he was very unwilling to help.

Q. "I have read through the email trail and it is very interesting that everyone is in agreement that this cannot be done. Perhaps LCF have got this wrong but this surprises me because Lewis Silkin are a great firm. "Andy (CEO of LCF) basically told me I didn't know what I was doing when I quizzed him on how he achieved this with a non-transferable bond. By email he cited this ..."

And then you set out Andy's email. So, although Lewis Silkin were involved and you thought they were a great firm, you were contemplating the possibility they'd got this wrong?

A. Yes.

Q. Then, if we look at the previous page, Mark forwards that to Roger and Jake, copying you and Pat and says: "Please see Kerry's response below ... which is the only information that we can get from LCF. "I have to say I cannot comprehend how HMRC rules could override the legislative framework introduced by the prospectus directive, but I would very much welcome your comments again so that we can put this issue to bed once and for all.

"If we can have a definitive view they are wrong, it will help internally hugely. The only credence I give this at all is that Lewis Silkin have advised and although not specialists in this area as Roger and his team are have advised."

So you understood Mark wasn't particularly impressed or persuaded by what Andy had said?

A. Yes.

Q. Then the previous page, the response from Roger, he says it's very curious:

"There is a danger in trying to second-guess what they are doing when the reality is that LC&F may simply have missed the point about transferability under the IFISA regs."

He goes on to set out some speculation as to what the thinking might have been. If we look on the right-hand side, he concludes at the end: "I think the reference by the CEO of LC&F to 'crowd funding' is likely to be a red herring as this term isn't actually used in the legislation, though is used in the HMRC guidelines."

Do you remember the thinking was beginning to crystallise that they had just got this wrong?

A. This didn't crystallise it. This was just -- you know, he uses terms here like "second-guessing". So nothing became crystallised at any point for me; ie, I could see arguments for and against and I didn't have the absolute clarity that would have been lovely to have.

Q. The second paragraph on the right, he says, towards the end of that paragraph, if you can see:

"... I am inclined to think LC&F have simply missed the point on transferability and/or that their offer documents are a sham attempt to sidestep the prospectus directive."

It was beginning to crystallise, wasn't it, that they'd just got it wrong?

A. "Crystallise" sounds like there's certainty. There was never certainty. But I did entertain the thought, very strongly, that they could have got it wrong and, ultimately, what made me somewhat comforted or reassured was that Andy was never very forthcoming with how he did anything, so that wasn't unusual, that wasn't a red flag, and Andy's advisors were of a high quality and he was -- his own company had got ISA manager status, Ernst & Young had checked the tax situation, Lewis Silkin had done the verification of the IM. So, faced with all of these facts, on balance, I did concede I can't stand in the way of Andy doing this, what do I know.

Q. Can we look at the first page, please? We see, at the bottom, Mark says:

"I really do think that they have missed the point here. I am amazed but cannot see how an arrangement like this could possibly work for us."

So, it was really crystallising, wasn't it, that they'd just missed the point?

A. It was for Mark because he had taken what Roger had written as, it's a fact. I read Roger's email and still have seeds of doubt.

Q. Then, if we look at the top left, Mark is saying: "It's baffling, it really is."

"I can't see that they could do this having just checked their permissions."

I mean, it had all been very thoroughly considered by Roger and Andy's explanation had been considered and the view that everyone on the Blackmore side had come to was that this was just a mistake, wasn't it?

A. That was definitely high up on the likely reason. Roger's, perhaps, ultimate conclusion is he can't see the loophole, they have probably got it wrong. Use of the word "probably" is what I would say. And you're asking me to crystallise, which I don't feel I can because I'm not an expert in this area and I did have conflicting information from multiple sources.

Q. Can we look at <SUR00093452-0001>. This is 21 February 2018. You're emailing John and Paul, saying:

"We need to discuss this with you.

"Are you busy now? Want to discuss this with you briefly."

You're forwarding to them an email from Roger: "Hi Kerry, LCF seem to be selling non-transferable bonds in order to avoid the prospectus directive and yet claiming they qualify for holding in an IFISA notwithstanding that IFISA eligibility requires bonds to be transferable!!

"Why don't you reply to Kobus and say:

"Dear Kobus, LCF seem to be selling non-transferable bonds in order to avoid the prospectus directive and yet claiming they qualify for holding in an IFISA notwithstanding that IFISA eligibility requires bonds to be transferable. There appears to be a serious problem here. Please can you ask your lawyers to write to us providing clear advice."

I accept what you say about the language of "probably" rather than a view having crystallised, but it was a fairly high probability by this point, wasn't it, that LCF had just got it wrong?

A. Well, I asked Roger to write me -- to help me challenge Andy and Kobus. I asked Roger, "How would you phrase this? How can I get to the bottom of it?" And he helped me previously with which correct COBS to quote, and you have seen that, we have talked about that email already. I continued to say, "Roger, help me with the wording, what's the right way for me to get to the bottom of this?" So I invited this. This isn't Roger going, "Red flag, Kerry, you have really got to send this". This is me saying on the phone, "Roger, can you provide me with a good wording that's going to have to force them into the corner to give me the secrets?"

Q. By this point, you're saying there appears to be a serious problem here. I mean, the view, by this point, seems to have been not that there was some clever secret, but that probably LCF have got it wrong?

A. Well, the idea with this is that, if you get more serious tone now, you might get a more detailed response, which is either going to be, "Oh, no, we have got it all wrong", or, "All right, here you go, this is very specifically what we have done".

Q. So probably they have got it wrong, but also a possibility that there is some secret that they are just not willing to share with a competitor?

A. The point is, we don't know. The point is, we really don't know, and I want to know, and I'm trying different tactics to get to the bottom of it.

Q. I'm going to move on to a new topic now. We looked earlier at what you said in your witness statement about the borrowing companies and the fact that, right at the beginning, when you weren't raising much money, Andy had said that they were all connected to Spencer, but then you say:

"I did not expect this to still be the situation in 2017 after we'd raised so much more money for LCF." Do you remember Mr Thomson saying things later on that gave the impression that LCF had expanded its borrowers?

A. I had that impression, but I honestly can't remember Andy telling me something that gave me that -- I don't -- I had that impression because I was told originally that's what was going to happen and it made sense that that's what should happen. Beyond that, I don't recall Andy saying -- Andy never said to me, "By the way, I now have 200 borrowers", but I definitely had the impression that there

were lots more borrowers, and how did I get that impression? I can't really remember. Did I just make an assumption or was it regularly we got scripts from Andy, we asked -- we said, "Look, we are getting these questions from bondholders, we need to update the script", and then he would -- either Kobus would come and do some training or Andy would send like internal -- it's not a press release, but, you know, an internal document that says, "This is the latest information". Maybe it was from those kind of communications. I'm really speculating as to why I believed that, but it was my belief that there were lots of borrowers independent to people Andy already knew, like Spencer.

Q. Can we look at <MDR00041314>. There's an email right at the bottom and over onto the next page, where Andy emails you and John Russell-Murphy. He copies Jo Baldock. This is May 2016. He says:

"Hi.

"I've put together some answers to the account managers questions. I believe the majority of the questions can also be covered/reinforced when I go through what the company does and how it does it." So, he's provided it in writing, but when he says "the majority of questions can be covered", was he going to come to a meeting and explain his answers, do you think?

A. Yes, Kobus and Andy came down fairly regularly to give educational sessions, to give updates. Updates maybe when information changed or regularly anyway, even if nothing had changed, because new staff needed to meet LCF, the company that they're promoting. So regularly Kobus or Andy would come down and have a session with all the account managers.

Q. If we look at the attachment, <MDR00041257>, we can see the document. Does that look at all familiar?

A. Yes, the content of it does.

Q. So, on the left, the bottom half of the page, it says "Lending":

"How many clients have we lent to?"

"As at the beginning of May 2016 LCF has made 121 loans."

Bearing in mind that the number 121 appears in response to the question, "How many clients have we lent to" --

A. I do remember thinking that's strange. I do remember reading this and thinking that's a funny way to answer that question.

Q. So you thought, "He might be saying 121 borrowers but I'm not sure"?

A. No. I mean, he specifically says loans, so I feel like he's answered the question. It's like he's changed the question. He hasn't answered the question clearly.

Q. He's answered a different question?

A. Yes.

Q. You thought that was a slightly weird, indirect answer?

A. Yes, I wondered why he didn't just say how many clients. I thought he was probably trying to do our job and position themselves to be bigger than they were, or something. I don't know.

Q. Is that something you remember from the time or is that possibly --

A. Oh, no, I remember at the time. I actually remembered thinking, "Why does he -- he's done this before. Why does he talk in terms of loans instead of clients? That's interesting".

Q. In light of what you said about how he told you he was going to expand the lending when you brought more money in, you wouldn't have understood at the time that he was still lending to Spencer-related entities?

A. No, no, I would have thought that that would have moved on a long time ago.

Q. Given the amount of money you raised for LCF in 2017 leading into 2018, and particularly after the launch of the ISA bond, presumably you had no idea at that point, no suspicion, that there was only a small number of borrowers and they were all related to Spencer in some way?

A. No, I would have thought there would be a lot more borrowers.

Q. So, if we look at <MDR00130369>, we see Andy's telling you -- this is now 20 February 2018 -- that the accounts were signed and submitted to Companies House last week. EY, as part of the audit, assessed the loan book and security and have included a section on it in the accounts. Do you remember looking at the Ernst & Young accounts?

A. Yes.

Q. I think we have got them at <MDR00004384>. These are the accounts, aren't they?

A. Yes.

Q. On page 4, we can see in the third paragraph, right at the end, it says:

"At year end ..."

So that's 30 April 2017:

"... the company had a total of 11 corporate borrowers (2016: 5)."

Then it goes on to say:

"Value of secured assets: £284 million." Looking at this, you would have thought, well, the security looks large, but I'm a bit concerned about the reference to 11 borrowers?

A. Yes.

Q. That's why you, I think it is fair to say, had mixed feelings about the Ernst & Young accounts?

A. Yes. I mean, my overriding feeling was, "Wow, what a good security value", but there was that little bit of, "I'm shocked that there's so few borrowers".

Q. Well, your first thought was, how are there so few borrowers?

A. It was not my first -- I honestly couldn't tell you what my first thought was, but I can tell you that there were two key things that I thought about this, and that's, "Wow, great security"; and, "Ooh, bad, not a lot of borrowers". Which order, which was my first thought, which was my second thought, I don't know.

Q. I'll show you why I'm saying that. <M1/2>, page 138. Do you remember being interviewed by the administrators on 3 September 2019?

A. Yes.

Q. At the bottom of this page, you said: "Yeah, my first thoughts were how were there only 12 borrowers in this audit? And my second thoughts were they've got really good security, really good loan to value on the security. So I had very mixed feelings when I saw that audit."

That's the only reason I say it was first and second?

A. Okay, yeah.

Q. But given that this was rather closer to the event, 2019, we are now 2024, do you think it was probably, when you saw the audit, borrowers first and then security?

A. I'm happy to go with first and second. Really, the sentiment is mixed feelings. But it is probably worth knowing that quite happy mixed feelings because the security made me feel quite secure.

Q. But the reason you'd have been concerned about the number of borrowers was, essentially, the valid point that we saw a bondholder raise when you were in sales: if you have ten borrowers and one goes bust, that could be serious; if you have 100 and one goes under, it's unlikely to be serious?

A. Exactly. That's probably why we were trying to assess LCF more closely than a marketing firm normally would. It's because we had our own concentration risk. We had two clients and they were by far the lion's share of the revenue. So concentration was, yes, well on my mind.

Q. If we look at <SUR00115269-0001>, just to place this, this is -- well, it's WhatsApps between you and Paul, but you can see the date, 10 December 2018. I'm sure you can tell me what happened on that date without me --

A. Is that the day that LCF was stopped?

Q. Exactly. The FCA went in. In the middle of the page, we can see your first thoughts to Paul: "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." That's a reference to what you found from the EY accounts, isn't it?

A. Yes.

Q. Then, in the next paragraph, you say: "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."

I mean, that was your -- I say it was the first thought on looking at the EY accounts, and 11 borrowing companies wasn't good, it looked suspicious?

A. Yes. It doesn't look suspicious of fraud, though, does it?

Q. Well, it looks suspicious in the sense that, when you got the Ernst & Young accounts, it's not something that gave you tremendous comfort, you had mixed feelings and thought, "That doesn't look right"?

A. I thought, "If one of these loans goes wrong, they could go bust". I didn't think, "Ooh, that must be fraud". I just thought, "Ooh, this is riskier than I thought it was".

Q. Your words, "LCF is suspicious". You thought it looked suspicious?

A. To the FCA, yes. Because I assumed there were more borrowing companies. I think people assumed there were more borrowing companies. Would the FCA assume there were more borrowing companies and find 11 a problem?

Q. Do you remember, when you got the accounts and had mixed feelings, you sent them to Mark to get his view?

A. Yes.

Q. And do you remember he provided an initial view? You might have looked at it in connection with these proceedings?

A. I think he was very positively surprised. He'd been quite cynical about them and I think, when he got this audit, he was quite impressed and it allayed some of his concerns.

Q. I think you're talking about <MDR00224100>. At the bottom, you email the accounts to him and, at the top, he says:

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

Is this the response that you had in mind when you were answering my previous question?

A. Yes. I mean, he starts off saying "good news", that's not like Mark. Then he says "5x cover," that's very positive. He then talks about a problem he can't reconcile, cost to commissions, but, overall, I'm just still going, "Yep, positive", because of what I've first read, and that's my overarching memory, that it was positive.

Q. Didn't you then go and speak to Kobus to say that the accounts weren't sufficient and you wanted more?

A. Yes.

Q. Even if Mark had been positive, you still had some concerns?

A. Well, I just had questions, not just 11 borrowers, but I read the complete set of accounts and I had a set of questions, I don't know, 10, 15 questions, and Andy had a phone call with me and John where he answered all my questions.

Q. So <SUR00093402-0001>. If we look at the next page as well, we can see -- no, sorry, it is on the left. It is an email from Kobus to you and Paul and he copies Andy as well:

"Just to follow up on what we have discussed this morning."

Under the heading "Accounts":

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

He says, basically, he is not comfortable providing such information to anyone. So you have got the accounts, got Mark's response and then went to Kobus to say, "Actually, we would like to perform more due diligence on LCF"; is that right?

A. Can I ask a question, when did we get the accounts?

Q. The 20th, just that morning. You get Mark's email and then you phone up Kobus and say, "We would like to do more due diligence"?

A. Was the audit, by the time it was delivered, quite out of date? Like, in terms of to the current trading position? My memory is vague, but I think what I might have been saying is, "This audit is good but it covers a period of time that's now -- months have elapsed. What's your latest trading position?", is my curiosity.

Q. It covered the period to 30 April 2017.

A. So that was it. Look, we are on 20 February 2018. Months and months have passed and we have been raising multiple millions. So even though we have got this great audit, love to know what the greatest position is. That is what was motivating me to ask for more.

Q. So, by definition, by the time you get the accounts, it's already out of date and there's limited --

A. I think the accountants have something like nine months or more after the year end to produce the accounts. Something like that. It is a long time. You don't finish your year end and then, suddenly, you've got your accounts.

Q. At the top, we can see you're commenting to John and Paul:

"A polite push back on my request for quarterly MI. "Not happy. It shouldn't be too much to ask to see ongoing management accounts. Quarterly is not onerous." I think it is fair to say those are your words, you weren't happy with the response from Kobus?

A. Correct.

Q. Then <SUR00144763-0001>. Jo is sending you -- this is the next day -- a document. If we look down the page, it's been sent to her by Aaron Phillips. He was another account manager at Surge?

A. Correct.

Q. He says:

"Questions from the team for Kobus."

A. I think I prompted this. I think I wanted to go to get information from Andy, so I was saying, "What kind of questions would we like to know as an organisation?" We were updating our scripts, "Ask all the account managers the kinds of questions they're regularly getting they can't adequately answer".

Q. Do you think the account managers would have looked at the Ernst & Young accounts or would you have given them a briefing on it?

A. Yes.

Q. Sorry, which one?

A. Oh, they --

Q. Or both?

A. I don't know, but they would -- I don't know -- I didn't write a briefing for them. I do know that they did read them because we were getting questions about it.

Q. The questions are at <SUR00144764-0001>. The second one that the account managers ask is:

"How many companies do we currently lend to? We were told around 150 companies in June 2017." So, you were aware that your concern about the 11 borrowing companies was one that was shared by the account managers?

A. Yes.

Q. Then if we look at <MDR00130961>, the same day, the 21st, you're emailing Kobus:

"Thank you for following up on our meeting. "Apologies if I seem like a cracked record on the IFISA, it is simply because we have received conflicting information and as a result of that we looked deeper and still our advice differs from yours."

You referred earlier to having to drop the bone. You hadn't had to drop it by this point, had you?

A. No. Yeah, I didn't have 100 per cent certainty.

Q. Then you say in the next paragraph:

"On the subject of ongoing monitoring, we are keen to have a formal process in place but this should not in any way be onerous or invasive."

Again, it's something where you weren't afraid to go back and have another go and say, "Come on, how difficult can this be?"

A. Yes.

Q. Then you explain:

"Why am I asking for this when we have the audited accounts signed off by Grant Thornton ..." I think you probably meant Ernst & Young?

A. I did, yes.

Q. Then you say:

"It is a best practice/safeguarding measure, we are now nine months forward from the period the accounts document, we are averaging £10 to £12 million funds into LCF on a monthly basis, the trend is showing that this can increase to circa £20 million a month. If our only update is on an annual basis, the business will have grown by more than 100 per cent and the circumstances will have changed substantially."

Is this the point you were just making, that by the time you get the accounts, by definition they are considerably out of date and there is limited reliance you can place on them?

A. Yes. I'm basically trying to justify why I want more information. I'm trying to explain why it is that I feel we should have more information.

Q. Then, at the bottom, it says -- you say: "On a separate subject, your training session yesterday coincided with the AMs first read of the April 2017 accounts and it became apparent that the official answers we have to some key questions are now out of date and we could do with a refresh. 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. We want to be sure that we are representing LCF correctly and compliantly."

When you say "representing LCF correctly and compliantly", is that the point that you need to have something in writing from LCF to confirm the position before you can say it to members of the public?

A. Yes, because our information is out of date and, if we are following a script that was true 12 months ago and now their business has substantially moved on, that does need updating because we will be giving incorrect information to the public.

Q. Can we look at <SUR00127723-0001>. I just want to take the opportunity to check something. It is another version of the email from you to Kobus: "Apologies if I seem like a cracked record ..." et cetera.

At the top, in handwriting, it says:

"LCF refuse 2 provide MI ..."

Is that management information?

A. Yes.

Q. "... I explain why I need it."

I'm assuming the phrase "I explain why I need it" -- this is your handwriting, you have written this on the document at some point?

A. Yes. Yes, this is my handwriting.

Q. Okay, thanks. Then <MDR00131073>, still on the 21st. You email, now in the afternoon, Andy:

"We were very pleased to receive the accounts yesterday."

You mention the security figure. Then you say: "On digesting the accounts it became apparent that the official statement that we relay to customers is now quite out of date.

"You sent the attached back in May 2016 and it is still in use by the account managers as an example of how you prefer us to answer these common questions. Naturally the business has progressed since then and is in great need of a refresh. Eg.

"At the time your average loan size was £75k, clearly this has increased.

"As at May 2016 LCF had made 121 loans." Was the point you were getting at there, "We can't be saying to people 121 loans if you have put in your own public accounts and it is only 11 borrowers"?

A. Yes -- well, no, sorry, you have drawn an inference. I probably wouldn't have exactly drawn the same inference, quite. What I'm saying is, our information really is out of date, and it was prompted - it was prompted, I think, because of the 11 borrowers. That made me think, "Wow, I don't quite have the accurate position on LCF". But what you have just said did put words into my mouth, which isn't, probably, how I thought about it exactly: but the sentiment is true, I had the same sentiment, generally.

Q. But it's the 11 borrowers that have prompted this?

A. Yeah -- well, not just -- actually, very big -- I think 11 borrowers put me on alert that I wanted to know more, but that wasn't the only thing. The other things were, this is an awful lot of money now, and it's escalating, growing faster and faster and faster, and it is nine months out of date, and, actually, the information that we are giving is now years out of date. So, it just -- a correction needed to take place.

MR ROBINS: My Lord, I'm looking at the time. I don't know if that is a convenient moment?

MR JUSTICE MILES: Yes. We will resume, then, at 10.30 am tomorrow.

(4.25 pm)

(The hearing was adjourned to Wednesday, 8 May 2024 at 10.30 am)

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