

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 33 - Wednesday, 8 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

Wednesday, 8 May 2024 (10.30 am)

Housekeeping

MR ROBINS: My Lord, in terms of housekeeping, there are two points. First, I am told there have been no objections to the application for Bankers Trust Orders in respect of two further bank accounts that have been discovered, and so we would invite your Lordship to make an order in those terms.

MR JUSTICE MILES: Yes. I have actually just approved that.

MR ROBINS: I'm grateful. Secondly, in terms of timetabling, having looked at the extent of the progress we were able to make yesterday, I think, with a fair wind, I, for my part, will finish with this witness today, I think possibly with time to spare.

MR JUSTICE MILES: Right.

MR ROBINS: I'm told by Ms Dwarka that she would like to cross-examine this witness, but has only 10 or 15 minutes' worth of material, and Mr Ledgister has told me that so far there is no re-examination. Obviously, that may change. But I think it is entirely possible that we finish with this witness today, with possibly time to spare, and then come back on Monday for the experts.

MR JUSTICE MILES: Right, okay.

MRS KERRY VENN (continued)

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

MR ROBINS: Can we go to <C2/4> at page 19, please. This is in your witness statement. At paragraph 88, you cover a point you mentioned briefly yesterday. You say: "I also recall that when the audit came out in February 2018 we had questions for Andy and had a series of meetings to discuss those questions. One of those meetings was by telephone and, by chance, it was recorded as my mobile ran out of battery and I therefore used the office line. I remember quizzing him on the audit results during that call. Andy answered my questions and I took what he said at face value." It is, in particular, the final remark that you make there that I would just like to ask you about. Do you really think you took what he said at face value?

A. What I meant by that was that I accepted his answers, they were satisfactory to me. There wasn't anything he said that made me think that there was some further investigation warranted.

Q. On the sliding scale of satisfaction that you told us about yesterday, given that it is Andy, I suppose it is always fairly low satisfaction?

A. There is a general sense of that, but, in all honesty, I can't remember how I felt when I walked away from that phone call. I simply can't remember, if I was satisfied, to what degree. But I do remember we just moved forward. There was no sort of pausing. So I must have been satisfied enough.

Q. Let's look at the transcript. It is <SUR00125394-0001>. If we go to page 19, please, we can see, right at the bottom of the page, John is making a comment about the accounts being out of date, right at the bottom. Then, over on the next page, you will see Andy says he's building a spreadsheet. Then, in the middle, on the right-hand side, he says:

"-- loan book at the moment, I think it is about 100-and -- probably 117 million at a guess." Then he complains about last night's collections report. Then a bit further down, about two-thirds of the way down, John says:

"But you're anticipating it to be around about 117, and what about the security?"

And Andy says:

"The security -- I've got a bit of an issue with the security and it -- it's a believability issue. So if I -- if I actually tell you, but don't repeat it --" That's something we saw yesterday. It was fairly common, wasn't it, for Andy to say, "Look, I'll tell you this, but don't repeat it"?

A. All of your -- you showed me several pieces of evidence where that was said, but it wasn't common. So, yes, it's been said several times, "Don't say this to another person", so there were several instances where that happened, but, no, it wasn't common.

Q. Okay. He says "Don't repeat it". He says: "-- the security -- the valuation of the security that we hold is a billion pounds."

That must have sounded quite surprising when he said that?

A. Yes, but I didn't really dwell on it because, in my mind, valuations have to be done by professionals and we're not going to be amending the figure until the actual valuation has taken place and we have a document to hang our hat on. So, basically, a billion does sound like a lot, but I don't really know what all the assets comprised. So, for me, it's just -- it doesn't mean a lot. It doesn't mean a lot until we actually have a figure confirmed professionally.

Q. When you say a figure confirmed in writing, you mean confirmed by Andy in writing?

A. Yes, because what would have happened is, Andy doesn't value his security. Whatever the assets are, there will be a specialist in that area to value it. So, if it was property, you know, there would be a firm like a surveying valuation firm. So, I knew that Andy doesn't make these figures up, these valuations will be done by professionals in that area, and, when those valuations have taken place, Andy will let us know what that actual figure.

Q. In your evidence a moment ago, I think you said it is important to get it in writing and, until you get it in writing, you can't take it too seriously?

A. Well, no, because he's presenting this as -- he's not presenting this as a fact, really, is he? He's sort of presenting it as, "I think it is going to be around a billion", but he's not saying, "I have had the valuation done and here is the final result".

Q. He says "The valuation of the security that we hold is a billion pounds". I think he's saying that there's been a valuation, isn't he?

A. He's also telling us not to tell people, so this can't be a confirmed figure.

Q. I see. Then, over the page, John points out that the loan-to-value figure would be 11.7 per cent, and Andy says:

"So then you've got -- then you've got -- then -- then you've got that -- 'that's too good to be true' questions."

He goes on to say he's trying to restructure things because he thinks in the mid to high 30s is a nice comfortable level.

It is a bit odd, isn't it? You thought it was a bit odd for a lender to be saying, "I need to give away some security because I need it to be believable"?

A. Yeah, but, in all honesty, I didn't really dwell on this because the confirmed figures -- I await the confirmed figures for publishing. In the meantime, if there is some debate over what the figures should be, that's really for Andy and the LCF team to confirm and come back to us.

Q. On page 23, there's a passage where it looks like Andy is telling you something for the first time. I just want to check that with you. It's the bottom left, actually, we start. Andy says -- they are talking about the questions. He says:

"That's why you've got -- I think one of them was 'How many clients do you lend to?' Well, and then we specifically say, 'We've made 121 loans'. Well, each drawdown's a loan, as we knew at the time, so --" You say "Yeah" and John Russell-Murphy says: "We need to be focusing on loans rather --" And you say:

"But it -- that's fine."

Then you said again:

"That's fine. But we -- because the -- one of the earlier pages in the accounts says there's 11 foreign customers, I'm sure some -- some studious customers will pick up on that one so it would be nice to have an official line --"

A. I think that's "11 borrowing customers".

Q. You think it is a mistranscription?

A. Yes.

Q. Andy goes on to explain, in the middle of the page: "... we've moved to a more qualitative stance as opposed to quantitative.

"...

"So we can spend more -- more time with our borrowers. We -- we know them in -- you know, and out. We monitor them on a regular basis. We -- we attend board meetings. Though we're a qualitative-based -- mid cap lender, as opposed to chucking out 50 grand to Joe Bloggs' corner shop."

You say "Okay", and go on, a few lines down, to say: "That -- that makes a lot of sense".

It doesn't look like he's told you this before, does it?

A. No. I remember feeling like this was the first time I was getting this information. However, for the process of this investigation and disclosure, I was shown emails very early on where he said that he was only lending to a small number of borrowers that were connected to Spencer back in 2015.

Q. Is this what we saw yesterday?

A. Yeah. So, obviously, early on, I had some awareness of that, but that had -- I had then thought that he was lending to many, many companies, and it was this audit that brought this back into the frame that actually there was only 11. So, this information -- yes, this is the first time I'm hearing it explained like this to me.

Q. And then page 25?

MR JUSTICE MILES: Sorry, did you think, then, that there were like 120 borrowers?

A. No, because he'd specifically said 121 loans, I didn't think that meant 121 borrowers, but I did think he was trying to avoid the question of how many borrowers by answering with how many loans. I couldn't really say why he would avoid the question of how many borrowers and I had just to proceed with the information he provided. But I thought there were a lot of borrowers, that was my - I don't think it was pure presumption. I think that there had been indicators. But it is hard now to say what specifically -- I think there had been times where Andy had actually said to our account management team a number of borrowers, there was quite a large number.

MR ROBINS: I think it was, yesterday, do you remember, in the account managers' questions, they said they had been told in July around 150 borrowers.

A. So I think he had made it clear that there were lots of borrowers, but because I didn't trust my own memory, really, so I see 11 and I think I must have got it wrong. That's sort of how I felt about it.

Q. But the general modus operandi was, Andy is the chief executive of the business, if he puts it in writing, then you can say it to members of the public and it is not your job, as you saw it, to start questioning him?

A. Correct. Although I would take some prerogative sometimes to question him, but, generally speaking, he's the client. The facts about his business come from him. And what -- the scripts come from him.

Q. In fact, we see that at the top right. John says: "Well, you're the chief executive. You know, you put it in writing and we'll quote it."

And he says he'll get something back to you. But that was the basis on which you had to operate at the time?

A. Yes, as was the same with Blackmore. You know, we don't have insight into how the bond issuers run their business day to day, be it money lending or property development. Our information comes directly from them and that is how we represent them to the public. We act as an agent of them.

Q. The importance about getting it in writing, I assume -- he's told you it is a billion, but you need to have it in writing so you can say, "This is what he told us to say"?

A. I mean, I'm not saying we would never take something over the phone. We would. But we would prefer to have it in writing.

Q. You were quite keen to have what he said in writing?

A. I would prefer it in writing.

Q. Does that suggest --

A. It depends on the circumstances.

Q. You didn't take what he said at face value, you wanted him to commit to it by putting it in writing?

A. Only so we couldn't get it wrong. You know, I don't want to misquote someone. If they have actually put it in writing, that's easier for me to circulate around the account managers and get it right for them.

Q. Can we look at <SUR00093580-0001>, please. This is your follow-up email to Mark Partridge, and you copied John and Paul. You summarise the conversation. In the second bullet point, you say:

"Security: £1b (yes billion, not a typo)." It doesn't look, does it, like you really believed what Andy had said?

A. I thought it sounded very large. But I didn't know what the security was to know how much the value should be. But it just sounded very large.

Q. It's fair to say, though, isn't it, you were sceptical?

A. Not that it troubled me, not that I was walking around wondering and pondering on it.

Q. Presumably, that's because it wasn't your job. You were emailing it to Mark. It was for Mark and Paul to deal with these things?

A. No, it's not really for any of us to deal with these things. It is not really a concern because we were waiting for a proper, confirmed figure and that's what we will say to the public.

Q. Then you say, at the bottom final line: "He was vague in not committing to anything but did say he would respond in writing to my email requesting up to date information."

Mr Thomson was generally pretty poor at confirming things in writing, wasn't he?

A. Yes.

Q. When he didn't respond, on reflection, do you think that his behaviour seems evasive?

A. On reflection from what I know today?

Q. Well, on reflection, if you reflect on the fact that he's not putting anything in writing, that seems evasive?

A. Well, he did put things in writing but we had to chase him a few times. So he was always slow, but he did put things in writing. I would say it would be more professional to have a much more regular update in writing. I say we should have chased for that and he should have provided it. But we did eventually get things in writing.

Q. At the time, did you think it might possibly be that he was just very lazy?

A. Yes. And that he didn't really understand our work fully. So, these facts and figures, up-to-date information, is important for our side of things, which advantages him, because then we could potentially fill more into his bonds. So I didn't understand why he wouldn't be in a hurry to give us what we say is useful information.

Q. He didn't respond, but Kobus did. I will show you that. It is <MDR00136622>. He's sending through, you can see from the attachment, or subject, "Answers to AM questions" and you're a recipient. You presumably would have looked at the answers?

A. Yes.

Q. They are at <MDR00136624>. You can see he's answered "HOW MANY CLIENTS HAVE WE LENT TO?":

"The audited accounts for 2017 indicated 11." On the bottom of the same page, "ASSETS ... WHAT IS THEIR VALUE?":

"The secured asset values as at the end February 2018 was c. £300m."

We just saw, at the end of February 2018, Andy had said it was a billion. Now Kobus is saying, "Actually, it's 300 million". You would agree that's quite a big difference?

A. Yes, but my presumption, at that point, was, "Okay, so they still haven't got that billion figure confirmed. They're still working off the old valuation".

Q. Wouldn't you have thought you couldn't really rely on what Andy had said?

A. What, the billion or the 300 million?

Q. The billion, the figures that he was giving you --

A. Yes, well, he was --

Q. -- were contradicted?

A. -- saying, "Don't talk about this", so that figure is clearly not confirmed yet.

Q. You must have thought, with these changing figures and Andy being so unreliable, there was a risk of LCF going bust?

A. Not for this reason. I did think there was a risk of LCF going bust, but not because the figure for security was going up and was as yet unconfirmed. That wouldn't be a reason he could go bust. But, I mean, it's my understanding that with every loan there's new security to 75 per cent loan to value or above, and so just every one deal could re-affect his security levels substantially, depending on the size of the deal, and he's saying now it's not SMEs, now it's more mid cap. It could be in large millions just with one new borrower coming onboard. This is a business that is -- businesses are liquid, they're in flux. A borrower repays and the security will be released and the value will go massively down. A new borrower will come on and whatever that security is will then reflect a change in the overall security value. So of course this is going to be a moving feast. So noticing these figures change from one day to the next is normal. Business as usual.

Q. But you thought there was a real risk of LCF going bust?

A. I thought that -- I didn't know -- I wasn't close enough to know how high the risk of them going bust was, but I was very sensitive to the thought they could go bust because we could go bust if they go bust, and for me to ascertain, "Well, how likely are they to go bust?", is all down to: what is the quality of their loans and the security? So, I did want to know more about that.

Q. You thought there was a high enough risk of them going bust that it might be a good idea for you just to get out of this situation entirely?

A. Well, it's more complicated than that. So, I didn't want to have an over-dependency on one client because any business can go bust, and, as a business, it was a failure of ours that we were so heavily dependent on just that one client, because, what does the future hold? They could go bust. Or they could do particularly well and stop doing bonds and start raising money through pension funds. You know, a business starts with a minibond. It's really the bottom end of the finance market. As they become tried, tested, experienced and they have enough money in their fund, they then start to attract more institutional investors like pension money, which is much cheaper, and then they wouldn't need us anymore. So there's all sorts of eventualities that crossed my mind. One of them is they could go bust, another is they could elevate out of our market and not need us anymore. There are all sorts of reasons why we could lose this one client and that would put us in a real situation.

Q. One of your key concerns was, "I'm a director of Surge. I'm exposed to liability if they go bust. I want to get out of this situation"?

A. Did I think about it in those terms? I'm not quite sure. I just -- if they went bust, that would be a disaster for our business as a whole, yes, of course it would. But that's not the only potential outcome that I was contemplating at the time.

Q. You might also have been thinking, well, if they go fully regulated, they can't pay such high commissions?

A. Definitely. And that would be us out of the game there as well. I thought it was important that we preference Blackmore a little more, try and bolster them, do a little bit less for LCF and take on new clients. As a business strategy, that's what I wanted to do.

Q. That's helpful. Can we go to <D7D9-0007347>, please. If we go to the next page, this is a WhatsApp conversation between you and John Russell-Murphy. In the middle of the page, you tell him about the suggestion -- you term it "the suggestion to sell to a Spencer-related company/LCF was discussed and is currently floating around as a good plan." Do you remember that being discussed?

A. Yeah. What's the date? 2018. I don't -- hmm, I didn't think it was in 2018. I thought it was earlier.

Q. Okay. Then you say:

"Totally dependent on Spencer coming up with big money. We ask for £50m and accept £30m but must have more than half of it cash upfront and rest paid in a timely fashion. No shares in oil or anything just cash."

This is probably something Paul's told you about, isn't it?

A. Yes.

Q. Then you say:

"Therefore the problem is can Spencer raise that cash."

And then you say:

"The deal makes sense for him because he can control deal flow to Andy and or LCF don't have to pay away 25 per cent."

Then John says:

"I would have thought so, 2 months worth of LCF money!"

And you say:

"LCF can't use investor money like that (Andy does follow the sentiment of the IM I believe)." Were you making a point that Andy can't just give LCF money to Spencer but he could follow the sentiment of the IM by lending it to him?

A. No, I just thought this was a naive comment from JRM that somehow LCF money could be used to purchase Surge. It just didn't -- like, how could you do that? That's not what LCF does.

Q. Your comment, just two down, is:

"He could lend money to a company that can provide security and that company could buy."

I mean, when you're saying "Andy follows the sentiment of the IM", aren't you saying here, "Look, he can't just give away money to Spencer, that's not what the IM says. But the IM is about lending, Andy could lend it to a Spencer company and then that company could buy"?

A. Yes, but, of course, that is a long shot because they would have to have enough security.

Q. And John says:

"Yes that's what I was going to say. It's possible."

He didn't seem to think it was a long shot, did he?

A. Well, I think both of us, both JRM and I, at the time, didn't really know what Spencer was capable of. How much cash security -- a reasonable company vehicle for this was a complete unknown to us. But the fact that there was already a discussion that I believe Spencer was engaging in with Paul and JRM, that he would want to buy this and that he wasn't put off by these large sums of money, meant that he must have the means, but it's pure speculation on my part and, I think, on JRM's part, although he might have been closer to it, to know, well, what money has Spencer got to effect a deal like this.

Q. You didn't think at the time it was a long shot, did you? You thought it was food for thought and you liked the idea?

A. I loved the idea, but I thought it was a long shot that Spencer would be able to just come up with this amount of money. Because we would want -- we wouldn't want a long deal that kept us working on an earn-out. We would want a decent amount of cash upfront for us to want to leave our business.

Q. Then you say, if we could just look below this extract, it must be over the page. John said "It's possible", and you said:

"Lots of food for thought. I like the idea." John said:

"It's got a lot of potential, I'm not sure how long we have left in the section 21 market ..." That was a concern, wasn't it, that there was going to be a law reform coming down the track and this sort of minibond market has a limited life span?

A. Yes.

Q. Then you go on to say:

"Absolutely. Also if they go fully regulated they can't pay high comms anyway."

I think that's a point you just mentioned, isn't it?

A. Yes.

Q. Then you say:

"If they go bust we want to be well out of it." As you said a moment ago, it does look like that was a thought in your mind, doesn't it?

A. It was absolutely a thought in my mind, but earlier you were trying to say it was the prevailing thought, but that wouldn't be true. It was a factor, and a big factor.

Q. Then you say:

"Leave now on a high.

"Put the money into all of the other businesses and grow them."

A. Yes.

Q. It does seem as though you were quite keen on a pivot away from LCF?

A. Well, when Paul said there might be a deal where we could get 50 million, I was quite excited, and I did want to leave the minibond market, really, because there wasn't a lot of quality product in it, and we had been incubating other start-ups that had been doing things I was interested in.

Q. Then you say:

"The staff stay on and carry on as usual. They aren't exposed to the risks that directors are so they will be fine."

You seem to be saying that the salespeople can stay with the company if it sold to Spencer but the directors could exit at this point to reduce their exposure to be risk?

A. Which is exactly what happens in most business sales. You are buying, also, the team of staff that have been accomplished in the tasks that run the business, and you may have the directors in situ for an agreed period of time, but ultimately they leave, they have been bought out.

Q. John says:

"If we still continue to do the account management, without the 25 per cent comms. We could still charge basic running costs."

That was always an option, wasn't it, to carry on doing the same role but for running costs and a small uplift?

A. I don't think we would have been particularly interested in doing that, but that's always an option.

Q. I think we covered this before, but when Mr Thomson wouldn't tell you anything about the 11 borrowers, you found that quite frustrating?

A. Yes.

Q. The position was quite stark. You had one client who would show you everything and another client who would tell you nothing at all?

A. Yes.

Q. Is that one of the reasons why you felt very keen to support Blackmore?

A. Yes. Not the only reason, but I felt warmly towards Blackmore, and they felt like the underdog and I wanted to champion them. I thought they had a good product and we could support them in further growth. I liked them more as individuals. But it was also selfish because I just didn't want all our eggs in one basket, I wanted us to have a more diverse portfolio of clients, and that meant boosting Blackmore but also taking on new clients.

Q. I'm moving on to another topic. Thistle were a market leader in assessing FCA compliance, weren't they?

A. Yes.

Q. In 2018, you contacted Thistle for a review?

A. Yes.

Q. Can we look at <SUR00099995-0001>, please. You have been in discussions with Alex Paschalis at Thistle, and he said:

"We can cover all the highlighted points, starting with the onsite visit on Monday, documentation and process review and written up report to Surge for £5,000 ..."

Then you say:

"This is very helpful. Thank you. One more thing to help me sell this internally. Can you please answer, what are the consequences of doing a regulated activity when you are not authorised?"

It looks very much as though you are encountering a bit of resistance within Surge to the idea of spending £5,000 plus VAT and you were keen to be able to go back and overcome that resistance?

A. I hadn't experienced much resistance, but I wanted to cover all bases because I thought I might experience resistance, so I wanted to know the full picture.

Q. Okay. At the top, he answered your question and said: "It's quite serious; regulated activity when not authorised to do so is a criminal offence. Potential consequences include custodial sentences." You understood this was a serious matter?

A. It was the perfect answer for me, because I could then go back and say, "Look, we really do need this gap analysis", is what they called it, "because if we are doing anything" -- because our fear was -- there's a back story to this, which is, the contract negotiations with Andy, he didn't want to list all of the services that we were providing for regulatory reasons because some of them were in what he called "the grey area of regulation", and it might expose that we were doing something regulated where we shouldn't. I wanted to list all of our services because that's what made us VAT exempt. It also frightened me when he said "grey area" and I wanted to make sure I understood this more, and that's why I wanted this compliance report -- they called it a gap analysis -- because I wanted clarity on if we were doing any regulated activities. Different lawyers or professionals within our network were giving me conflicting information. Many were saying, "Yes, it is a grey area, but you're on the right side of the line, but, you know, it would only take your account managers to sort of say something too positive to push you over the line". I basically thought, "I don't like grey, I want black and white". I would rather have this report and know. Because, if we need to become an AR, which means authorised representative, which means that we were a company that has the FCA permissions, we can come under their wing and, with their training and support, they can grant us those permissions, or we could become fully authorised ourselves. But we didn't think that that would necessarily be the case because the general consensus was that we weren't doing regulated activity but that we were getting close to the line. So, anyway, I wanted black and white, it was grey, that's why I wanted this report.

Q. When we look at <SUR00100027-0001>, we see, at the top of the page, you reply to him saying:

"Sold. Everyone sufficiently worried (exactly as we need to be to take action) ..."

It looks as though you've gone and told, what, Paul and Steve, "Look, we need to sort this out. There's a risk of committing a criminal offence", and they have said, "Well, let's go ahead with it", and you're happy because you managed to overcome the anticipated resistance?

A. Yes. I didn't want to live in the grey, and so I was wanting to really twist their arm that this is important and let's get that report, and, if we are doing anything that is regulated, then let's get regulated. Let's become an AR.

Q. The report is <MDR00154926>. You would have, no doubt, studied this carefully when it arrived?

A. Yes.

Q. If we look at page 6, you can see the executive summary: "The overall grading for this audit is: red." You said you didn't want to live in a grey area. You must have been a bit uncomfortable about discovering you lived in a red area?

A. Yes. This made me now push forward with the AR plan.

Q. It says:

"The firm is carrying out regulated activity while being an unauthorised firm; the firm must cease all regulated activity until it becomes an authorised firm or appointed representative."

You would agree that's not at all equivocal or unclear; it's definitive?

A. It is, but what we found out was the things that were regulated were things that we could easily stop doing, such as the paper-based application forms. That was part of what was regulated and we could easily stop doing that. I forget all of the many things. But it was quite easy for us to stop doing anything that had put us in the red. But I would have preferred, as belt and braces, to instead have become an AR.

Q. If we look at the next page to see what puts you in the red, they say:

"The firm provides many services to two bond issuing companies, London Capital & Finance and Blackmore Bonds. The majority of the services are unregulated activities. "At present, the firm is conducting the regulated activities of 'arranging (bringing about) deals in investments' and 'making arrangements with a view to transactions in investments' ..."

You understand that the context of arranging, bringing about, deals in investments is what is sometimes described as "bringing the deal together"?

A. Yes.

Q. It's sealing the deal with a customer?

A. Well, and what does that actually mean? And, when you get into this, our online process was considered to be compliant; our paper-based was not considered to be compliant. So, there's a lot of nuance when you get into the detail. And the overarching, well, "arranging" means "bringing together", doesn't really tell you anything in terms of what is regulated and what is not.

Q. Then:

"Conducting these activities without regulatory permission could potentially lead to an unlimited fine and up to two years in prison for the directors." This is something you would have understood to be a serious matter?

A. Yes.

Q. Over the page, I think there is another red. This is about precompleting the application form, which is something your account managers did, wasn't it?

A. Yes.

Q. Having looked at this, you would have presumably thought, that's concerning, we must immediately stop doing the things that are contraventions of the regulations?

A. Yes.

Q. So, if we look at <MDR00154892>, we can see you emailed Andy and Kobus, copying John and Paul, and you say: "As discussed, we recently commissioned a gap analysis report from external consultants Thistle, today we received the report and the results are concerning." Then you say:

"There are two areas they identify as being regulated activities ...

"1. Completing application forms on the phone ... "2. Active selling eg when we contact exiting bondholders to promote the ISA."

You explain:

"These come under 'arranging deals in investments' and 'making arrangements with a view to transaction in investments'."

Then you say:

"The recommended action is that we cease to conduct these activities until we have become an AR. We will of course action this immediately."

So, that was your clear decision?

A. Yes.

Q. So then I wanted to show you two emails from Kobus in response. The first is <MDR00155053>. He emails you to say:

"I've gone through the report. You have not relayed the correct information regarding LCF. If you did, their report would have been fundamentally different. As it is now, their report does not reflect the reality of the operations. Where I can only speak for the LCF part of your services, I can confirm you're not in breach of regulations."

Well, hang on. You have just got a thoroughly detailed report from the market leader in assessing FCA compliance who has visited your offices. Presumably, you're not just going to look at an email like that from Kobus and say, "Oh, well, that's fine. We will put the Thistle report in the bin and carry on as we were"?

A. No. I would have spent a week on the phone to every lawyer I knew in compliance, and was very confused and scratching my head at the end of it because some agreed with Kobus, some agreed with Thistle. This is like the VAT situation, unbelievable. When I spoke to a VAT specialist and said, "Can you tell me whether I need to be VAT-registered or not?", his reply to me was, "Well what would you prefer to be?". I said, "No, no, just tell me, legally, should I or should I not?" He said, "You can argue the case either way". It is absolutely ridiculous. The same was true with FCA regulation.

No, black and white rules. All this kind of guidelines that can be misinterpreted and interpreted differently. This was probably the most frustrating point of my career.

Q. Look at <MDR00155397>. This is the second email that -- well, the second and third. At the bottom, Kobus says: "In furtherance of the email below, just to clarify that you're not in breach:

"1. The investor journey is with LCF and not with Surge.

"2. As a subcontractor, Surge is representing LCF, not itself (the investor does not engage with Surge).

"3. LCF has confirmed this with our lawyers, Lewis Silkin, in the past.

"4. In addition, LCF is providing compliance oversight (including continuous monitoring and training) and procedures."

Do you think Kobus was unhappy with your suggestion that you were going to stop doing things and he was trying to persuade you to carry on?

A. Not Kobus, because, knowing Kobus like I do, he would have wanted to do everything correctly. So I don't think Kobus was trying to persuade me of anything. Was Andy asking Kobus to steer me in a direction? Maybe. But, no, Kobus was very straight up. Kobus would tell me exactly what he knew about compliance and I would always believe what Kobus would tell me.

Q. You wouldn't say, "Well, I'm going to put the Thistle report in the bin", would you?

A. No.

Q. So if we look on the left, at the top, you reply to Kobus to say:

"Thank you for the clarification which is most reassuring.

"Based on this we will carry on as we are." Why on earth would you say, "Well, Thistle is in the bin, we are taking Kobus's word for" it? That doesn't make any sense, does it?

A. If you look at what happened next, and there will be evidence to support this, that's not actually what I did. Behind the scenes, I was lobbying internally to become an AR. JRM had introduced me to a company called Alexander Rose, and I made an AR application under them. At which point, we were divided as a company, and LCF offered that he could become an AR under them and Paul quite liked the idea. I didn't. I felt that was a conflict. So we -- there was a lot, then, of infighting and politics in my organisation.

Q. What's really going on here? Did you not like the Thistle report? You wanted to get something in writing from Kobus so you could carry on as before? Did you get him to send these emails?

A. No.

Q. Are you sure?

A. Yes.

Q. Can we look at <D7D9-0007394>. This is an email from you to John Russell-Murphy and Paul to say -- talking about disclaimer, and you say:

"An interesting and welcome practical solution. However, we don't actually know legally if the disclaimer now means that we are covered. I doubt it does.

"Ultimately it is a regulated activity whether you add a disclaimer or not.

"Still need a reply to my email saying they have taken advice and because we are contracted to act as if we are LCF, we are indeed covered under their permissions.

"To help them, I will reply stating it is possible Thistle didn't comprehend that we were acting as if we were them and this must be the reason for confusion." You were trying to edge Kobus into a position of responding to say, "It's all fine. The report is wrong. You can carry on as before", weren't you?

A. I was looking for -- a bit like how I was communicating with Roger Blears about the ISA, trying to get material to advance the discussion. This is what I'm doing here. So, okay, if Andy and Kobus are saying, "You don't need to be regulated and it's not Thistle's fault but you've misrepresented the relationship to them", my next step is to go back to Thistle to say, "I've misrepresented the relationship. They have taken advice. Here is their advice", and then see what Thistle have to say about it.

Q. You were suggesting Kobus should say it is possible Thistle didn't comprehend that Surge was acting as if we were LCF and this must be the reason for the confusion. You were trying to influence --

A. Well, what's that they said to us. That's what Andy or Kobus -- I forget -- said to us. They said the reason the Thistle report is saying this is because you have fed them slightly incorrect information, and, had you fed them the correct information, it would have been a different outcome. That came from them. And then my response to that was, "Okay, let's be open-minded about this. Have I not said it -- articulated it entirely correctly? Could the nuance have been missed that affects the regulation? If that is a risk, let's explore that by going back to Thistle".

Q. It came from them because you put the words in their mouth?

A. Not the words -- no, I haven't put the words in their mouth about, "Kerry, Thistle have got this wrong and it's your fault because you misrepresented". I haven't put those words in anyone's mouth. That was their response to us.

MR JUSTICE MILES: Can I just ask a question? In this email, you don't seem to be saying, as I read it, "Oh, I'd prefer check with Thistle". You seem to be saying you're going to reply to LCF saying it is possible Thistle didn't comprehend. Is that right? At the bottom.

A. Let me just read the email.

MR JUSTICE MILES: When you say "I will reply to it", that's a reply to LCF's email. You seem to be saying, "I will reply to LCF saying it is possible that Thistle didn't comprehend".

A. Yes, so I will agree with LCF and then extract some more information from them. It's not okay for them just to say to me, "We got advice". Can I see your advice? I can then share it with Thistle and, yes, if you are right, LCF, Thistle will then change their view.

MR ROBINS: <D7D9-0007397>, please. John replies to you to say:

"Kerry, when I'm in Eridge this morning ..." That's LCF's office, isn't it?

A. Yes.

Q. "... I will get them to reply as noted below by you." You understood -- you'd explained to John what you wanted LCF to say. He was going to Eridge and he would get them to reply in accordance with your requirements?

A. I particularly wanted them to share the advice they said they'd had about how -- because we were acting as an agent of them. I wanted that information so I could supply it back to Thistle because I was hoping that, if LCF were right, Thistle would have a correction to make to their report which might take us out of the red.

Q. They hadn't had any advice that it was because you were acting as your agent. You were trying to put these words in their mouth so you could have an excuse for carrying on as before?

A. I wanted to know the correct position and LCF were telling me that what we were doing was correct. Thistle were telling me what we were doing was not correct. I would like to -- I would hope that what we were doing is correct. I would like to believe LCF. But I can't just take their word for it. They say they have had legal advice. I would like to see it and share it with Thistle and hopefully Thistle could make a correction or Thistle would come back and go, "No, I have read what LCF say but I still stand in this position", and then I would have to become an AR.

Q. You wanted a one-paragraph reply from Kobus to give you a fig leaf for ignoring the Thistle report?

A. No, I wanted to go back to Thistle with his reply and get Thistle to comment further.

Q. Look at <D7D9-0007399>, please. In the middle, you say to Paul & John:

"Perfect. I am encouraged by the email trail because it shows they consulted Lewis Silkin at the time, fingers crossed they are correct and I am baffled that they wouldn't just reply immediately to state something along the lines of: actually we sought advice from Lewis Silkin at the time and they said -- blah, blah, blah -- therefore all is good. Possibly Thistle don't understand the relationship in terms of Surge employees being contracted to act on behalf of LCF, etc. A one-paragraph reply and all is restored." You didn't want a one-paragraph reply to take it back to Thistle. You wanted a one-paragraph reply to justify putting Thistle in the bin and carrying on as before?

A. It would have helped me feel more confident, but I would have taken it straight back to Thistle.

Q. But you wanted them to say, "Possibly Thistle don't understand the relationship in terms of Surge employees being contracted to act on behalf of LCF"?

A. I didn't want them to say anything. That's what they had already said. I thought, well, if that's what they're already saying, let's get this clearly articulated so it can be shared with Thistle".

Q. I'm not sure they said it already. We see what Kobus says, <MDR00155053>. We saw this a moment ago: "I've gone through the report. You have not relayed the correct information regarding LCF. If you did, their report would have been fundamentally different. As it is now, their report does not reflect the reality of the operations", et cetera.

That one paragraph wasn't going to be sufficient to justify putting Thistle in the bin, was it?

A. No, but what I'm saying back is, "If you have taken advice, share the advice. Embellish this, please. Explain this more to me why it's okay".

Q. Well, you wanted him to say in terms, "You're not in breach because you're an agent acting as LCF"?

A. Well, I wanted to know why it was okay, and he came back with information like that. That was his explanation of why it was okay.

Q. You went to John and said, "Look, Kobus has sent this. It is not enough. I want him to say in terms that it's because we are acting as LCF's agent"?

A. Well, that's what he's already told me and I'm telling John that I want this in writing. I'd like to see their evidence.

Q. He hasn't already told you that. You didn't know the reason he'd give, did you? You were trying to put words in his mouth?

A. No.

Q. Can we look at <D7D9-0009137>, on page 5, please. This is a WhatsApp chain between you and John Russell-Murphy. For some reason, he comes up as "Dad Xami"?

A. That's really weird.

Q. You hadn't put him in your phone as that?

A. No, definitely not.

Q. About three-quarters of the way down, you say to him: "Kobus sent an email saying he confirms we are not in breach of regulations. Whilst that is helpful he hasn't explained it at all. Would you try and get a bit more info? If the reason we are not in breach is because we are an agent acting as them and that means we come under their permissions. That would be good to know."

It certainly looks like he hasn't told you this. You're speculating about what might be a good reason?

A. I won't just purely be speculating. This will have come from the pushback from LCF, be it Andy, be it Kobus. They will have said, "No, Thistle have got it wrong. They have got it wrong because you're an agent". I wouldn't have just come up with that.

Q. This is what leads to the second email, <MDR00002213>. We looked at this before, about a third of the way down the page. When you got this, you would have understood that this was prompted by a WhatsApp to John saying, "Can you get him to reply again"?

A. I don't recall, but if that's the timeline here, then yes. So, I've asked John, "Get more information from them", and then this email has come through. Is that what you're saying? Because I didn't note the time of the text or the date, but if that's what happening, then that makes sense.

Q. What Kobus is saying -- we didn't look at his third email at the top. It says:

"Clarification: when an AM is interacting with an investor/client, he/she states that he is calling from LCF and on behalf of LCF. This is a representation of LCF as much as any employee would. This is why we have compliance oversight over all such interaction." And we saw you responded to that to say: "It is most reassuring. Based on this, we will carry on as we are."

Did you think that was a good explanation?

A. No. I would have wanted to know a little bit more, and I think I'm asking them at a certain point after this for how he knows that's true and he said he got some legal advice from Lewis Silkin, and I'm saying, "Could you share it?" There is a continuing dialogue to try and get to the bottom of it because Kobus -- Thistle says one thing, Kobus says something else. Kobus might be right because, did Thistle not understand our engagement with LCF? So he might be right. But he's not definitely right. And I still don't know the truth of the matter. And, therefore, there's further investigation to be done.

Q. He's hanging his hat, isn't he, on this? And you would have understood at the time, he's hanging his hat on the point that, when an AM phones up an investor, he or she states they're calling from LCF?

A. Yes.

Q. You knew that Thistle weren't misunderstanding the relationship, didn't you?

A. They might have been. I didn't have a contract with LCF to share with them the details of how we acted as an agent of. So, they knew we answered the phone as LCF but we are Surge, implying an agency agreement, but there's going to be -- the detail of that is going to influence how this is viewed in a compliance setting.

Q. But the detail Kobus is giving is, when an AM is interacting with an investor/client, he/she states that he is calling from LCF. Thistle haven't misunderstood that, have they?

A. I think they understood that part.

Q. They understood because you had told them, hadn't you?

A. Yes.

Q. If we look at your first email to them, <SUR00099716-0001>, if we look at the third bullet point from the end of page 1, this is your email to Alex. You say:

"We are the client-facing team for the bond issuing company. If you have any question for LCF or Blackmore it is actually our office you are calling and we either answer your question or put you in contact with the person you need at the bond issuing company. "Surge are unknown to the public, we 'act as if' we are either LCF or Blackmore, eg answering the phone, 'Hello you have reached Blackmore how can I help you'." You knew Thistle hadn't misunderstood what Kobus had said they misunderstood?

A. Well, clearly, they understand the headlines, but does the detail of your contractual relationship with the bond issuing company affect the compliance potentially?

Q. But Kobus hadn't mentioned anything to do with details of contractual relationship, had he? He just said Thistle hadn't understood this point. But you knew Thistle had understood this point because you told them about it?

A. On a headline level, yes, but there's possibly more to it.

Q. If we go back to <MDR00155397>, we've just seen Kobus's reply and you say:

"Thank you for the clarification which is most reassuring."

You knew it wasn't reassuring. You knew it was nonsense.

A. "Nonsense" is going too far. What I knew is I didn't have all of the facts yet and I was going to do a little bit more investigation, which is what happened.

Q. You weren't. You say:

"Based on this we will carry on as we are." You wanted something in writing to justify putting Thistle in the bin and carrying on as before?

A. Well, let's look at our conduct. What did we do next? Did we carry on as we were? No. We filled in an application with Alexander Rose to become an AR. Then there was some infighting and some politics about becoming an AR of LCF, which then -- then we pulled the application from Alexander Rose whilst we decided which direction we were going to go in. We also stopped some of the activities that were in the red area, such as paper-based application forms, and also we had some employees who were going into any level of detail of things, something like that, who then became TUPE'd over to LCF. We took quite a lot of actions as a result of this, but none of that happened overnight. And me saying, "Based on this, we will carry on as we are", is really okay for now, but pretty much straight away we were taking action and we were in a continuing dialogue with Kobus, Andy, Thistle. It didn't just end there.

Q. You said we will carry on as we are and you carried on as before. Okay, being an AR will cure it, and you expected you might become an AR, but, in the meantime, you were carrying on as before?

A. No, actually, we didn't carry on as before. So we did take some immediate action with dealing with the paper-based application forms differently and TUPE-ing some staff over to LCF's side. So it is not entirely true what I have written, "we will carry on as we are", because our conduct shows we didn't carry on as we were.

Q. Can we look at <SUR00121593-0001>. You're emailing Peter Tayler. He dealt with compliance at Northern Provident, didn't he?

A. That's correct, and they acted for Blackmore as a section 21 sign-off partner.

Q. You have put "Subject: Acting as agent" and you say: "Hi Peter, re our conversation today, this email from Kobus the LCF compliance officer is very useful to me in terms of proving that Surge acted as an agent!" The attachment is <SUR00121594-0001>. That, I think, is your handwriting again, isn't it?

A. Yes.

Q. Why didn't you say to Peter, "By the way, I asked John to get Kobus to send this to me and the clarification he gave was inaccurate"?

A. The clarification he gave is inaccurate? What do you mean.

Q. The clarification. This is the thing that Kobus said Thistle were unaware of:

"When an AM is interacting with an investor/client, he/she states that he is calling from LCF and on behalf of LCF."

And Kobus said that's what Thistle had misunderstood. You knew Thistle hadn't misunderstood that because you told them about it?

A. Well, I didn't know that there hadn't been a misunderstanding, "devil in the detail" sort of misunderstanding. I didn't actually know with any certainty because -- that's why I'm speaking to Peter Tayler, because he's a compliance officer and he might be able to shed some light onto this. So I'm having long phone conversations with Peter Tayler asking him, "This is what Thistle say, this is what LCF say. Obviously we provide the same kind of service to Blackmore. What is your view?" So I'm not just accepting what I'm told. I am digging in the background and I'm finding, actually, that I'm not getting enough clarity to be certain in any which direction.

Q. You're presenting this email as if it's something that Kobus has sent to you independently, when, in fact, he only sent it to you because you told John to get him to send it to you?

A. Me saying I would like something in writing from LCF and asking John to be the messenger for that is just me seeking further clarification.

Q. But you'd -- we saw -- saying what you wanted him to say, putting words in his mouth?

A. I'm expressing what level of detail I'm looking for. I do this a lot. It is my style of communication. I will often write people an explanation that they can use or not use or edit, so that what I'm providing for them is quite a lot of detail about what it is I'm looking for. What level of clarity would give me comfort. And my level of clarity here would have been if they'd shared -- when they said they went to Lewis Silkin and sought advice, if they would share that advice with me, that was the level of clarity I was really after.

Q. Moving on to another topic, and it is not perhaps the most interesting, but I don't know if you have looked at the expert reports. They get into the question of annualised commission, dividing the commission between the number of years and the term of the bond?

A. Which experts? What's this?

Q. Well, Mr Grainger in particular, who has been retained by --

A. I don't know.

Q. -- Surge. This is why I'm covering it. If we go to <C2/4> at page 10, and the context for this is, as we've seen from the invoices, from the outset, Surge charges 25 per cent, but then there's one point in 2018 where, for some series, the commission is 22.5 per cent. You say in paragraph 42:

"The fees Surge charged LCF between 2015 and 2019 didn't vary from the 25 per cent, other than in the case of one bond series for which I believe we agreed to a lower fee. We wanted LCF to consider doing a one-year bond as the public generally did not like their money to be tied up for too long. Andy explained to us that the business model doesn't work so well on a one-year bond as some of the loans needed more time for the borrower businesses to generate profits and make repayment. Andy was reluctant, but said if he could crunch the numbers and make a one-year bond work he would do it. He wanted to cap it as he did not want millions to go out in one year if all investors would want to redeem after one year. We did the research that more often than not, investments did roll over and ISA's stay invested for 13 years. Andy said he needed to pay us less on a one-year bond and I do think we agreed a slightly reduced fee at some point, but I cannot remember exactly if that was for the one-year bond, it might have been for a compounded interest product but my memory fails me probably because I was not involved in that agreement. I do remember talk of charging less if an investor did not roll on, but I don't remember exactly what actually happened."

It is fair to say you do accept in that paragraph, don't you, that this is not something that is clear in your memory?

A. Yes.

Q. You would also accept, I assume, that the one-year bond was a feature from not exactly the very beginning of Surge's relationship with LCF, but it certainly started to be talked about in October 2015?

A. I don't remember the dates, but we knew what the public were looking for, and so we would have been pushing LCF, "Can you create a product like this because there's a big demand for it?", and LCF would have been saying to us, "Well, it doesn't work with our business model" or "Okay, let's investigate how we can make this work or not". But we would definitely -- we would go with a shopping list, a wish list, a blue-sky thinking, and say, "We know a product with these features would sell really well. Is it something you can do?", and they would have come back to us to say, for the bullet points of all of our blue-sky thinking, "Yes, we can do this one. No, we can't do that one". You know, maybe, "Yes, we can do this rate of 8 per cent, but, no, we can't do it on one year". So we would go to them with our wish list and they would tell us what's possible.

Q. If we look at <SUR00002676-0001>, please, this is an agenda meeting from a meeting that you had with -- let's look at the covering email first. <SUR00002675-0001>. This is October 2015, 14 October. You're emailing Paul and John. "Agenda for tomorrow":

"Attached is an agenda for our 2 pm with Spencer and Andy."

You say it is for internal use only. Do you remember maybe not that meeting, but having meetings with Spencer and Andy around that time?

A. Yes.

Q. The agenda is <SUR00002676-0001>. The context for this -- we looked at it yesterday -- when you were first introduced to LCF they were selling a two-year bond at 8.5 per cent, and you suggested in 3:

"Change the rates for 1, 2, 3 years: 3.9, 6.5, 8.5." Do you remember Andy and Spencer accepted your advice?

A. I don't remember that conversation, but they must have, because I think those rates did end up happening.

Q. Yes, exactly. The two-year 8.5 per cent product was replaced by the three new series, one of which, series 3, was the one-year bond, wasn't it?

A. Mmm-hmm.

Q. Sorry, for the transcript, could you say "Yes"?

A. Yes.

Q. Thanks.

A. I'm kind of having to take your word for it because I don't remember which series was which percentage, but I don't think this is a point of contention. It's facts that you have in front of you. So, yes, I agree.

Q. Let's double-check it. <MDR00033167>. This is the final version of the information memorandum. <MDR00033167>. "Series 3, 1-year 3.9 per cent AER Protect Bonds". This is a familiar-looking document, no doubt?

A. Yes.

Q. I think you would also accept that the 25 per cent commission was paid for the one-, two- and three-year bonds?

A. I think so, although, in my witness statement, I was shown evidence that we were taking, at some point, something like 22 per cent. I simply couldn't quite remember why that would be, because my recollection throughout was 25 per cent. So the 22 per cent would have had to have been either the one-year or the compound interest, the two products that LCF felt nervous about from a cash flow perspective and wanted to push for lower comms.

Q. There are only two candidates that I can think of. Let me show you the first. <SUR00099143-0001>. This is where we can see John emails you and Kerry: "5-year bond.

"After some serious negotiating, Andy and I settled on the following figures -- 8.95 per cent for the rate ..."

That's the interest date:

"... and 22.5 per cent commission."

You would agree it looks like it was the five-year bond?

A. This is a complete surprise just because I simply don't remember the 22.5. My retrofit explanation for that would have been, as I have just said, one year or compound. But clearly it's stated here, much to my surprise, it was the five-year.

Q. The only other one I can think of is <D7D9-0009104>. John emails saying, and you're one of the recipients: "Andy has agreed to continue with the 25 per cent and 22.5 per cent (5-year product) ..." It certainly looks like it was the five-year commission, doesn't it?

A. It does, yes.

Q. There is absolutely no criticism. As you say, memory is fallible. But do you accept that, when you say in your witness statement, "We suggested a one-year bond to Andy. He didn't like the idea of a one-year bond and he wanted a reduced commission", that is sort of reconstruction rather than memory you had at the time?

A. I do remember he didn't like the one-year bond and he expressed that that could be a cash flow problem. So that's a fact that I remember him saying that to us because it was hotly debated. It stays in my memory because Paul and I very much wanted a one year and Andy very much said that was going to be difficult. However, clearly he made that happen, so he overcame his difficulties.

Q. That memory must be a 2015 memory?

A. Oh, I could not place it at all.

Q. We saw the one-year bond was launched at the end of 2015, so he must have --

A. There can't be a "must have" about it, because we could easily have talked again in the future about -- these products were reviewed and changed all the time. So it could have been at a later date that one year was becoming a problem for him, but I simply can't tell you with accuracy -- I know that conversation happened. I know one-year made him nervous. I know compound made him nervous. But I don't know at what date that -- he was really pressing that upon us that that was a problem.

Q. It is certainly right that, after the one-year bond was issued in December 2015, the subsequent bonds are, like, two years or sometimes three years?

A. We did a lot of two and three years, yes.

Q. Do you think you could be confusing your memory with times where Andy said, "I don't like one-year, let's do a two-year this time, let's do a three-year this time"?

A. I clearly remember Andy worrying about cash flow on a one-year. That is a recollection that I accurately have. It is not vague. I do really remember that clearly.

MR ROBINS: My Lord, I see the time. I wonder if that would be a convenient moment for the shorthand writer's break?

MR JUSTICE MILES: Yes, we will take a five-minute break, thank you.

(11.43 am)

(A short break)

(11.51 am)

MR ROBINS: I am going to take you now to a document that you will have seen mentioned when you looked at the transcript of last week's hearing, which I think you were anticipating in one of your answers shortly before the break. This is <SUR00125178-0001>. If we zoom in at the top, we see you're emailing Nick, who I think worked for Surge.

A. Yes.

Q. You said:

"Please can you start a shared folder that has restricted access (you and I for now).

"This is to collate evidence ..."

Sorry, have you got some water?

A. Yes, I apologise. I'm fine. But I might still cough for a little bit. Okay.

Q. "This is to collate evidence that will support your case as we might be challenged by the administrator. "Can you place this email trail in it, in a folder entitled: Fees Evidence.

"This is independent evidence that our fees are market standard because a director of Blackmore, Pat McCreesh, has independently stated that to a client making the enquiry."

You will know my question from having looked at the transcript. It wasn't something he had independently stated to a client, was it he, you had drafted an email for him?

A. I'm not sure. Could you show me.

Q. Let's look at <SUR00118090-0001>. At the bottom, there is an email from Tony Platten. Hayley forwards it to you to say:

"Just received this from a client."

You say:

"Thanks, I will draft a reply."

Then <SUR00118099-0001>, you emailed Pat, saying: "Please see this enquiry from an investor asking us about fees ... Would you mind replying as it might be unethical for us to reply when we are the marketing company.

"To assist, I have drafted something for you which you can modify or send as you see fit." Then <SUR00118100-0001>, we can see you copied Paul and he replied to you, saying:

"Excellent email draft. He better use it!" You would have understood at the time Paul wanted Pat to use it so you would have some evidence to support your argument that the commission was market standard?

A. Oh, I couldn't definitely say that. I mean, it may be. Because -- I mean, the other explanation is that we are trying to allay the concerns of a concerned -- either a prospective investor or a concerned investor. So, on the one hand, he could be saying, "This represents us well and this difficult situation". On the other hand, he could be saying, "Well, this is good because I can use this as supporting evidence". But the fact remains, what's in that letter are facts.

Q. You were really hoping, "I hope Pat sends it because I need it for evidence", weren't you?

A. I don't remember thinking that this -- I don't remember, upon drafting this, thinking "This could be used as evidence". I remember thinking, "This is a tricky thing because LCF and Blackmore are using the same company, Surge, and how -- what is the appropriate way to explain this?".

Q. You wanted it for evidence because the 25 per cent was coming under attack. You wanted to say it was market rate. You didn't have any evidence to support that argument --

A. Oh, I had evidence to support that argument, but this is part of a bank of evidence after the event, clearly because, after the event, I'm using it as evidence. But was that the reason it was written that way?

Q. Well, you thought it would be helpful to have Pat sending it so you can say, "Look, a third party has independently confirmed these conditions are market standard". That's what you were hoping?

A. Well, that's how I latterly used it because you see I'm suggesting to Neil Morrison that we can put it in the file for that purpose. But was it constructed for that purpose? I don't think so. I think it was constructed to reassure the concerns of this member of public.

Q. You put in the email, draft email, second paragraph, end of the paragraph:

"Before selecting our current supplier we obtained quotes from 4 firms ..."

You hadn't actually ever seen a written quote obtained by Blackmore, had you?

A. I'd never been a written quote but I'd had multiple conversations with them about what they were quoted and I know that we were absolutely in the right ballpark at 20 per cent.

Q. You didn't even know if four was the right number, did you?

A. I'm not sure I did know that. I wonder if I put that in there knowing that I'm sending it to Pat who is going to edit this and top and tail it and make it his own, or whether I actually did know four because he'd told me that at some point. I don't really remember why I put four.

Q. Can we look at <SUR00118102-0001>. You replied to Paul to say:

" I really hope he does because I need it for evidence."

Do you accept your thought at the time you were drafting this was, if Pat sends this, we can put it in a file and use it later as evidence?

A. Yes.

Q. Then the third paragraph, you say:

"This letter from Pat is a third party confirming the industry standard."

You accept you were drafting it for Pat so you could then present it to people and say, "Look, a third party has confirmed it"?

A. I think this is just quite fortunate, killing two birds with one stone, really. The most important thing is to reply to the concerned member of public. But, in that reply, he has provided some evidence that we could use because we knew that we were in the frame as suspicious because the administrator's report said very early on that Surge had taken 25 per cent of bondholders' money, which -- the way that was phrased obviously put us right in the frame.

Q. You say in the second paragraph:

"Everyone tells us that our competitors charge between 15 and 30 per cent but we don't ever get to have a written quote from a competitor to physically evidence it."

Your problem was you didn't actually have any physical evidence to support your argument?

A. Physical evidence was a problem. We were told by many, many people, customers and section 21 sign-off partners, that this is the price, but it was very hard for us to have physical evidence because competitors weren't going to give us their contracts.

Q. So, you were manufacturing physical evidence to support your argument, were you?

A. You could say that. I suppose I was trying to kill two birds with one stone.

Q. You agree --

A. Can I just say, though, I wasn't making anything up, was I? So, yes, I wanted to have a purpose in how this was used, but the facts remain the facts.

Q. Well, you'd started with the argument, and you were trying to find physical evidence to support it?

A. Yes.

Q. Going back to the email we started with, you agree that Pat hadn't independently stated anything to a client. You had put words in his mouth?

A. Oh, this is just how I operate. If you look through all my emails with Pat, with Paul, with many people, it's my role, almost, to be secretary, if you like. I drafted lots of Pat's responses to many things so that we could get a fast turnaround. So, for instance, if something required facts, figures, stats, I would go and get them, I would make a draft and then I would send it to him for him to use or not use as he sees fit. That's normally how I would say it. I'd say, "Please either use this or not use this", and I was trying to be super helpful so that he wouldn't have to do all the legwork and he could turn around a response quite quickly. Very often, he would use what I drafted, but, equally, he may delete sections, write his own sections, make it his own. But the fact of me originally drafting gave him a head start and meant we'd get a faster turnaround.

Q. Except that if you drafted or even drafted most of it, it would be misleading to say, "Look, it is independent evidence"?

A. Well, no, because Pat had to accept it. I've not got a gun at Pat's head saying, "Use my content". I'm saying "Pat, I have tried to help you by drafting some content. Obviously, you will then edit this to make it your own or, if I have accurately represented you, you'll probably just put your name to it".

Q. You don't think that if you gave it to someone saying, "This is independent evidence" without revealing that you had had a key part in drafting it, you would be misleading them in some way?

A. I have to accept that I clearly have another agenda, that I'm wanting -- that I'm finding it hard to have physical evidence even though it is a fact that 20 per cent is normal. I am finding it hard to have physical evidence and I'm thinking I can kill two birds with one stone here. So, yes, I think that is what I'm doing.

Q. Can we look at <SUR00118650-0001>, please. It is a WhatsApp message from you to Paul. You are sending him a link to an article in The Times about Funding Circle with the headline "Losses increase by 40 per cent at peer-to-peer lender".

You say:

"Gold dust: on revenue of £140 million there was a marketing spend of £58 million. We are cheap by comparison. We are £60 million for £230 million funds in."

Do you remember being excited when you saw the article in The Times?

A. Yes, because all of us in the team were Googling to try and find comparable evidence, and so this was great because it showed -- Funding Circle had been considered quite credible and it showed the high cost of marketing.

Q. Then you say, in the next box:

"Can we ask Mark? This is a major defence if that's correct. 'Prove your fees are in line with the market Mr Careless' 'Well I charge 40 per cent less than the people that did Funding Circle'."

You were thinking this would help support the argument?

A. I thought it would, but I'm not an accountant and I do prefix here perhaps I'm being too simplistic because that's how I read it, but, you know, it's not my area of expertise, but, yeah, that's how I read it.

Q. You're giving this to Paul so he could use it in conversation and communications to support the argument that 25 per cent was market rate?

A. Yes. There is many ways in which he needed to support that argument -- journalists, SFO, administrators, lots of people saying, "Justify 25 per cent", and so we were --

Q. Johnny Mercer?

A. I don't know if Johnny Mercer asked about the fee. I'm not quite sure.

Q. If we look at <SUR00120261-0001>. This is from Johnny Mercer to Paul:

"Mate, was Surge's fee for marketing the bonds an industry standard? Was it really 25 per cent?" And Paul replies:

"Morning. Yes. The number is industry standard." He says he has seven clients. He confirmed last week that he didn't. Then he says:

"Funding Circle, the UK's largest alternative investment firm, has a cost of raising funds exceeding 25 per cent! They lost £50 million last year gaining clients."

Then <SUR00120260-0001>, he sends a further message to Johnny Mercer at the bottom. It is a link to Funding Circle's accounts. He says:

"Funding Circle (2018)- 41 per cent. Industry standard."

You didn't know he was using in to justify the fees to Johnny Mercer?

A. I wasn't privy to this conversation but I did know he would be using this to justify the fees in any context.

Q. You were using it as well to justify your argument that 25 per cent was market rate?

A. Yes.

Q. Can we look at <SUR00121444-0001>, please. You're emailing Chris Gilmour. He worked for a PR company, I think?

A. Yes.

Q. You say:

"I found this from Baily last week to be highly inappropriate."

You're referring to the person who was head of the FCA at the time. Over the page, you say: "Mr Bailey must surely know that 25 per cent is within the range of normal/industry standard. How could a man in his position not know that alternative investments all pay within this range?" Then you say:

"A quick Google search brings up the facts. "Funding Circle spent 40 per cent of its revenues on marketing last year."

A. And they say that in the FT, so that is quite credible, is it not?

Q. And then:

"Ratesetter.

"2018 accounts show costs of sales at 15 million or so (44 per cent of revenue) (Revenue was £34 million and admin costs were 33 million)."

And then "Lending Club", you say:

"In 2015 sales and marketing spend was 40 per cent ..."

Then "Zopa":

"2017 -- cost of sales 22 per cent of revenue ..." This is evidence, is it, that you had at your fingertips to justify 25 per cent commissions?

A. These are Google searches. I have done Google searches to try and find out information about what people are paying for marketing. Very hard to find out because there's not conveniently a line in your accounts that says, "How much did you spend on marketing?". Different accountants will, you know, cover this differently. It is very hard to get this information. Not many companies publicly state how much they would spend. Also, it's wrong to say we just did marketing. Obviously we outsourced

the whole business function. But, yes, this information is simply from Google searches, trying to find out what alternative investments might pay for this type of thing.

Q. Had you actually looked at Funding Circle's accounts?

A. I think so. Or I may have just taken the headline from the FT. But I think I did.

Q. Let's look at them. <MDR00227316>. Here is the accounts. Page 3, please. At the bottom right, do you see "Originations, £2.3 billion". You understand originations are new loans?

A. New loans, yes.

Q. That's new loans at £2.3 billion. You can see from the columns that's in the year 2018, isn't it?

A. Yes.

Q. Then the bottom left, "Revenue" for 2018, 141.9 million. Do you see that?

A. Yes.

Q. Then page 13, please, in the middle of the page, they explain what revenue is:

"How we generate revenue.

"We generate revenue in two primary ways: "(i) a transaction fee -- typically ranging between 1 per cent and 7 per cent of the original principal balance of the loan, which is deducted from the loan proceeds paid to the borrower.

"(ii) an ongoing servicing fee -- of 1 per cent per annum, calculated monthly on each loan (in most instances as a percentage of the outstanding principal balance of a performing loan)."

That's the small percentage fees they charged to borrowers, isn't it, that's their revenue?

A. Oh, yes.

Q. Then page 35, we can see there's a breakdown of the marketing spend somewhere. Where is that? "Marketing overhead", the second paragraph after the first table:

"Marketing overhead spend in the year rose to £57.8 million ... as the group continued its strategy ... Overall group spend remained at 41 per cent of revenue ..."

I mean, having seen all that, do you agree that Funding Circle wasn't spending 40 per cent of new money from investors on marketing, it was spending 41 per cent of its own fee income?

A. I see that, yes, and I didn't see that at the time. So, yes, you've pointed out something new to me.

Q. So, if we look at LCF's accounts for the year ended 30 April 2017, <L1/8> at page 4, we can see from the third paragraph that, during the financial year ending 30 April 2017, LCF issued bonds with a value of £53.4 million. Do you see that?

A. Yes.

Q. I have rounded it up, but that's broadly right. So the commission payable to Surge at 25 per cent would have been £13.35 million, wouldn't it?

A. Yes.

Q. If we look at page 18, note 2, we can see that LCF's revenue for that year was £7.8 million. Do you see that, at the bottom of the left-hand column?

A. Yes.

Q. So, if Surge had been receiving 41 per cent of LCF's revenue, which would be the Funding Circle comparison, then it would have got 41 per cent of that 7.8 or 3.2 million, wouldn't it?

A. Yes, I can see that me using that Funding Circle analogy was not apples with apples at all, now you've pointed out the detail, but that headline in the FT, the FT being a credible source, saying they spent 40 per cent on marketing, just at the time made me think, "Right, well, this is external third party evidence that explains our case". But now you've gone into the detail, I can see it was flawed to use.

Q. They said 41 per cent of revenue. Surely you would have understood that invested funds weren't being counted as revenue?

A. I wouldn't have thought about it at that level of detail. I wouldn't know how they defined revenue without really poking into it, and I obviously didn't.

Q. We saw the other examples you gave in that email where you were saying that "Bailey must surely know 25 per cent is within the range of normal industry standard. A quick Google search brings up the facts". Had you really found those by doing a quick Google search?

A. Yes, I think some colleagues had also done Google searches. I think we were all furiously trying to find independent evidence. We knew that our fees were standard from what all the professionals in the industry had told us. People had recommended clients to us, knowing our fees and appreciating our business model where we took the risk, because we only charged upon success, and we didn't charge upfront for marketing, and some of our competitors did charge upfront for marketing. So, we were in demand, and section 21 sign-off partners, like Northern Provident, were introducing us clients on the basis of our fees, and the fact of our business model where we took the risk. So we knew it was standard but we struggled to provide evidence that proved it was standard.

Q. You struggled to find evidence because it wasn't standard?

A. Oh, no, it was standard.

Q. You convinced yourself it was standard and you were looking for evidence to support your argument?

A. I was looking for evidence to support my argument because written evidence was something I struggled to find. But it is an absolute fact that this is the market standard price. All of the professionals in the industry who were recommending us to their clients were doing so on the basis of these fees. This was a topic of much discussion, for example, with Northern Provident, who were Blackmore's section 21 sign-off partner, who introduced at least three clients to us after the collapse of LCF, and we had detailed discussions because the FCA introduced something for the section 21 marketing that said you must now declare the costs you spend on marketing, and what was happening is, people were putting on their websites that they were spending 10 per cent on marketing and we said, "Well, how are people doing that? It's 20 per cent". He said, "Well, it's a fudge. They are saying publicly they are spending 10 per cent on marketing but in their accounts they are putting the other 10 per cent under another business heading to do with business services but it's still 20 per cent".

Q. But you didn't find those examples by Googling. They came from Project Context, didn't they?

A. What is Project Context?

Q. Can we look at <SUR00119549-0001>, please. Page 2. In the middle of the page, 29 March 2019, you email Keith Greywood at Surge, copied to Paul and to Oliver Easton-Hughes at Surge and you say: "Subject: context around our fees -- research. "Hi Keith, we need your assistance with 'Project Context'."

A. Okay, I had forgotten that terminology. But, yes, just as I said to you I was Googling, colleagues were Googling, Keith was Googling. I obviously found the Funding Circle example and he found some others.

Q. You say:

"The media are up in arms about the 25 per cent/£60 million and we wish to assist their understanding ...

"Can you please research the internet for data about what other, credible investment companies spend on marketing, on boarding new clients and managing them." You gave him the Funding Circle example: "We want to find factual information (and be able to reference our sources) re how much companies spend. "Please condense what you find into a short concise (less than one page) report."

Can you remember tasking him with Project Context?

A. Yes.

Q. If we look at page 1, we can see his response to you. He says:

"Attached are my thoughts on this, which I hope is somewhat helpful in terms of reputation management/justification. I've based this on comments I've seen so far and people's perception of what we do. I don't really have a chance restricting to 1 page -- sorry!"

Then he says:

"It is also difficult as most providers are not willing to publicly state in the press how much they have spent on marketing and administration." Do you remember looking at Keith's report?

A. I don't really remember the contents of it, but, yes, I do remember that he'd done some research and there was a report.

Q. Can we look at <SUR00119550-0001>. It is headed "Project Context". Do you accept that at the time you called it Project Context?

A. I only accept that because I have seen this. I have no recollection of it. But, yep, it makes absolute sense now. It was clearly called Project Context.

Q. Can we look at page 4, please. Keith says: "General research.

"Biggest costs for a business are what Surge does ..."

Then he says:

"12 per cent is average spend for companies on marketing."

At the bottom:

"Other providers.

"Funding Circle."

That's the example you gave him. In his final bullet point, he says, "The key information being: Funding Circle 'spent 40 per cent of its revenues on marketing last year'". Then he says Ratesetter -- let's look over the page:

"2018 accounts show costs of sales at 15 million or so (44 per cent of revenue) ..."

And then "Lending Club (US P2P)":

"In 2015, sales and marketing spend was 40 per cent ..."

He gives the link to the document.

Then "Zopa":

"2017 -- cost of sales 22 per cent of revenue (£10m, admin £25m)."

And then "Lendinvest", but there's no percentage. Do you accept that those examples are the ones that you then put into your email to the PR man that we looked at earlier?

A. Yes.

Q. If we go back to your email, <SUR00121444-0001>, over the next page, we've dealt with Funding Circle. The next one is Ratesetter. 44 per cent of revenue. Do you understand that's going to be the same point: it is not 44 per cent of monies from investors; it is 44 per cent of the company's revenue?

A. Are you sure? I mean, would it be different? Would different companies do it different ways, or is that definite?

Q. You don't know?

A. No.

Q. Okay. Let's look at Lending Club. You say: "In 2015, sales and marketing spend was 40 per cent", and you link to the document. I think we've got the document in the trial bundle at <R1/26>. At page 21, there's a table. In the 2015 column, in the middle, it's dealing with the position of Lending Club. You can see the income is various fees. You've got transaction fees, servicing fees, management fees, other revenue. Do you see, almost in the middle of the table, just above the middle, total net revenue is \$429 million?

A. Yes.

Q. And then sales and marketing, we can see, just a couple of rows below that, \$171 million. Do you see that?

A. Yes.

Q. That's 40 per cent of the net revenue, isn't it?

A. Yes.

Q. So it's not 40 per cent of investor monies, is it?

A. No.

Q. If we look at page 20 in the middle of the page, it says, in the fourth paragraph down:

"In 2015, Lending Club originated \$8.3 billion of loans ..."

You accept that 40 per cent of investor monies would have been a lot more than \$171 million, wouldn't it?

A. Yes.

Q. So that sales and marketing figure was in fact a tiny fraction of investor monies, wasn't it?

A. Yes.

Q. And then the next example you gave was Zopa. You said cost of sales, 22 per cent of revenue. We've got their accounts in the trial bundle at <R1/27>, and page 13 shows us that revenue, at the top, was just short of £46.5 million. Do you see that?

A. Yes.

Q. And then the cost of sales, just below that, is just over £10.3 million, isn't it?

A. Yes.

Q. So, as you said in your email, that's 22 per cent of revenue, but it's not 22 per cent of investor monies, is it?

A. I think I'd rather missed the point when I was using this information, because I was misunderstanding revenue.

Q. Can we go back to page 4 of this document. Under the heading "Business Review", it says, "Loan origination is a billion". So you agree the cost of sales figure that we saw is actually just -- it's not 22 per cent of investor money, it is a tiny fraction of investor money, isn't it?

A. Yes, yes. Clearly, I've used the wrong examples to justify my point. I mean, they are all peer-to-peer and not minibonds, and that will be the difference, but, yeah, I've found it hard to find published information, and I've grabbed the first Google search that Keith did and treated it like a fact and that's a flaw. I made a mistake there.

Q. So you accept the things you were citing to support your market rate argument didn't actually show that 25 per cent of investor money was market rate?

A. Yes. These examples do not justify my point. I still stand which the fact that our rates were completely standard for minibonds, but I'm scrabbling around to try and find this published anywhere and I've gone to peer-to-peer because they publish more information than minibonds and it's not comparing apples with apples and I'm using the information to justify my point and it's actually flawed. It doesn't justify my point.

Q. It undermines your point, doesn't it?

A. It does.

Q. Do you remember that you used this information to help Paul reassure Johnny Mercer?

A. I used this information -- I don't remember specifically to reassure one person, and I don't specifically remember using it to reassure Johnny Mercer, but definitely the intention was to reassure anyone and everyone who ever asked us. I was trying to prove a point, but my argument was flawed.

Q. Can we look at <SUR00120342-0001>. You have sent an email to Paul with the subject "Overview for Jonny". The attachment is "Overview_Jonny" The attachment is two pages and he asked for one:

"I think he can stretch to 2, especially considering he has actually been asking for more facts to back things up."

Do you remember drafting the note for Johnny?

A. I don't actually remember, but certainly I was looking to draft evidence to justify our point to anyone and everyone who wanted it, be that a journalist or the SFO or you guys or, indeed, Johnny Mercer. Sorry, I just don't remember doing this particularly for Johnny.

Q. Okay. Let's look at <SUR00120395-0001>. We can see Paul has sent it on to Johnny:

"Please see attached a briefing document I have had put together by Kerry Graham ..."

It is something you put together, isn't it?

A. Yes.

Q. Then the attachment is <SUR00120396-0001>. This is the document you put together, isn't it?

A. Yes.

Q. If we look at the bottom of page1, over to page2, at the top of page 2, you say:

"It would assist your understanding that the fees are normal/usual and certainly not an indicator of scandal by considering them in comparison to what the market leading firms in the sector are paying." It is not correct to say those companies were paying anything in the region of 25 per cent of new investor monies in sales and marketing charges, is it?

A. No, you've clearly made your point here, but, at the time, I was misunderstanding revenue, so I'm giving misinformation here, honestly given, but I'm misunderstanding the point here, and I haven't read the accounts, I haven't understood how they do their accounts in peer-to-peer, and so I have got it wrong.

Q. Can we look at <SUR00156404-0001>, please. You emailed Paul, subject "Leander Wealth". You say: "Hi Paul, we've not been able to find any email negotiations about the fees we charged LCF this is because it was agreed face to face or by phone. In doing the search, Alex found this (see attached) which is a contract JRM sent us to sign for a company he was working with called Leander Wealth. They paid introducer commissions at 30 per cent. To be honest I don't remember this at all and we've been unable to locate any other emails on the subject so I suspect it was a suggestion from JRM that we didn't take up. I am sending it to you because it is clear evidence that introducers fees of 25 per cent are not uncommon. This company paid more."

Do you remember finding this and being excited about it?

A. I genuinely don't recall this. However, I do recall that we were searching through all of our email catalogue to find any written evidence because we were struggling to find written evidence.

Q. Can we look at <SUR00122202-0001>. You email Alex. That's Alex Bennett. Who's that?

A. Yes, he's a member of the Surge staff.

Q. "Thank you Alex, the Leander Wealth one JRM sent me have proved to be really useful! They were willing to pay 30 per cent and the contract is clear evidence. Very useful for comparison."

Do you not remember finding this one and thinking it was clear evidence, it was very useful?

A. I don't remember it, but it's absolutely true it's clear evidence and very useful.

Q. Let's look at it, <SUR00156400-0001>. Page 1 has the recital:

"The principal provides financial planning and structuring advice and products to private clients. The principal is also responsible for the administration and compliance. The principal wishes to engage the introducer to introduce clients to the principal on a non-exclusive basis ..."

And then page 3, clause 7, if we could enlarge the whole of that:

"The fee payable to the introducer is 20 per cent of the gross fee received by the principal on the first £3 million of business written from introduced clients." Looking at that carefully now, do you accept that's 20 per cent of the principal's gross fee, not 20 per cent of investor money?

A. Yes.

Q. Because if --

A. No, 30 per cent here -- oh, the 30 per cent comes later.

Q. Do you accept, if it was 20 per cent of investor money, then it would mean the principal's fee was 100 per cent of investor money, which can't be right?

A. Yes.

Q. And then the same in 7.2:

"Once the introducer has introduced £3 million in business written the fee payable to the introducer will be 25 per cent of the gross fee received by the principal."

Again, it is not 25 per cent of investor monies, it is 25 per cent of the principal's gross fee?

A. Yes. Yes, I do see that now. Obviously, I didn't study this before making the comment, "How useful".

Q. Then the 30 per cent in the next one: "Once the introducer has introduced £6 million (a further £3 million) in business written the fee payable to the introducer will be 30 per cent of the gross fee received by the principal." You accept that's 30 per cent of the principal's gross fee, not 30 per cent of investor monies?

A. I do accept that. So, overall, this does not substantiate our point, this particular piece of evidence.

Q. Do you accept, in very broad terms, you have done the same thing: you have focused on the percentage number without thinking, "Well, what is this a percentage of?"

A. Absolutely. I haven't looked at the detail. But, absolutely, 20 to 25 per cent was standard. You have found here what we are wanting to use as evidence, and that's flawed, but the fact remains that I didn't get it wrong that 20 or 25 per cent was standard, it was standard.

Q. But it's fair to say that you were struggling to find any evidence to support the argument?

A. Really struggling. And, also, the experts who I would have wanted to lean on to maybe write a written report with their experiences, because this had all gone so public and so toxic, wouldn't be anywhere near it. So all of the lawyers that specialised in minibonds and all of the section 21 sign-off partners that were our good friends would not write us letters because they didn't want to be anywhere near this. So it was very hard for us to provide evidence for what we knew to be a fact.

Q. Or what you wanted to be a fact?

A. No, we knew to be a fact.

Q. But you accept you were desperate to find evidence. You'd spend things like train journeys Googling to try to find evidence to support the argument?

A. Yes, desperate to find evidence and really struggling.

Q. <SUR00156391-0001>. This is Oliver Easton-Hughes emailing you to say:

"I'm on my iPad so can't unfortunately search through the PDFs themselves but I've found a couple that include Squire Patton Boggs."

And he links a lot of information memoranda?

A. Yes, my next thought was, let's try and find more information about minibonds because peer-to-peer and other types of investment, it is different. So what can we find by a direct apple-with-apple comparison. We even struggled to find many minibonds on the internet because you don't type in "minibond" and it comes up, because they don't call themselves that, even though, technically, that is what they are. So we were struggling even to find many competitors. But he was tasked with finding some and getting their investment memorandum because we wanted to see if anyone had declared it in their investment memorandum. Because I'd say about 50 per cent of minibonds declared this in their IM and about 50 per cent didn't declare it. It clearly wasn't a requirement. Blackmore, for example, declared the 20 per cent and LCF, for example, did not declare 25 per cent.

Q. If we look at the next page, we can see what he'd found previously. No, the previous page, sorry, I wasn't recognising it. On the left, he emails you and Paul and Ryan:

"For reference, this is the search query I used: ... information memorandum bond UK introducer fee. I've found a few that specifically mention introducer fees." The first one is a 10 per cent broker commission. Then, at the bottom of the page, the last line, you can see there is another 10 per cent.

So is this right, he looked, the only examples he could find were 10 per cent, and so you asked him to look again?

A. Yes, because what we were finding -- well, Northern Provident Investments told us this: a lot of companies, spooked by what was happening with LCF, had started to keep it under 10 per cent, and they weren't misleading. The other 10 per cent they put on a different line in their accounts, they declared more of the services aspect of it rather than the marketing aspect of it.

Q. We can see from the links he sent, these aren't things from after -- well, the first one is from after -- no, it is not, it is 2018/10, so that's before. Then the next one we can see from the link is 2016. The bottom one has a date 2017. These are all things from before LCF's collapse, aren't they?

A. Well, maybe I'm wrong in saying it was just LCF that made people do it this way around. But it was definitely information I got from Northern Provident because one thing that did happen is the FCA

wrote to minibond holders and started to ask them to declare their marketing, and it was frowned upon if it was more than 10 per cent.

Q. You didn't then find any evidence to support the theory that they might have been splitting it out?

A. I don't remember.

Q. Can we look at <SUR00157959-0001>, this is from the Surge core WhatsApp group. Do you remember who was in that WhatsApp group?

A. No, but it's very likely, if you are saying it's core, it would very likely be the small team of people that were us when the business started, and that would be people like Ashleigh Newman-Jones, Ryan Holdaway, Steve Newman-Jones -- or Steve Jones, sorry, and Vicki. So I don't know if it was more than that, but it would be a very small team of people.

Q. The attachment is <SUR00157960-0001>. It is a screenshot that he sent of a message from Thistle. I think the previous one, actually, we need to look at first, <SUR00157961-0001>. Maybe, could you bring the two up side by side, with this one on the right? Vicki Bennett has gone through this. Was she one of the people tasked with going thoroughly through the emails to try to find the evidence that you were looking for?

A. Yes.

Q. What she's found is Alex Paschalis of Thistle, 18 June 2018, to you, saying:

"Hi Kerry, I've got a UK prospect who are currently having their loan note (quite similar to minibonds) structured with UK lawyers.

"It'll be a 5 per cent coupon for 3 years. They're looking to raise £25 million.

"They're allocating 25 per cent of the raise to marketing.

"They state a law firm has done DD on their offering; I haven't seen any of it.

"Their business is UK property ...

"They're looking for a marketing company for their section 21 loan note."

You don't know the name of the UK prospect mentioned, do you?

A. No.

Q. You don't know if they actually ever issued a loan note?

A. I can't remember this.

Q. Do you know if the UK prospect mentioned actually raised any money from a loan note?

A. I have a feeling we might have turned them down because there was a conflict they might be too similar to a pre-existing client, who would be Blackmore.

Q. Do you know if this prospect actually went ahead with issuing a loan note and raised money?

A. No. Because we turned them down, we didn't then keep following -- we didn't keep -- we didn't watch that company with any interest. I think we just turned them down and moved on.

Q. I don't think you knew who they were, did you?

A. I have no idea. Can't remember.

Q. You don't know if they actually paid anyone any money for marketing?

A. I simply can't remember who this particular proposed client is.

Q. When Vicki found this, you thought, excellent, we can use that as evidence?

A. I would have thought so. I mean, Thistle are very credible. Here they are stating that they have a client looking for 25 per cent. Yes. It's probably one of the better pieces of evidence we have.

Q. That's a thought you and Paul would have had at the time, "This is excellent, this is relevant evidence that we can rely on"?

A. Yes.

Q. You say in your witness statement that in the early days of working for LCF, you remember a meeting with a minibond issuer called Dolphin. Is that right?

A. Yes.

Q. You say:

"Dolphin asked us to promote their bonds, provided us with their literature and set out what they were willing to pay us."

Is that correct?

A. Yes.

Q. You say:

"The fee they were proposing was on a sliding scale and would increase based upon the amount invested and it went up to 20 per cent or maybe more."

Is that also right?

A. Yes.

Q. If that was right and you'd got all the literature that you mentioned from 2015, no-one would have needed to contact Dolphin after LCF's collapse to say, "We need you to help us, can you provide any documents?"; is that right?

A. I think we probably would have asked them, I would have thought. I can't remember asking them myself, but we were doing everything we could to get some evidence together, so we would have been looking for that.

Q. If you had had meetings with them before, you would be able to find emails arranging those meetings, for example? Vicki would have found them --

A. Maybe not, because I think JRM set that meeting up.

Q. Well, he would presumably have sent a text or a WhatsApp or an email --

A. Telling us the meeting was happening.

Q. -- telling you the meeting was happening?

A. I would presume so, yes.

Q. If you couldn't find it, it probably means it didn't happen, doesn't it?

A. No, we did meet with Dolphin.

Q. What about the literature you mentioned in your witness statement? If you had been given that at the time, then you wouldn't have needed to ask Dolphin to help. You could have just relied on the information --

A. Well, we wouldn't necessarily have kept a paper-based IM given to us at a meeting and I think -- I do remember us struggling to find this on emails. We were using search terms to see if our emails would come up with IMs, and things like that, contracts. I remember we were struggling to find anything, probably including Dolphin.

Q. Can we look at <SUR00121999-0001>. It is a message from Paul Careless to James Hall BowCap. He was also associated with Dolphin, wasn't he?

A. Yes, independently, he was an agent that sold Dolphin and he was the person that we met representing Dolphin. He was the one.

MR JUSTICE MILES: So he wasn't actually at Dolphin; is that right?

A. No. He had an independent company with an Irish guy, I think, called Daniel. They had an office where they were doing something a bit like what Surge did, but they didn't do all the back office services and technology like we did. They simply made the introductions. No, what they did is they went around to meet IFAs to promote Dolphin so that the IFAs would sell Dolphin. So they were kind of an intermediary who had relationships with the network of IFAs. That's what they were. And they were treating us almost like an extension of that. They were trying to get Surge to sell it, like they were getting all of the IFAs to sell it.

MR ROBINS: So, when Mr Careless refers in messages to you to James Dolphin, is that the explanation, do you think, for the reason he's saved him under that name?

A. Yes, because, when we first met him, he was working for Dolphin. Paul actually tried to get him to come and work for us, but that never happened.

Q. That was in October 2017, I think?

A. Paul quite liked the idea that he had these relationships with all these IFAs nationwide and thought maybe this was a different route to market for us.

Q. Actually, Surge offered him a job as business development consultant in October 2017?

A. Yes.

Q. So, in the middle, Paul says to him: "My SFO investigation and indeed S&W, the administrator hold the belief that the 25 per cent fees for Surge's services to LCF are extreme. It's the main thrust of their argument. I would like to provide evidence to prove to them both that a 25 per cent fee is actually entirely standard for raising money in the alternative finance space. As Dolphin is the largest bond in the market having raised £600 million over a decade they would be an ideal example for me. Would you be willing to help me prove that 25 per cent is standard fees?"

Did you know that Paul was asking James Dolphin?

A. I didn't, but I just can't remember. He probably told me this at the time but I can't remember. But we were asking everyone because we knew that we lacked written evidence. So he would have asked James, and we would have asked many people who knew that these fees were standard, to maybe write a letter for us or something. But nobody wanted to put their name to this after LCF had gone so toxic.

Q. Can we look at <SUR00122186-0001>, please. This is a screenshot that Paul sent to you and it is a screenshot of his exchange with James Dolphin. James says:

"No, I don't think we ever went beyond 20 other than to one big firm early days. It actually went down last couple of years."

Then Paul asks:

"Any you know I should look into?"

And James says:

"Store first paid huge comms as did Global Forestry ..."

25 per cent wasn't market rate, was it? It was huge?

A. Well, he's saying he paid 20, and he's also saying he went up more for a particularly big firm. So more than 20, less than 25, was what they were doing. So do you call that extraordinary?

Q. But "huge", he thought Paul was looking for examples of huge comms?

A. "Store first paid huge comms". He doesn't say how much is huge, does he? We are saying we want to evidence that our 20 to 25 is normal. He's saying, "Well, Store first paid huge ..."

Q. Do you know that Mr Careless and Surge aren't actually relying on Store or Global Forestry in these proceedings?

A. I don't know. Maybe we tried to find IMs on line and they had been pulled. I don't know. This is speculation now, because, if he's suggesting they're worth looking at, I would have thought we would have looked at them. But I don't recall.

Q. Can we look at <SUR00154485-0001>. On the left, Paul Crawford of Northern Provident is emailing Pat and you. He says:

"We'd gone back to the FCA in relation to the 20 per cent and they have immediately come back to us with the following. As you can see, we'd specifically asked the FCA to confirm this was going to be an industrywide change as everyone has marketing and fundraising costs ..."

And they say -- this is the FCA:

"Whilst the FCA is considering this issue more widely, in the specific case of the Blackmore website, we have significant concerns about the risk to investors posed by the 20 per cent fee paid to Surge. Although this fee may not necessarily be paid directly by investors, our understanding is that its likely effect is a substantial risk to capital and corresponding likelihood that investors will not receive their investment back. Accordingly, unless we have misunderstood the financial modelling around the Blackmore Bonds ... we consider that both the existence and effect of this fee should be flagged prominently to ensure that the relevant financial promotion complies with the 'fair, clear and not misleading' requirement." At the top of the page, you said:

"Oh dear ..."

Was your thinking at the time, if we have to flag 20 per cent clearly on the Blackmore website, their conversions are going to plummet?

A. Yes.

Q. Do you accept that if LCF had been open with the public about the 25 per cent commission, it would have had an extremely low conversion rate and raised considerably less money than it actually did?

A. Yes. The same is true of any minibond in the UK. If they had prominently advertised the cost of marketing, it would have been offputting.

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

MR JUSTICE MILES: Thank you.

Cross-examination by **MS DWARKA**

MS DWARKA: Mrs Venn.

A. Hello.

Q. Hi. Am I right in saying that you were the person in charge of the day-to-day running of Surge when it was dealing with the LCF bonds?

A. No. That would be Jo Baldock.

Q. Okay. But you were quite involved with the business otherwise?

A. I was a key person in the business, definitely.

Q. Now, in terms of the product. Surge effectively provided a comprehensive range of end-to-end support to LCF and not just lead; is that right?

A. Yes.

Q. So the service included the building, hosting, maintenance of a website for the digital service?

A. Yes.

Q. Marketing services, which was ongoing, and accounts management or investor relation functions; is that right?

A. Yes.

Q. So that's an accurate description of the entire set of services?

A. I could go into more detail, but that's the headline information.

Q. That is why you say the fee of 25 per cent was reasonable and acceptable?

A. Yes, because introducers, such as the network of IFAs, would be paid comparable fees, and yet we were a whole outsource business function. We weren't just introducing, we weren't just sending them on an application form. We were doing all of the back-office services as well.

Q. Yes, because, had LCF taken different companies to cover these different areas or services, it would have certainly cost them quite a lot of money --

A. Yes.

Q. -- to get that up and running?

A. Yes.

Q. That's the position. Now, Mr Thomson did often ask Surge to reconsider the 25 per cent rate, didn't he?

A. Yes.

Q. I think you mentioned that in your witness statement. You had a lot of interaction with Mr Thomson about LCF, didn't you?

A. It depends -- I would say I probably had less than you would imagine, given that they were our major client, but was I --

Q. A fair amount?

A. A fair amount, yes.

Q. Maybe not a lot.

A. Yes.

Q. A fair amount. You didn't always agree with him, though, did you?

A. I regularly disagreed with him.

Q. Now, in your statement, if you want to have a look, <C2/4> at page 12, paragraph 48, you describe your relationship with Mr Thomson as "awkward and fraught"?

A. Yes.

Q. You explained in your evidence that he was hard to deal with because he didn't provide as much information as people who you dealt with at Blackmore, for example. Do you recall saying that?

A. Yes. Blackmore were very open, transparent and collaborative. If they received a letter from the FCA, they forwarded it straight to me. Whereas Andy wouldn't do that. He would just say, "You need to change something on the website", and tell us what to change. And we would say, "Well, why, why?", whereas Blackmore would say, "We need to make some changes because of the FCA" and "Here you go, look at the FCA letter". Andy wouldn't share that information with me.

Q. He was a bit rigid, wasn't he?

A. Yes.

Q. I think you also said in your evidence he was a bit misogynistic?

A. Yeah.

Q. He had a bit of an issue with women in power?

A. Yes.

Q. But you didn't dislike him, you just found him difficult to deal with?

A. I thought he didn't like me. That's what I thought. And I thought, what a shame, because I didn't dislike him. I would like to have a nice relationship with this person who is key to my working life. But I could never get that. I would try and sort of pander to him and just be really nice, but he wasn't nice back.

Q. It is fair to say he had a bit of a communication issue, just generally?

A. Yes. Socially awkward. It wasn't just the women. He was socially awkward with the men as well.

Q. So, it's fair to say also that you didn't meet eye to eye on occasions on various things because your language is usually quite strong about him?

A. Yes.

Q. I will show you an email. <SUR00072982-0001>. I think that shows the general language that you use. The third line in the middle, where it says, if you want me to read:

"... so if Andy isn't being a twat, this shouldn't be a difficult --"

A. I have referred to him as a twat, which is obviously embarrassing when it is read out in court, but, yes, I did think that about him.

Q. You often questioned his decisions and instructions generally, but that's because you felt he was rigid?

A. My feeling was, I didn't think Andy was competent in the role as CEO of LCF. I didn't ever think, "Oh, there's a fraud here". What I thought was, "The guy in charge is not competent for such an important role". That's really what I thought.

Q. Is that why you didn't follow most of the instructions -- or some of his instructions at times and asked Mr Careless to speak to others to try and override him?

A. Well --

Q. I will show you an email. <SUR00003280-0001>. This email was shown to you by Mr Robins in his cross-examination. The language you use there is, "We need to override him and speak to Spencer. Will you or do you want me to?"

A. I wonder, what am I saying we need to override? I just need to read what is the issue.

Q. Yes. I think it is to do with --

A. Oh, the IM.

Q. We have got the email at the bottom where he's giving a little bit more of what he thinks should be included, and he tells you about the FCA's overriding principle and all the rest of it?

A. Yes. I think he's wrong. I know what competitors are doing. I know what a good customer journey is, what a slick funnel -- is the terminology in the industry, that, as a person clicks through the application form and goes from section, to section, to section, how that can flow or how that can disrupt or disjoint. I thought the process he was proposing would disrupt and disjoint. I know that competitors were doing it, so, from a compliance perspective, I couldn't see why not. I thought he was wrong and I wanted to do it differently.

Q. So you questioned his authority, because, in a sense, it would have restricted sales --

A. Yes.

Q. -- and it would have affected Surge's business in that sense, so that's why you --

A. Yes, I believed that the process I was proposing would get more investment, and what Andy wasn't doing here was telling me why. Well, I suppose he was, but not in the level of detail that I wanted because I saw competitors were doing it so I knew, from a compliance perspective, it was possible.

Q. Now, the focus for Surge is generally sales, as this has a direct impact on Surge's profit, has it not?

A. Yes.

MS DWARKA: My Lord, I have just realised it is 1 o'clock.

MR JUSTICE MILES: How much longer have you got?

MS DWARKA: Ten minutes.

MR JUSTICE MILES: I think what we will do is, carry on and finish Ms Venn's evidence so that she can leave.

MS DWARKA: Sure. So, ultimately, you were told by Mr Thomson that he's in charge, at some point, and that you should not go behind his back to speak to anyone else about LCF's business. I will show you the email. That's at <SUR00131168-0001>. This email was shown to you by Mr Robins previously. This is where he sets out what the position is and you talk about it.

A. So, just a couple of months after that last email, where I'm off to Spencer, he's telling me, "Don't go off to Spencer".

Q. Yes.

A. Yes.

Q. Now, it was put to you that you still didn't follow his instructions after that by Mr Robins, and that is correct, isn't it?

A. What do you mean, that I didn't -- that I still went to Spencer.

Q. Mr Thomson told you not to go and tell other people and you still didn't really quite do that?

A. Yes, that's true. We did respect it initially, but then JRM was in contact with Spencer and Spencer was still getting things unstuck, so we just slipped back into our old ways.

Q. Is it possible that this was, in a sense, because Mr Thomson was a bit limiting --

A. Yes.

Q. -- in terms of you and what your plans were to make sure you hit the numbers? Is that a fair comment?

A. Yes. Limiting without explaining why. Blackmore limited us all the time because there would be a letter from the FCA or the section 21 sign-off partner would take a view. So there would always be brakes put on us, as there should be. But Andy would never explain the brakes he was putting on, whereas Pat would, in detail, explain.

Q. But you have said in your evidence recently that you realised that was because his advisers were telling him what he could and couldn't do?

A. I think so, in the main, yes.

Q. You knew that Mr Golding had a good influence on Mr Thomson, didn't you?

A. Yes.

Q. That was why you were trying to use that connection?

A. Yes, we had gone to him with some issues and he'd unstuck them, so he clearly had an influence, and that's why we kept going back to him. He didn't always unstick everything. Andy held his ground on many things. But Spencer had an influence. There were times when he was able to help us get what we wanted.

Q. You mention in your evidence of the possibility of a sort of mentor type of relationship. Is that what you meant?

A. Well, I don't know. This is speculation. So, he had an influence. Why would he have an influence? Well, Andy certainly looked up to Spencer as a much more experienced entrepreneur and somebody who had been very successful in business. Is that why he bent to him or did he bend to him because, actually, Spencer did have more of a controlling function/role? That's what I don't truly know the actual correct answer. But, from -- anecdotally, from what I saw, it did seem very much like Spencer was in charge a lot of the time.

Q. But Andy held his ground as well?

A. Yes, he did. He did. It wasn't like Spencer said, "Jump," and Andy said, "How high?". Andy did hold his ground sometimes.

Q. Now, in your statement, if we can go through to <C2/4> at page 13, it is paragraph 56, you say that Mr Thomson's -- in line nine, you say that Mr Thomson's involvement was from a commercial perspective: "The first was Andy, as it was his business, and he wanted to approve how his business was being represented from a commercial perspective."

Can you see that?

A. Yes.

Q. Now, as far as you know, Mr Huisamen, Kobus, was in charge of compliance, wasn't he?

A. Yes.

Q. So he was authorised to approve and sign off the documents under section 21 of FSMA?

A. He was when he came in-house, and, prior to that, he was, because he worked at Sentient, who were the third party section 21 sign-off.

Q. So it was Kobus who was providing regulatory sign-off, rather than Andy, and deal with anything to do with compliance, wasn't it?

A. Not everything to do with compliance, because Andy would sometimes contact us about issues of compliance as well.

Q. But on a high level?

A. Well, Andy was on a higher level -- Andy was Kobus's boss.

Q. Yes. Now, it was also Kobus who visited your offices to give specific training to the entire team; is that right?

A. Yes; and Andy did as well.

Q. Andy would come to your offices generally to tell everybody how everything was going generally, but Kobus would have a specific role in relation to training and other parts?

A. Yes, and Kobus was more hands-on in terms of, he would monitor our calls, he would listen to a sample of calls from each of our agents and he had a score sheet and he would score them and he would let us know if we needed further training or any disciplinary action or if it was all going really well. He would monitor us.

Q. It was also him who dealt with and approved all financial promotions, wasn't it?

A. Yes.

Q. Now, you might not know this, but let's have a look at Kobus's first interview. It is at <M1/4> at pages 7 to 8. Kobus confirms that he used an independent verification process to verify information such as market-related figures or stats, if you have a look at that, the end of page 7 to page 8. But it does look like you were under the same sort of impressions, as you mention it in your statement, if you want to have a look. <C2/4> at page 9, paragraph 35. You talk about your understanding of how the process worked, and in the fourth line down you say that you understood that Lewis Silkin did all the verification process for LCF. So, to your knowledge, there was some sort of verification process in respect of what the IM said and everything else. Is that your understanding?

A. There has to be. So, when an IM is written, before it's signed off for section 21, there's the verification process, which means that you read the IM line by line and every time there's a fact or figure or statement, supporting evidence has to be provided that substantiates, corroborates, makes it clear that that is evidence, and that is how an IM gets signed off. The verification process is evidence for every fact and figure, and that's normally done by the solicitor, Lewis Silkin, but also in collaboration with the bond issuer. So Kobus would have been providing the evidence and facts and figures and Lewis Silkin would have been approving them and writing the verification pack --

MR JUSTICE MILES: Were you involved in the verification process?

A. Not for LCF, but the reason I know about this is because we were trying to establish another bond, oil and gas bond, for Simon Hume-Kendall, and so I became more aware of what was involved in the verification process, and also Blackmore were really transparent. So, I had some involvement in that.

MS DWARKA: So, Kobus would get -- would normally give the final say, and occasionally I think Andy gets involved; is that right?

A. For what?

Q. In terms of the approvals and -- the final promotion approvals, and all the rest of it?

A. Well, Kobus has the compliance experience to know what the rules are better than Andy. But, in terms of communication between LCF and Surge, we may interchangeably get communications from Andy or from Kobus. What happens behind the scenes at LCF -- does Andy and Kobus chat and then one of them get back to us? Probably. But we could receive the authority of LCF via Kobus or Andy.

Q. Let me show you your witness statement, <C2/4> at 17, paragraph 75. So, this is where, in the fourth line from below:

"Kobus was often the final say on compliance matters with occasional input from Andy."

This is what I was asking you about.

A. Right.

Q. Do you still stand by that statement?

A. Yes.

Q. Now moving on to another point, you knew that Mr Careless had a good relationship in the background with Mr Golding, didn't you?

A. Sorry, Mr Careless had a relationship with Mr Golding? Is that what you just said?

Q. Mr Careless.

A. Oh, I don't think they had much of a relationship, no.

Q. Did you know that Mr Careless had other deals with Mr Golding in the background?

A. I don't think he had other deals, unless you are referring to Isle of Wight, which never happened, but was talked about.

Q. Did you know about the loans that Mr Careless obtained via Mr Golding?

A. Oh, are you talking about the early days of Surge where they advanced money?

Q. Yes, I am talking about every -- other relationship --

A. Yes.

Q. -- which Mr Thomson might not be privy to but which does exist?

A. Yes, I do know about that. We were short of money and he was very kind to help us.

Q. So Mr Careless did have some sort of other relationship with Mr Golding?

A. Yes, but it just surprised me the context of saying they had a relationship. They weren't friends. They didn't speak regularly. They hardly ever met.

Q. No, it can be a business relationship?

A. Yes.

Q. Let's deal with the main issue. You are aware, aren't you, that there is an allegation that Mr Thomson had applied your signature to a version of the Surge agreement with LCF and sent it to PwC?

A. Yes.

Q. Surge's counsel cross-examined Mr Thomson about it at length; did you know that?

A. No.

Q. Well, Mr Thomson's evidence is that he did not apply your signature, but that someone else must have done it and provided it to his office for him to use, apply his signature and send to PwC. Did you know that's his evidence?

A. I think that's nonsense. I don't think that would have happened.

Q. Now, you say you haven't done it?

A. I have not done it.

Q. He said he hasn't done it. But you cannot be sure that someone else hasn't done that?

A. I cannot be sure, but the likelihood is -- I mean, I don't believe that's what happened because there's no-one in my organisation that would feel the need to do that.

Q. I think Mr Robins has asked you this, if you believe Mr Careless or Mr Russell-Murphy or somebody else from Surge could have applied your signature?

A. It's not an impossibility. My signature would have been available for anyone within Surge to take, digitally clip it off another document. But would that happen? No.

Q. Mr Careless sent you a message asking you if you could just do it to help him. Do you recall that message?

A. Yes.

Q. Do you want to have a look at the message?

A. I remember it.

Q. Could he not have asked somebody to just apply it to keep peace?

A. No, because he was asking me and he listened to me when I said we should get lawyers to look at this first. He listened to me when I said that.

MS DWARKA: Thank you, Ms Venn. My Lord, I have no further questions.

MR JUSTICE MILES: Mr Robins, normally, one would have cross-examination by other defendants before cross-examination by the claimant in cases. For some reason, it's happened the other way around here. I think you, strictly, have the right to ask any further questions, if you wish to, arising out of that cross-examination.

MR ROBINS: My Lord, it has happened the other way around because I didn't know that Ms Dwarka was intending to cross-examine until my cross-examination was well under way. So, it has just been a product of circumstances, rather than something that we set out to do deliberately. We haven't deliberately reversed the order for any reason.

But I have listened to that. I don't think I have any further questions. May I just confer for a moment? No, no questions arising out of that.

MR JUSTICE MILES: Thank you. Mr Ledgister?

MR LEDGISTER: My Lord, there is no re-examination of this witness.

MR JUSTICE MILES: Thank you. Thank you for coming and giving your evidence. You are now free to go.

A. Thank you. And I'm so sorry about being late yesterday.

MR JUSTICE MILES: Don't apologise. It happens.

A. Thank you.

(The witness withdrew)

Housekeeping

MR JUSTICE MILES: There is a matter which I think we might as well deal with, which is to do with a pair of spectacles, or possibly two pairs of spectacles.

MR ROBINS: Yes. We were intending to file a very short witness statement explaining that prescription glasses can be obtained readily from internet suppliers and the high street for between £25 and £50 and that it's not necessary for Mr Thomson to spend £800 on this. In terms of the background, and this is something that, again, we are potentially going to set out in evidence, we have very recently bent over backwards to consent to things that we could have opposed because we wanted to get on with the trial and didn't want disruption, but there comes a point where we do have to draw a line and say Mr Thomson should stop treating this money as though he is entitled to it. The claimants have a good arguable claim to it and he should be cutting his cloth when it comes to buying eyewear. So, we were planning to put in something in response. We could deal with it now if your Lordship is prepared to take all that from me, as it were.

MR JUSTICE MILES: It is not something that I would expect to be dealing with, frankly.

MR ROBINS: The reason that we --

MR JUSTICE MILES: At the moment, it seems to me that, if you wish to put in some evidence, then you should do so. The other point that did occur to me, Ms Dwarka, was that, quite recently, there was evidence from your side, from Mr Thomson's side, saying that he needed a driver, and it now appears that one of these pairs of glasses is for driving.

MS DWARKA: Yes.

MR JUSTICE MILES: And whether there is a difference between the two pairs of glasses, and whether he is even driving.

MS DWARKA: I will need to take instructions, my Lord.

MR ROBINS: My Lord, from our perspective -- obviously, we don't know how long it is going to take your Lordship to prepare a judgment, and we didn't want to be in the position where Mr Thomson is acting as though he's just entitled to spend this money and constantly requesting permission to spend it on X, Y and Z.

As I say, it comes in the context where we have recently consented to a huge amount of expenditure in connection with moving house and arrangements that had to be made. There comes a point where we feel, for our part, that he should start choosing the cheaper options rather than the most expensive ones.

MR JUSTICE MILES: Because I think it may be that there this goes beyond just the pair of glasses, or two pairs of glasses, I will give you the opportunity to put in that evidence.

But, on the other hand, if Mr Thomson requires at least one pair of glasses in order to be able to read properly, then I think it is important that he should be able to do so.

MR ROBINS: Absolutely.

MR JUSTICE MILES: There is a question about how much they should cost and there is a question about whether he needs two pairs of glasses and whether the glasses which are being sought are in any way unusual or whether they are the kinds of glasses that you can get at a well-known high street optician, the name of which I won't mention, but I think all of us are aware of. I will give you the chance to deal with that. If you could deal with it as briefly as possible, Mr Robins, and I will then have a look at this on paper. I will give you the opportunity to respond as well.

MS DWARKA: I will seek some instructions.

MR JUSTICE MILES: But I want brief evidence on this. I don't want to turn this into a big matter.

MS DWARKA: Thank you, my Lord.

MR JUSTICE MILES: Is there anything else?

MR LEDGISTER: My Lord, there is just one matter, nothing to do with spectacles, I'm glad to say.

My Lord, Ms Dwarka has asked that on Monday, when the Surge fee experts are giving evidence, that I will cross-examine out of turn. I don't anticipate it being a major issue for the claimant, but clearly it is going to be --

MR JUSTICE MILES: I will leave that to you --

MR LEDGISTER: I'm grateful.

MR JUSTICE MILES: -- to sort out between yourselves. That's fine.

MR LEDGISTER: I am grateful. Thank you.

MR JUSTICE MILES: So, the next things on the agenda, then, are the experts. That takes us until when?

MR ROBINS: Until Tuesday, possibly lunch time, on the current timetable. There is then some time for preparation --

MR JUSTICE MILES: Is this the latest version?

MR ROBINS: Yes. There is then some time for preparation of closing submissions, interrupted briefly by the expert giving evidence by videolink, who I understand Ms Dwarka will have some questions for, and then we hand in our closing submissions, your Lordship reads them and we come back for closing speeches.

Mr Shaw is reminding me that the timetable for defendants' closing submissions was prepared at a time when there were rather more representatives for the defendants than there are now; Mr Warwick was here, for example, and was going to have quite a lot to say. It may not be something for now, but I imagine that, by agreement, we would be able to cut down the time for defendants' closing submissions by at least a couple of days.

MR JUSTICE MILES: Yes, all right, and that's obviously something that needs to involve Mr Sedgwick as well --

MR ROBINS: Yes.

MR JUSTICE MILES: -- any discussion about the timetable on that. But it does look as though that may well be something that can be reduced a bit.

MR ROBINS: Yes.

MS DWARKA: My Lord, I should say it may be that I won't cross-examine the expert Mr Watson, but I will indicate -- the one from the videolink. It will be very short. I will still decide --

MR JUSTICE MILES: If you can --

MS DWARKA: By next week --

MR JUSTICE MILES: -- indicate that -- when do you think you might be able to give that indication? Do you think by the end of Tuesday?

MS DWARKA: Yes.

MR JUSTICE MILES: So by the end of Tuesday next week, it would be helpful if you could make that clear, and then Mr Watson can be stood down, if that is the decision.

MR ROBINS: Yes. I don't know if we would need a formal ruling from your Lordship to the effect that his evidence stands unchallenged.

MR JUSTICE MILES: If he is not cross-examined, then I will just admit his report or reports without him having to be cross-examined.

MR ROBINS: Yes.

MR JUSTICE MILES: I don't think it will be necessary then for him formally to confirm those reports.

MR ROBINS: I think that's right.

The reading time for your Lordship was also set at a time when there were rather more defendants, but I don't think four days is overly generous.

MR JUSTICE MILES: No. I think it will be helpful to have proper time to read those. It may be that, at some point on Tuesday, it may be helpful to have a discussion about the nature and format of those closing written submissions in a form that would be of most assistance to me.

One thing that might be worth mentioning now is that it would be -- there were earlier directions as to the legal propositions contained in the claimants' openings and the extent to which those were in issue, and I think there were actually directions to that effect. I don't know whether those have been met.

MR ROBINS: The short answer is, no.

MR JUSTICE MILES: So, it would be helpful for there to be an indication as to the extent to which those are in issue before the claimants have to produce their closing submissions. If they are in issue, then the claimants will just have to -- presumably, they are going to say, "These are our legal propositions", but it would be, I think, helpful to have an indication about that. It would also be helpful -- and I can say this now that the factual evidence is completed -- for the parties to identify in their closing submissions what findings of fact they are inviting the court to make on key points and the reasons why. That may seem an obvious point, but, on key points of controversy, it is helpful for

the written submissions to identify those points and for the party in question to say, "This is the finding on this point which we would invite the court to make, and here is why".

We might have a discussion, but I'm not going to have it now, about length, and that sort of thing. But we can discuss that on Tuesday.

MR ROBINS: Yes.

MR JUSTICE MILES: We will adjourn now until Monday -- sorry, I should say, there isn't a chance that we can accelerate these experts?

MR ROBINS: No. Based on prior knowledge, no, because they -- it was difficult enough to pin them down to bring them earlier. Your Lordship will recall they were meant to be later, before the settlement with Mr and Mrs Hume-Kendall. We managed to get a date when they could come earlier, but that was rather difficult. At this short notice, I really don't think it is going to be possible.

MR JUSTICE MILES: So we will say Monday. Thank you.

(1.23 pm)

(The hearing was adjourned to Monday, 13 May 2024 at 10.30 am)

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