Claim No. BL-2020-001343

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

B E T W E E N :

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

Claimants

-and-

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

Defendants

CLAIMANTS' WRITTEN CLOSING SUBMISSIONS

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A. INTRODUCTION

A1.1 LCF at all times carried on a fraudulent scheme by which it raised money from bondholders on the back of false representations as to its business and those monies were then misappropriated by, in particular, D1, D2, D3 and D4.

A1.2 Due to the high interest rates it promised bondholders and the enormous fee it paid to D6, LCF's business model was always bound to be unsustainable, even without any misappropriations. This unsustainability was then exacerbated by the misappropriation of its monies. As a result, LCF operated as a Ponzi scheme, using new money from new bondholders to meet obligations to existing bondholders.

A1.3 Each of the remaining Defendants knowingly participated in the fraudulent scheme carried on by LCF. As a result, they are all liable to make contribution for their part in the fraudulent trading of LCF.

A1.4 In carrying on the fraudulent scheme D1, as a *de jure* director of LCF, and D4, as a shadow and/or *de facto* director of LCF each breached the duties they owed to LCF. The Claimants therefore have proprietary and personal claims against D1 and D4 in relation to these breaches of duty and proprietary and personal claims against the other Defendants in relation to their receipt of LCF's property as a result of these breaches of duty and in relation to their dishonest assistance in the breaches of duty.

A1.5 These closing submissions set out the liability of each of the remaining Defendants in relation to each of the causes of action asserted by the Claimants against them.

A1.6 The closing submissions set out in relation to each of the relevant Defendants their participation in, and knowledge of, the following matters (in broad overview): (i) the Sanctuary scheme (including The Hill and The Beach); (ii) Paradise Beach; (iii) Lakeview; (iv) SAFE and LCF; (v) the Lakeview SPA; (vi) the Elysian SPA; (vii) the Prime SPAs; (viii) the LPE SPA; (ix) the LPT SPA; (x) other misappropriations; (xi) attempts to conceal the fraud after December 2018; and (xii) the involvement of D5, D6, D7 and D9. The factual findings which the Claimants invite the Court to make are those set out in these sections.

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A1.7 The closing submissions then describe: (i) the participation in and knowledge of each of the Defendants in relation to the fraudulent trading of LCF; (ii) the breaches by D1 and D4 of the duties they owed to LCF; (iii) the proprietary claims asserted by the Claimants; (iv) the knowing receipt claims asserted by the Claimants; and (v) the claims in dishonest assistance asserted by the Claimants.

A1.8 The final section of the closing submissions explains the quantum of the money judgment sought by the Claimants in relation to their fraudulent trading, breach of duty, knowing receipt and dishonest assistance claims.

A1.9 The Claimants' position on the relevant law has already been set out in their written opening submissions on the law.[1] The relevant points of law are not repeated in detail in these closing submissions but are summarised where relevant for convenience.

A1.10 D1 and D5/D6 have set out their agreement or otherwise on the Claimants' propositions of law.[2] The only point of disagreement that the Claimants consider is material to these claims against the remaining participating Defendants concerns the points of law relied upon in relation to the strike-out application D1 made on 21.03.24 and which the Court decided as a matter of case management would be dealt with together with all the other issues in the trial. The Claimants set out their position on the applicable law in the section of these closing submissions dealing with their proprietary claims.

1 **[A2/2/1]**.

2 **[A2/3.1/1]** and **[A2/6.1/1]**.

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B. THE CLAIMANTS' CLAIMS IN OUTLINE

B1 D1

B1.1 D1 acted in breach of the fiduciary duties he owed to LCF under the Companies Act 2006.

B1.2 The Claimants assert a proprietary claim to all of LCF's monies paid out in breach of fiduciary duty and their traceable proceeds which remain in D1's hands.

B1.3 The Claimants seek equitable compensation from D1 for any of LCF's monies paid out in breach of duty and which are not recoverable by them under their proprietary claims.[3]

B1.4 Further, or alternatively, D1 acted in breach of the duty of care he owed to LCF under section 174 of the Companies Act 2006. The Claimants seek damages for all monies paid out by LCF as a result of D1's breach of this duty.

B1.5 D1 was a knowing party to the fraudulent carrying on of business of LCF within section 246ZA of the Insolvency Act 1986 and the Claimants seek a contribution from him equal to the deficit in the administration estate of LCF.

B2 D4

B2.1 D4 was at all material times a shadow or *de facto* director of LCF. He owed LCF the same duties as would be owed by a *de jure* director.

B2.2 D4 acted in breach of the fiduciary duties he owed to LCF.

B2.3 The Claimants assert a proprietary claim to all of LCF's monies paid out in breach of fiduciary duty and their traceable proceeds which remain in D4's hands.

---

[3] In the RRRAPoC, the Claimants also assert a claim against D1 for dishonest assistance in D4's breaches of duty to LCF: RRRAPoC ¶91 **[B1/2.1/66]**. However, as any such assistance would also constitute a breach by D1 of the duties he owed to LCF, it is not necessary for the Claimants to pursue the dishonest assistance claim against D1 as a separate freestanding cause of action.

Source: Mouseinthecourt.co.uk

B2.4 The Claimants seek equitable compensation from D1 for any of LCF's monies paid out in breach of duty and which are not recoverable by them under their proprietary claims.

B2.5 Alternatively, (i) D4 is liable as a knowing recipient for all monies paid out by LCF in breach of fiduciary duty by D1 and their traceable proceeds which were received by him; and (ii) D4 dishonestly assisted D1 in breaching the fiduciary duties he owed to LCF and the Claimants seek equitable compensation for the loss arising from such assistance.

B2.6 Further, or alternatively, D4 acted in breach of the duty of care he owed to LCF under section 174 of the Companies Act 2006. The Claimants seek damages for all monies paid out by LCF as a result of D4's breach of this duty.

B2.7 D4 was a knowing party to the fraudulent carrying on of business of LCF within section 246ZA of the Insolvency Act 1986 and the Claimants seek a contribution from him equal to the deficit in the administration estate of LCF.

B3 <u>D5/D6</u>

B3.1 The Claimants assert a proprietary claim to all of LCF's monies paid out in breach of fiduciary duty by D1 and/or D4 and their traceable proceeds which remain in D5's and D6's hands.

B3.2 D5 and D6 are liable as knowing recipients for all monies paid out by LCF in breach of fiduciary duty by D1 and/or D4 and their traceable proceeds which were received by them and which are not recoverable by the Claimants under their proprietary claim.

B3.3 D5 dishonestly assisted D1 and/or D4 in breaching the fiduciary duties they owed to LCF and the Claimants seek equitable compensation for the loss arising from such assistance.

B3.4 D5 and D6 were knowing parties to the fraudulent carrying on of business of LCF within section 246ZA of the Insolvency Act 1986 and the Claimants seek a contribution from them equal to the deficit in the administration estate of LCF.

Source: Mouseinthecourt.co.uk

B4 D7/D9

B4.1 The Claimants assert a proprietary claim to all of LCF's monies paid out in breach of fiduciary duty by D1 and/or D4 and their traceable proceeds which remain in D7's and D9's hands.

B4.2 D7 and D9 are liable as knowing recipients for all monies paid out by LCF in breach of fiduciary duty and their traceable proceeds which were received by them and which are not recoverable by the Claimants under their proprietary claim.

B4.3 D7 dishonestly assisted D1 and/or D4 in breaching the fiduciary duties they owed to LCF and the Claimants seek equitable compensation for the loss arising from such assistance.

B4.4 D7 was a knowing party to the fraudulent carrying on of business of LCF within section 246ZA of the Insolvency Act 1986 and the Claimants seek a contribution from him equal to the deficit in the administration estate of LCF.

B5 D8

B5.1 The Claimants assert a proprietary claim to all of LCF's monies paid out in breach of fiduciary duty by D1 and/or D4 and their traceable proceeds which remain in D8's hands.

B5.2 D8 is liable as a knowing recipient for all monies paid out by LCF in breach of fiduciary duty and their traceable proceeds which were received by him and which are not recoverable by the Claimants under their proprietary claim.

B5.3 D8 dishonestly assisted D1 and/or D4 in breaching the fiduciary duties they owed to LCF and the Claimants seek equitable compensation for the loss arising from such assistance.

Source: Mouseinthecourt.co.uk

B5.4 D8 was a knowing party to the fraudulent carrying on of business of LCF within section 246ZA of the Insolvency Act 1986 and the Claimants seek a contribution from him equal to the deficit in the administration estate of LCF.

B6 The Claimants' alternative claims

B6.1 In the event that the Claimants are unsuccessful on the claims made in relation to monies improperly paid out by LCF, which are set out above, they will rely on analogous claims in relation to LOG.

B6.2 Each of D1, D4 and D8 knowingly participated in the fraudulent carrying on of business of LOG within section 246ZA of the Insolvency Act 1986 and the Claimants seek a contribution from each of them equal to the deficit in the administration estate of LOG.

B6.3 D2 and D3 each acted in breach of the fiduciary duties they owed to LOG under the Companies Act 2006.

B6.4 The Claimants assert a proprietary claim against each of D1, D4, D5, D6, D7, D8 and D9 to all of LOG's monies paid out in breach of fiduciary duty by D2 and/or D3 and their traceable proceeds which remain in those Defendants' hands.

B6.5 D1, D4, 4 D8 and D9 are liable as knowing recipients for all monies paid out by LOG in breach of fiduciary duty and their traceable proceeds which were received by them and which are not recoverable by the Claimants under their proprietary claim.

Source: Mouseinthecourt.co.uk

C. THE FACTUAL EVIDENCE

C1 Assessment of evidence

C1.1 The importance of contemporaneous documents has been emphasised in a number of cases.

C1.2 In *The Ocean Frost* [1985] 1 Lloyds Rep 1, Robert Goff LJ stated (at 57[4]):

> "*Speaking from my own experience, I have found it essential in cases of fraud, when considering the credibility of witnesses, always to test their veracity by reference to the objective facts proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities. It is frequently very difficult to tell whether a witness is telling the truth or not; and where there is a conflict of evidence such as there was in the present case, reference to the objective facts and documents, to the witnesses' motives, and to the overall probabilities, can be of very great assistance to a judge in ascertaining the truth. I have been driven to the conclusion that the Judge did not pay sufficient regard to these matters in making his findings of fact in the present case.*"

C1.3 This statement was recently cited by Males LJ in *Simetra Global Assets Ltd v Ikon Finance Ltd* [2019] 4 WLR 112 at [48][5] following a passage in which he noted the importance of contemporaneous documents as a means of identifying the truth and that a party's internal communications were likely to be of particular value:

> "*In this regard I would say something about the importance of contemporary documents as a means of getting at the truth, not only of what was going on, but also as to the motivation and state of mind of those concerned. That applies to documents passing between the parties, but with even greater force to a party's internal documents including e-mails and instant messaging. Those tend to be the documents where a witness's guard is down and their true thoughts are plain to see. Indeed, it has become a commonplace of judgments in commercial cases where there is often extensive disclosure to emphasise the importance of the contemporary documents. Although this cannot be regarded as a rule of law, those documents are generally regarded as far more reliable than the oral evidence of witnesses, still less their demeanour while giving evidence…* "

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4 **[S2/36.1/57]**.

5 **[S2/151.2/9]**.

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C1.4 Males LJ went on to explain (at [49][6]) that:

> "*It is therefore particularly important that, in a case where there are contemporary documents which appear on their face to provide cogent evidence contrary to the conclusion which the judge proposes to reach, he should explain why they are not to be taken at face value or are outweighed by other compelling considerations…*"

C1.5 The importance of ascertaining the facts from the documentary record, rather than oral evidence, was also stated by Leggatt J in *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2020] 1 CLC 428. Leggatt J described various shortcomings of human memory at [15]-[21][7] and concluded (at [22][8]):

> "*In the light of these considerations, the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose – though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth.*"

C1.6 However, as Cotter J explained in *Aspinalls Club Ltd v Lester Hui Chun Mo* [2023] EWHC 2036 (KB) at [137][9]:

> "*… not all contemporaneous documentation carries the same weight and it is necessary to treat with caution documentation which may have been self-serving at the time of creation and to consider carefully whether the document can be taken at face value.*"

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6 **[S2/151.2/9]**.

7 **[S2/156.2/7]**.

8 **[S2/156.2/8]**.

9 **[S2/178.1/33]**.

Source: Mouseinthecourt.co.uk

C2 The Claimants' witnesses

C2.1 The Claimants rely upon evidence from Mr O'Connell, Mr Shinners, Ms Lloyd, Mr Hudson and Mr Pitt.

C2.2 Mr Hudson's evidence concerns the operation of LCF as a Ponzi scheme. The evidence of the other witnesses relates to realisations in the administrations and the net deficiencies in each of the administration estates of LCF and LOG and is relied upon by the Claimants in relation to the quantum of their claims.

C2.3 The Claimants witnesses are all professional persons who provided the best assistance to the Court that they could. They were all honest and the Court should accept their evidence in full without hesitation.

C3 D1

C3.1 D1 was a thoroughly unreliable witness whose evidence should only be accepted where it is corroborated by unimpeachable contemporaneous documents.

C3.2 **First**, notwithstanding the certificate certifying compliance with PD 57AC signed by Mr Slade[10], it is clear that sections of D1's witness statement were not written in his own words[11] but rather in Mr Slade's words. This was exemplified by the fact that D1 did not even know the meaning of some of the words used in his witness statement.[12]

C3.3 **Second**, D1 did not believe his witness statement to be true in all respects. At the outset of his evidence, he explained that on re-reading his witness statement, there were "*a number of things that are not quite as accurate as they could be.*"[13] Rather than setting out the corrections he considered needed to be made, as is conventional, he simply gave a couple of examples. D1 clearly did this to allow him the flexibility to depart from his

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10 **[C2/1/67]**.

11 As is required by paragraph 3.3 of PD 57AC.

12 Day 23/page 47/line 9-Day 23/page 49/line 20 [**A5/23/13]**.

13 Day 19/page 69/line 23-Day 23/page 70/line 8 [**A5/19/18]**.

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witness statement in his oral evidence and to try and preserve his ability to change his story when confronted with documents which were at odds with his witness statement.[14]

C3.4 **Third**, there were instances when D1 gave evidence that contradicted his witness statement but then changed his answer when confronted with what he had stated in his witness statement. For example, he stated that "*someone else in the group*" made a working financial model of the estimated values of the properties at the resort in Cape Verde.[15] However, when confronted with his witness statement, which read "*…That involved making a working financial model of the properties at the resort and their estimated values. But, apart from that, I had no real involvement in this project*"[16], he modified his answer and admitted that "*I would have, you know, had some hand in it.*"[17]

C3.5 **Fourth**, D1 clearly fabricated significant parts of his oral evidence. Sometimes, this was to try and reconcile his evidence with documents placed before him. For example, in his witness statement, he stated that in or around August 2017, LOG was nearing its facility limit, which was increased to £50 million by a side letter.[18] When presented with the side letter[19], which was dated 1 December 2017, D1 first claimed that it reflected a verbal agreement made at an earlier date.[20] He was then taken to documents which demonstrated that the side letter had been signed in March 2018 but backdated to 1 December 2017.[21] D1's explanation was that the date on the side letter reflected the date at which the oral agreement to increase the facility letter had been reached.[22] He confirmed to the Court that the side letter had been dated in December to reflect when the extension had been agreed between LCF and LOG.[23] D1 went on to say that the extension had been discussed on a number of occasions through November 2017.[24]

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14 See, for example, Day 24/page 133/lines 8-23 **[A5/24/34]**.

15 Day 21/page 22/lines 5-8 **[A5/21/6]**.

16 Thomson ¶19 **[C2/1/6]**.

17 Day 21/page 25/lines 6-13 **[A5/21/7]**.

18 Thomson ¶118 **[C2/1/42]**.

19 MDR00134419.

20 Day 20/page 48/lines 7-11 **[A5/20/12]**.

21 MDR00133748; MDR00134332; MDR00134334

22 Day 20/page 51/line 12 – page 52/line 4 **[A5/20/13]**.

23 Day 20/page 58/lines 17-24 **[A5/20/15]**.

24 Day 20/page 60/ lines 15-25 **[A5/20/15]**.

Source: Mouseinthecourt.co.uk

When it was pointed out to D1, that in his witness statement he had said that the facility was extended "*In or around August 2017*"[25], he said "*I don't remember the exact day. That is why I've said "in or around". It was summer into autumn into winter time.*"[26] It was clear that D1 was making it up as he went along. D1 then sought to rely on a default notification letter dated December 2017 without seeming to realise that it undermined his position.

C3.6 A further example of this can be seen in D1's evidence on his knowledge of the value of the Paradise Beach resort. From reading a variation agreement between Paradise Beach ATA and CV Resorts[27] when it was placed before him, D1 believed that Paradise Beach had an obligation to build a hotel. He then gave the impression that he knew that the Savills valuation under-valued the resort because of Paradise Beach ATA's obligation to build this hotel.[28] However, when the Court asked to see the relevant clause, it was clear that the obligation to build the hotel was that of CV Resorts and that D1's evidence had been ad libbed from his mis-reading of the contract.[29]

C3.7 On other occasions, D1 simply fabricated his evidence to avoid acknowledging facts which he perceived would harm his defence. For example, D1's response when he was asked about the contents of his tax return. D1 claimed that he didn't read his tax return before signing it:[30]

> 17 MR JUSTICE MILES: Tax returns have a declaration on them,
> 18 don't they?
> **19 A. Yes, my Lord, I'm well aware of that.**
> 20 MR JUSTICE MILES: Did you read the tax return before you
> 21 signed it?
> **22 A. I would have sat down with Mr Davidson. He would have**
> **23 said, "There's your tax return, sign that, this is the**
> **24 tax you need to pay and pay it". I've known Mr Davidson**
> **25 for many, many, many years. I trusted him implicitly.**
>
> **1 So I would have just signed where he asked me to,**
> **2 trusting that he had -- he had calculated things**
> **3 correctly. I don't believe I would have gone through it**

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25 Thomson ¶118 **[C2/1/42]**.

26 Day 20/page 61/lines 18-25 **[A5/20/16]**.

27 MDR00227593

28 Day 21/page 47/line 10 - page 48/line 4; Day 21/page 49/lines 6-15 **[A5/21/12]**.

29 Day 21/page 56/lines 4-21 **[A5/21/14]**.

30 Day 25/page 31/line 17 – page 32/line 24 **[A5/25/8]**. See also Day 25/page 33/lines 11-20 **[A5/25/9]**.

Source: Mouseinthecourt.co.uk

4 in detail. I was open with him. I provided him
5 everything. I am trusting by nature. He hadn't given
6 me any reason to doubt his work in the past, so I would
7 have just signed where he said to sign and paid the tax.
8 MR ROBINS: Can we go back to <MDR00227595>. At page 22 is
9 the schedule of calculations. Is this what Mr Davidson
10 would have gone through with you?
11 A. This would have been a calculation that would have been
12 included in the documentation, I imagine, but the
13 conversations with Mr Davidson were: come in, see him,
14 sit down, "How's things?", cup of coffee, talk about
15 family because we knew each other's families, "This is
16 your tax return", already open on the page for
17 signature, "Sign here. Here is the amount you need to
18 pay for tax", paid the tax and off I go. He wouldn't
19 have -- we didn't go through this. I just trusted him
20 that I provided all the documentation to him, I provided
21 all my bank statements to him, they did all the tax
22 calculations, they did all the computations in the best
23 way that they thought to manage my affairs. I signed it
24 and paid the tax.

C3.8 However, it is clear from the contemporaneous documents, that in fact D1's accountants sent him a copy of his amended 2015/16 tax return and his 2016/17 tax return by email with a detailed covering letter. The covering letter asked him to check these documents carefully before signature. Further information was requested by D1's accountants in relation to the 2016/17 tax return. D1 was asked to confirm he was happy with the 2015/16 return, upon which confirmation it would be submitted by his accountants, presumably electronically. D1's evidence about chats over coffee and his tax return being open on the signature page for him to sign was made up by him in the witness box to avoid him having to acknowledge that he was aware of the content of his tax returns.[31]

C3.9 Yet another example of D1 fabricating his evidence occurred in relation to his involvement with One Monday. One Monday was a company of which D1 was a shareholder from 05.05.10 to its dissolution on 02.02.16 and a director from 09.05.12 to 02.02.16.[32] It was undeniably involved in making payments of monies raised from the Sanctuary investors to D4 (via Clydesdale Property Developments), D2 (via LV Management) and D1.[33] One Monday was also used to pay the monies raised from the SAFE investors to discharge the interest due to the Sanctuary investors and to make

31 MDR00227592; MDR00227593

32 **[A1/5/92]**.

33 D2D10-00049660; Day 1/page 81/line 18 – page 91/line 5 **[A5/1/21]**; D2D10-00008623; MDR00194997; D2D10-00049660

Source: Mouseinthecourt.co.uk

payments to D2, D4 and D10.[34] To avoid admitting his knowledge of these matters, which clearly demonstrate that SAFE was operating as a Ponzi scheme from its inception, D1 claimed in his oral evidence that he had handed over control of One Monday to D3 and Michael Peacock.[35] This was a lie which unravelled under cross-examination.

(1) Initially D1 claimed he had handed over control to D3 and Mr Peacock, but when faced with an email dated 30.09.13 that he received from D8 referring to an agreement to which One Monday was party, he claimed "*it's not a black and white. There is a handover.*"[36]

(2) D1 was unable to explain when control of One Monday's bank account was supposedly handed over, saying: "*I don't remember. I believe I gave it over. I know Mr Barker got added to the bank account. I am not sure if Mr Peacock did. My recollection of the time is, you know, it was a busy period. There was lots going on and we were working as a group.*"[37]

(3) D1 was unable to explain why, if his story that he had handed over control of One Monday was true, he was copied into various emails from Nicola Wiseman containing information about One Monday's finances.[38]

(4) LCF's annual report, which was signed by D1, stated that he was a director of One Monday.[39] D1 tried to explain this away by suggesting that he would have paid more attention to the figures than the text but was forced to admit that he had not told his accountants that he had handed control of One Monday to D3 and Mr Peacock.[40]

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34 Day 3/page 83/line 14 – page 89/line 24 **[A5/3/31]**; Day 3/page 89/line 12 – page 94/line 9 **[A5/3/23]**.

35 Day 20/page 119/line 1 – page 122/line 16 **[A5/20/30]**.

36 MDR00014024; Day 20/page 120/line 25 – page 121/line 17 **[A5/20/30]**.

37 Day 20/page 122/lines 2-6 **[A5/20/31]**.

38 D2D10-00006245; D2D10-00006248; D2D10-00006251; D2D10-00006254; Day 20/page 122/line 17 – page 125/line 22 **[A5/20/31]**.

39 **[L1/6/18]**

40 Day 20/page 126/line 25 – page 128/line 23 **[A5/20/32]**.

Source: Mouseinthecourt.co.uk

(5) The following day, D1 was presented with an email dated 25.07.14, in which an employee of the Bank of Scotland, with which One Monday held an account, sent an email to Nicola Wiseman referring to a meeting the previous day and the need to obtain a debit card for One Monday's account for D1.[41] D1 could not account for this.[42]

(6) D1 was also referred to a form provided to the FCA dated 16.10.16 which stated that he was a director of One Monday.[43] Despite D1 having signed the form to confirm, *inter alia*, that the information in the form was accurate and that it was a criminal offence to knowingly or recklessly give false information to the regulator, D1 claimed that the form would have been filled out by Kobus Huisamen and he would simply have signed it without checking the information in it.[44]

(7) D1 was also shown a CV that had also been provided to the FCA that said that he had been the managing director of One Monday from "*2010 – Present*".[45] He said that this "*would have been an old CV that Kobus attached that was on file.*"[46] He was then taken to an email dated 11.10.16 which he had sent to Kobus Huisamen in which he wrote "*Sorry this is late it took more re writing than I expected, have a read and let me know what you think? Does the LCF bit need a bit more fleshing out for the FCA?*"[47] D1 then suggested that because he had ceased to be a director of One Monday in February 2016, the CV "*didn't contain the absolutely correct information.*" and that "*I put it on the CV because it accurately – it reflected that I was still a director. If I hadn't put it on my CV it would have been a lie*." He could not explain why, if he had actually handed over control of One Monday. the CV described him as "*managing director*". [48]

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41 D2D10-00007627

42 Day 21/page 2/line 12 – page 3/line 10 **[A5/21/1]**.

43 D1-0003049

44 Day 21/page 3/line 11- page 6/line 5 **[A5/21/1]**.

45 MDR00002237

46 Day 21/page 7/line 6 – page 8/line 3 **[A5/21/2]**.

47 MDR00227556

48 Day 21/page 8/line 18 – page 11/line 19 **[A5/21/2]**.

Source: Mouseinthecourt.co.uk

(8) D1 was also unable to explain why his accountants, Oliver Clive, sent him a striking off letter for One Monday on 27.10.15 if he no longer ran the company.[49]

C3.10 D1's evidence in relation to his control of One Monday changed almost every time he was presented with a new document and was so obviously untrue that it fundamentally undermines his credibility.

C3.11 That D1 wanted to tailor his evidence to best advance his case, rather than in compliance with his oath to tell the Court the truth, was also evident from the way in which he frequently sought to try and understand the purpose for which questions were being asked, rather than simply providing an answer.[50]

C3.12 **Fifth**, it was often difficult to tell whether D1 was giving evidence as to his state of mind at the time about which he was being questioned or his current view. He frequently used vague and ambiguous terms in his answers such as "*I can see me doing that*"[51] or "*I can see a set of circumstances*."[52]

C3.13 **Sixth**, there are repeated examples in the contemporaneous documents of D1 lying to people, including LCF's auditors and legal advisers. D1 told PwC that he would bring "*the original agreement with Surge Financial*" with him to a meeting when he knew that this would be impossible because the agreement had not been signed.[53] D1 was obviously unable to bring the agreement with him to that meeting. He then lied again when chased for the agreement by PwC, saying that he would have a copy scanned and sent over; this would again have been impossible because the agreement did not exist. When it was put to him in cross-examination that he was lying to PwC, D1 said "*I wouldn't necessarily call that a lie I am just biding time.*"[54]

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49 D1-0001334; MDR00227554; Day 21/page 11/line 20 – page 12/line 23 **[A5/21/3]**.

50 See, for example, Day 19/page 82/lines 8-9 **[A5/19/21]**; Day 19/page 88/ lines 13-16 **[A5/19/22]**; Day 20/page 6/lines 11-12 **[A5/20/2]**; Day 20/page 41/lines 20-21 **[A5/20/11]**.

51 Day 19/page 103/line 3 **[A5/19/26]**.

52 Day 19/page 130/line 6 **[A5/19/33]**.

53 MDR00059776 page 3.

54 Day 19/page 106/line 20 - page 108/line 4 **[A5/19/27]**.

Source: Mouseinthecourt.co.uk

C3.14 A further example is the deliberate impression that D1 gave to Lewis Silkin that he did not know how LCF had come to be listed on Best Investment Funds, when in fact he had arranged for LCF to pay £1,000 to InfoConnection to achieve this; D1 acknowledged in his oral evidence that "*I would have probably hid it a bit, so - if they had an issue with it… A little white lie…*".[55] In light of the reliance he sought to put on the advice he received, it is particularly significant that he was willing to mislead advisers if he thought that they might have a difficulty with his conduct of LCF's business.

C3.15 **Seventh**, D1 had clearly come equipped with some pre-prepared lines which he mentioned whenever possible. Most notably, he made frequent references to "*my buyout agreement*"[56] when referring to an agreement by which he said he sold his shares in various group companies and which the Claimants assert was fabricated after the collapse of LCF to justify his receipt of funds from LCF. The phrase "*buyout agreement*" is not used in D1's witness statement or his written opening submissions and is not a phrase which appears in any documents preceding LCF's collapse.

C3.16 Despite being a practised and fluent liar, D1 was on occasion forced into making some damaging admissions. So, he admitted that he was prepared to commit mortgage fraud by giving an inflated, and false, statement of his financial means to a mortgage broker; D1 described this as having "*talked the book up*".[57] He also admitted that, "*LCF is my company. If I had wanted to take more money out of it, I could very easily have done.*"[58], thereby acknowledging that he was able to extract monies from LCF at will.

C4 D8

C4.1 D8 filed and served a witness statement. He was due to give evidence on 18.04.24 (a Thursday). However, on 15.04.24, D8 informed the other parties that "*on the basis of*

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55 Day 23/page 97/line 11 - page 100/line 6 **[A5/23/25]**.

56 See, for example, Day 24/page 22/line 16 **[A5/24/6]**; Day 24/page 26/line 20 **[A5/24/7]**; Day 24/page 28/line 5 **[A5/24/7]**; Day 24/page 31/line 12 **[A5/24/6]**.

57 Day 25/page 15/line 3 – page 19/line 9 **[A5/25/4]**.

58 Day 26/page 148/lines 1-2 **[A5/26/37]**.

Source: Mouseinthecourt.co.uk

the evidence given in support of the Claimant's [sic] case I do not intend to give oral evidence in this case."[59]

C4.2 As a result of D8's decision not to give oral evidence, by reason of CPR r.32.5 he may not rely upon his witness statement without the permission of the Court. No such permission has been sought or given.

C5 D5

C5.1 D5 initially sought to give the impression that he was trying to assist the Court. In sharp contrast to D1, he began by trying to give short direct answers to questions and, rather than arguing with the content of contemporaneous documents and making up obvious lies, seemed prepared to acknowledge evidence that was damaging to his case. However, over the course of his oral evidence his façade collapsed: D5 increasingly failed to answer questions and instead gave lengthy argumentative answers which sought to advance his positive case and which failed to engage with the questioning. Ultimately, D5 was reduced to rambling answers in which he repeated (and repeated) his rehearsed lines like mantras: "*we're getting the best audits available in the world*";[60] "*Barristers as smart as you*";[61] "*he had Lewis Silkin*".[62]

C5.2 D5 acknowledged that in the period since LCF's collapse there had been countless occasions when he had sought to anticipate questions that might be asked of him in these or other proceedings and had constructed his own narrative which has become more real to him than his fading memory of the actual events.[63]

C5.3 D5 clearly sees himself as a talented entrepreneur. His involvement in a dishonest scheme to misappropriate money originating with bondholders does not accord with his self-image and it is understandable that in an attempt to rationalise this involvement, he has supplanted the truth with a version of events which is more palatable to him.

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59 **[Q6/7.1/1]**.

60 Day 31/page 131/lines 10-16 **[A5/31/33]**.

61 Day 30/page 137/lines 2-13 **[A5/30/35]**.

62 Day 30/page 139/lines 23-25 **[A5/30/35]**.

63 Day 29/page 30/line 13 – page 46/line 20 **[A5/29/8]**.

Source: Mouseinthecourt.co.uk

C5.4 However, it became clear during the course of D5's oral evidence that he had engaged in a more orchestrated and formal coaching process than simply rehearsing answers to questions in his head. After LCF's collapse, in a process that appears to have been led by Kerry Venn, a deliberate effort was made to generate evidence that purported to show that the absurdly high fees charged to LCF by D6 were in line with the market rate.[64] This exercise backfired. As became clear in the course of Kerry Venn's oral evidence, she had confused gross sums raised from investors with the company's revenue and therefore her comparisons were "*flawed to use*".[65] Prior to Kerry Venn's cross-examination, D5 did not appreciate the flaws in the exercise and so sought to justify D6's fee on the back of Kerry Venn's work, both in his private examination (using Funding Circle)[66] and in his oral evidence in these proceedings (using Leander).[67] These pre-prepared comparisons actually contradicted D6's case that its commission as standard in the market.

C5.5 It also emerged that D5 had been fed pre-prepared lines ahead of his private examination under section 236 of the Insolvency Act 1986. The purpose of that examination was to enable the LCF Administrators to better understand its affairs and D5 had given an oath to tell the whole truth. Rather than doing this, he parroted answers that had been fed to him earlier that morning by his PA.[68] This is deeply damaging to his credibility as a witness. More concerningly, D5 appeared to admit that a similar process had taken place in these proceedings, but with the coaching being carried out by his solicitors, rather than his PA:[69]

> **16 I cannot apologise for Vicki doing the job which**
> **17 I pay her to do. I didn't know she wasn't allowed. It**
> **18 is not that dissimilar, frankly, to the assistance the**
> **19 brilliant Kingsley Napley give me over the years.**

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64 Day 31/page 168/line 7 – page 171/line 18 **[A5/31/42]**.

65 Day 33/page 67/lines 15-22 **[A5/33/17]**.

66 **[M1/9/11]**.

67 Day 28/page 41/line 18 – page 42 line 4 **[A5/28/11]**.

68 SUR00123002-0001

69 Day 31/page 108/lines 16-19 **[A5/31/27]**.

Source: Mouseinthecourt.co.uk

C5.6 D5 is consequently a highly unreliable witness. The Court should not accept any of his evidence unless corroborated by unimpeachable contemporaneous documents.

C5.7 A further relevant factor that the Court is asked to have in mind when assessing the evidence in relation to D5 and D6, is that documents relevant to these proceedings have not been disclosed by those Defendants.

C5.8 The Court is familiar with the inadequacies in D5/D6s' disclosure process, which resulted in the disclosure of thousands of further documents during the trial (the documents having been previously wrongly withheld on the grounds that they were privileged) and required D5/D6s' solicitors to re-review a substantial number of documents withheld on the grounds of privilege.

C5.9 However, this was not the only shortcoming in D5/D6s' disclosure. The Claimants' solicitors have engaged in protracted correspondence with Kingsley Napley about other issues, including serious shortcomings in the way in which WhatsApp messages have been disclosed by D5/D6. Kingsley Napley has not engaged with the concerns raised by the Claimants.[70] The most serious issue is that certain potentially very significant messages do not appear to have been disclosed at all. For example, it is clear that D5 was part of a WhatsApp group entitled "*IOW*", the other members of which were D4 and D7. The potential significance of the messages in this group is obvious; however, these messages have not been disclosed and the Claimants are only aware of this group's existence because some screenshots of messages from the WhatsApp thread were disclosed.[71]

C5.10 It is unclear why these documents have not been disclosed; in his oral evidence, D5 was adamant that he had not deleted anything from his telephone and that he had provided all his electronic devices to Kingsley Napley.[72] Whether the reason for non-disclosure of WhatsApp messages is due to an incompetently conducted disclosure process or because D5 has deleted or concealed them is ultimately of secondary importance;

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70 **[Q6/4]**.

71 SUR00164572-0001

72 Day 30/page 121/line 10 – page 122/line 7 **[A5/30/31]**; Day 31/page 142/lines 10-15 **[A5/31/36]**.

Source: Mouseinthecourt.co.uk

documents that appear to be relevant to these proceedings have clearly not been disclosed.

C6 Kerry Venn

C6.1 Kerry Venn's evidence shed some light on the day-to-day running of D6. However, it was of limited benefit in shedding light on the principal issues in the case because it is clear that it was D5 and not Ms Venn who made all significant decisions in relation to D6 and that D5 was privy to knowledge which Ms Venn was not.

C6.2 Ms Venn generally appeared willing to give frank evidence. Understandably though, the passage of time has had some effect on the reliability of her memory. So, on occasion, she gave confident answers which she had to recant when presented with contradictory contemporaneous documents. For example:[73]

> 13 Q. Do you remember looking at this, thinking, "I wonder if
> 14 those five companies that he mentions are under the same
> 15 or connected ownership?"
> **16 A. It wouldn't have crossed my mind.**
> 17 Q. Can we look at the top left. You forward it to Paul and
> 18 Mark to say:
> 19 "See Andy's comments regarding the £10 million over
> 20 five borrowing companies. I'm interested to know if all
> 21 five are ultimately under the same/connected ownership."
> **22 A. Oh, okay, so I did think that. I just don't remember.**

C6.3 For this reason alone, the Court should be cautious about accepting any of Ms Venn's uncorroborated evidence.

C6.4 Ms Venn also shifted her position on some aspects of her evidence without acknowledging that she was doing so. For example, in her first witness statement she said that "*I remember that there were comments that we thought warranted escalation [sic] we usually asked John to speak to Andy to provide and answer and were always satisfied with the response.*"[74] Satisfaction is ordinarily understood to be a binary state: one is either satisfied or dissatisfied. However, in her oral evidence, Ms Venn explained that by using the word "*satisfied*" she had not meant "*Oh, well, there's not issue here*"

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[73] Day 32/page 72/lines 13-22 **[A5/32/18]**.

[74] Venn 1 ¶96 **[C2/4/22]**.

Source: Mouseinthecourt.co.uk

but rather had been "*loosely satisfied*."[75] She later suggested that for her "*a satisfactory answer on my low scale of satisfaction which means I have still got doubts but, you know, how can I argue with this?*"[76] It is consequently clear that when Ms Venn says in her witness statements or her oral evidence that she was "*satisfied*" with something, this is not actually what she means.

C6.5 A further example of how Ms Venn's evidence shifted can be seen in relation to her questioning of how LCF had got an ISA bond approved. She started by downplaying her scepticism of whether LCF had interpreted the legislation correctly: "*Yeah, but Lewis Silkin and Ernst & Young getting it wrong is not really that likely though. So, it's a risk, but it doesn't – didn't seem too risky.*"[77] Faced with a number of documents that demonstrated that she, and others, did think that LCF had got it wrong, she conceded that she did "*entertain the thought very strongly, that they could have got it wrong*".[78] It is consequently difficult to know exactly what Ms Venn did think.

C6.6 It is clear that Ms Venn feels a deep loyalty to D5.[79] Ms Venn also admitted that she had read the transcripts of D5's evidence.[80] It is therefore understandable that, perhaps unconsciously, she echoed parts of D5's evidence: for example, she referred to Mark Partridge as "*cynical*"[81], which was the word used repeatedly by D5 to describe him.[82] She also sought to buttress D5's evidence by claiming, in what appeared to be a pre-prepared answer, that her use of the phrase "*the missing piece of the 'is it a ponzi' jigsaw*"[83] was simply a continuation of a joke between D5 and Mark Partridge even though the email in which she used this phrase was plainly a serious one and the

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75 Day 32/page 107/line 22 – page 108/line 10 **[A5/32/27]**.

76 Day 32/page 127/line 24 – page 128/line 2 **[A5/32/32]** and see also Day 32/page 113/lines 18-22 **[A5/32/29]**.

77 Day 32/page 125/lines 21-23 **[A5/32/32]**; see also Day 32/page 129/line 19 – page 130/line 17 **[A5/32/33]**.

78 Day 32/page 139/lines 20-22 **[A5/32/35]**.

79 Day 32/page 10/lines 14-24 **[A5/32/3]**.

80 Day 32/page 82/lines 3-6 **[A5/32/21]**.

81 Day 32/151/pages 151/lines 11-20 **[A5/32/38]**.

82 See, for example, Day 29/page 89/lines 17-25 **[A5/29/23]**; Day 29/page 90/lines 19-20 **[A5/29/23]**; Day 29/page 134/lines 17-20 **[A5/29/34]**.

83 SUR00158422-0001

Source: Mouseinthecourt.co.uk

information she was seeking was the kind of information which would have been required to help establish whether or not LCF was a legitimate business.[84]

C6.7 It was also clear that Ms Venn's primary concern in making enquiries of LCF was not to ensure that it was a legitimate business but was instead to generate a paper trail that would allow D6 to distance itself from LCF in the event that the latter collapsed. On more than one occasion she asked for content to be included in emails or drafted emails to be sent to her, which she then relied upon to justify D6's position.[85] It is likely that this mindset has influenced her memory of events and consequently affected the reliability of her evidence.

C6.8 Accordingly, save in relation to uncontroversial matters involving the internal operation of D6, the Court cannot place any reliance on Ms Venn's uncorroborated evidence.

C7 D4

C7.1 D4 was barred from participating in these proceedings because of his failure to comply with the Court's orders that he give Extended Disclosure. Hence, documents relevant to his liability have not been disclosed by him. This would include, for example, WhatsApp messages he exchanged with D5 and D7 in relation to the Isle of Wight deal.

C7.2 It is also clear that, while he is party to some emails, it was well-known that this was not his preferred method of communication. As D5 wrote to Mark Partridge "*Spencer doesn't like getting emails.*"[86] D4 appears to have preferred communicating on the telephone and in face-to-face meetings[87], of which there is now no record. He also communicated by text and WhatsApp but, as explained above, disclosure of these messages has not been given from D4 and such messages are also missing from the disclosure of other parties to them, such as D5 and D7.

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84 Day 32/page 81/line 18 – page 82/line 6 **[A5/32/21]**.

85 Day 33/page 44/line 1 – page 46/line 8 **[A5/33/11]**; Day 33/page 53/line 15 – page 60/line 23 **[A5/33/14]**.

86 SUR00158416

87 See, for example, Day 28/page 100/ lines 4-10 **[A5/28/25]**.

Source: Mouseinthecourt.co.uk

C7.3 D4 also communicated through proxies. D5 and Kerry Venn often used D7 as a channel to communicate with D4.[88] D3 was also a recognised conduit to D4.[89] It is clear that D4 wanted to operate in the shadows, no doubt due to the fact that he was disqualified from acting as a director of companies.[90]

C7.4 As a result of the above, the Claimants' case concerning D4's participation and knowledge necessarily relies more on inference than their case against the other parties. In assessing the evidence against D4, the Court is asked to have in mind the reasons for the relative paucity of contemporaneous documents to which he is a direct party.

C8 D7/D9

C8.1 D7/D9 have not participated in these proceedings since giving disclosure. D7 has decided not to file any witness statement and has not made any submissions or played any active role in the trial at all.

C8.2 The Claimants have considered carefully whether it is appropriate to ask the Court to draw any adverse inferences from D7's failure to participate in the trial.

C8.3 In light of the authorities set out in the following section, the Claimants have sought to be selective in the choice of the adverse inferences which they ask the Court to draw. In the absence of any information about D7's reasons for not participating, the Claimants do not ask the Court to draw any adverse inferences from D7's non-participation.

C9 Adverse inferences

The law

C9.1 The circumstances in which the Court may draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give were

88 Day 31/page 193/line 3-9 **[A5/31/49]**.

89 D7D9-0007543; Day 32/page 58/line 24 – page 60/line 10 **[A5/32/15]**.

90 MDR00226310; Day 3/page 24/line 4 – page 31/line 14 **[A5/3/6]**.

Source: Mouseinthecourt.co.uk

described by Brooke LJ in *Wisniewski v Central Manchester Health Authority* [1998] PIQR P324 at 340[91]:

> "*(1) In certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.*
>
> *(2) If a court is willing to draw such inferences, they may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.*
>
> *(3) There must, however, have been some evidence, however weak, adduced by the former on the matter in question before the court is entitled to draw the desired inference: in other words, there must be a case to answer on that issue.*
>
> *(4) If the reason for the witness's absence or silence satisfies the court, then no such adverse inference may be drawn. If, on the other hand, there is some credible explanation given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or nullified.*"

C9.2 The question of whether adverse inferences may be drawn from the absence of a witness was also considered more recently by the Supreme Court in *Efobi v Royal Mail Group* [2021] 1 WLR 3863. Lord Leggatt held (at [41][92]):

> "*The question whether an adverse inference may be drawn from the absence of a witness is sometimes treated as a matter governed by legal criteria, for which the decision of the Court of Appeal in Wisniewski v Central Manchester Health Authority [1998] PIQR P324 is often cited as authority. Without intending to disparage the sensible statements made in that case, I think there is a risk of making overly legal and technical what really is or ought to be just a matter of ordinary rationality. So far as possible, tribunals should be free to draw, or to decline to draw, inferences from the facts of the case before them using their common sense without the need to consult law books when doing so. Whether any positive significance should be attached to the fact that a person has not given evidence depends entirely on the context and particular circumstances. Relevant considerations will naturally include such matters as whether the witness was available to give evidence, what relevant evidence it is reasonable to expect that the witness would have been able to give, what other relevant evidence there was bearing on the point(s) on which the witness could potentially have given relevant evidence, and the significance of those points in the context of the case as a whole. All these matters are inter-related and how these and any other relevant considerations should be assessed cannot be encapsulated in a set of legal rules.*"

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91 **[S2/58.1/17]**.

92 **[S2/157/14]**.

Source: Mouseinthecourt.co.uk

This case

C9.3 In light of the authorities above, the Claimants have given careful consideration as to the adverse inferences they ask the Court to draw. The adverse inferences that the Claimants invite the Court to draw are as follows.

C9.4 First, the Claimants invite the Court to infer that D1 did not summon any of the professional witnesses on whose evidence he had said that he intended to rely because he concluded that those witnesses would have been likely to tell the Court that D1 had misled them about LCF's situation.

C9.5 D1 explained in his witness statement that he was going to adduce evidence from the audit partners at PwC and EY through the use of witness summons.[93] The Court will also recall that considerable time was given over at pre-trial hearings to the issue of the witness summonses that D1 intended to serve, not just on PwC and EY but also on Oliver Clive and Lewis Silkin. As far as the Claimants are aware, no witness summonses were ever issued by D1; certainly, none of the witnesses on whom he said he was going to serve witness summonses attended trial.

C9.6 Second, in relation to D8, the Court is invited to infer from D8's late decision not to give evidence and the reason he gave for this decision that he has no honest and proper answer to the matters contained in the documents relied upon by the Claimants and that the allegations made against him by the Claimants are true.

C9.7 The documents referred to by the Claimants in the course of their opening submissions and in the cross-examination of D1 provide unanswerable proof of D8's repeated involvement in dishonest transactions put in place to disguise the misappropriation of LCF's monies, including in the dishonest backdating of documents. If D8 had given evidence, he would therefore have been faced with the unpalatable choice of publicly admitting his dishonesty or perjuring himself.

[93] Thomson ¶130 **[C2/1/46]**.

Source: Mouseinthecourt.co.uk

D. THE EXPERT EVIDENCE

D1 Introduction

D1.1 There was expert evidence on three topics: (i) the market rate for the services purportedly provided to LCF by D6; (ii) the value of LOG's interest in IOG; and (iii) the value of land in the Dominican Republic.

D2 The market rate for the services purportedly provided by D6

D2.1 The expert instructed by the Claimants was Dr Okongwu, who produced two reports.[94] He was an obviously impressive expert who gave careful and measured evidence. Dr Okongwu was frank about the extent of the work he had undertaken and his reports contained numerous citations that supported the conclusions that he reached.

D2.2 Dr Okongwu and D5/D6's expert, Mr Grainger agreed that at the outset of the relationship between LCF and D6, "*there was no generally accepted market rate for the set of services which are said to have been provided by Surge*."[95] On the question of whether hypothetical parties transacting at arm's length would have agreed such a rate, Dr Okongwu's conclusion was clear: no economically rational party would enter a transaction that would consistently cause it to make losses and that would have occurred with a commission rate of 25% (or 22.5%) because it was not credible that LCF would have consistently been able to make supra-normal returns.[96] This conclusion is unimpeachable.

D2.3 Mr Grainger, who produced one report[97], was not an expert on whose opinion any weight can sensibly be placed.

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94 **[D2/3/1]** and **[D3/4/1]**.

95 **[D3/3/5]**.

96 Okongwu 1 ¶¶17-23 **[D3/2/10]**; Okongwu 2 ¶¶5-8 **[D3/4/5]**; Day 34/page 61/line 24 – page 62/line 22 **[A5/34/16]**.

97 **[D3/1/1]**.

Source: Mouseinthecourt.co.uk

D2.4 **First**, it is unclear what field Mr Grainger claims to be an expert in. The bulk of his career has apparently been spent as a "*regulatory and compliance consultant*"[98], which is not an obviously relevant field of expertise to the questions posed. In his oral evidence, Mr Grainger appeared to confuse personal experience of certain transactions, such as the cost of outsourced services, with expertise in those transactions.[99] This is obviously wrong; a person who carries out a supermarket shop every week might obtain through experience a good knowledge of food prices but is not an expert in food markets. The hallmark of expertise is an ability to transcend personal experience.

D2.5 **Second**, there is no substance to Mr Grainger's report. The only document he cites which was not provided to him by Kingsley Napley is a HM Treasury report into mini-bonds which provides some background but no support for his conclusions. Mr Grainger's research appears to have consisted of carrying out unidentified internet searches[100] and speaking to unnamed colleagues.[101] This is not a promising foundation from which to derive conclusions.

D2.6 The absence of evidence completely undermines Mr Grainger's conclusion that "*the fee agreed between LCF and Surge, when apportioned over the period of time for which service delivery was expected, is not significantly out of line with the fees for similar services offered by other service provided*."[102] Nowhere in his report does Mr Grainger set out the fees actually charged by comparable service providers.

D2.7 Mr Grainger apparently believes that it is enough for him simply to assert that a matter is so. For example, in his oral evidence he stubbornly insisted that alternative investment fund managers would not have provided the range of services to their customers that Surge provided to LCF.[103] However, he did not identify any such fund managers either in his report or in his oral evidence, nor did he explain in any detail what the differences in services were; his evidence that such fund managers would not even keep a database

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98 Grainger ¶2.2 **[D3/1/3]**.

99 Day 34/page 70/line 25 – page 73/line 2 **[A5/34/18]**.

100 Grainger ¶10.5 **[D3/1/11]**.

101 Grainger ¶10.39 **[D3/1/15]**.

102 Grainger ¶12.3 **[D3/1/18]**.

103 Day 34/page 92/line 23 – page 97/line 24 **[A5/34/23]**.

Source: Mouseinthecourt.co.uk

or contact list of their customers was unbelievable.[104] Furthermore, Mr Grainger did not provide any satisfactory explanation as to why he was using alternative fund managers as a comparator rather than looking at entities which provided the services that Surge provided to LCF and using these to assess the cost of such services.

D2.8 **Third**, Mr Grainger's report contains a great deal of largely irrelevant material. For example, he spends five paragraphs apparently demonstrating that it is difficult to compare fees for different types of services, which is not a point of any obvious relevance.[105] He also spends three paragraphs discussing the law of supply and demand, which is not a topic on which he is an expert and, even on his inexpert evidence, is not applicable where there is no price transparency in the relevant market.[106]

D2.9 **Fourth**, some of Mr Grainger's conclusion that "*in the absence of any other means of establishing a market rate, the two willing parties, acting as reasonable parties and at arm's length effectively established a market rate acceptable to both parties for the scope of services required*"[107] is based on circular reasoning because Mr Grainger assumes that the services and fees were agreed between LCF and Surge acting as reasonable parties' in an arm's length transaction.[108] In addition, Mr Grainger's conclusion does not answer the question posed for the experts, which is concerned with hypothetical parties in the position of LCF and Surge.[109]

D2.10 **Fifth**, Mr Grainger failed to comply with his duties as an expert.

D2.11 In a number of instances, Mr Grainger refused to discuss matters on the agenda for the discussion between the experts on the basis that such matters were "*outside the scope of my instructions.*"[110] In several instances, these agenda items arose from matters raised by Mr Grainger in his own report. The relevance of these items to the expert issue is

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104 Day 34/page 103/lines 20-24 **[A5/34/26]**; Day 34/page 104/lines 10-16 **[A5/34/26]**.

105 Grainger ¶10.17-10.21 **[D3/1/12]**; Day 34/page 108/lines 6-13 **[A5/34/27]**.

106 Grainger ¶¶11.1-11.3 **[D3/1/16]**; Day 34/page 120/line 16 – page 122/line 1 **[A5/34/30]**.

107 Grainger ¶12.6 **[D3/1/18]**.

108 Grainger ¶12.7 **[D3/1/19]**.

109 Grainger ¶4.3 **[D3/1/5]**; Day 34/page 119/lines 8-20 **[A5/34/30]**.

110 Agenda Item 4 **[D3/3/7]**; Agenda Item 5 **[D3/3/9]**; Agenda Item 8 **[D3/3/14]**; Agenda Item 9 **[D3/3/16]**.

Source: Mouseinthecourt.co.uk

obvious. Why Mr Grainger believed that matters he himself had raised in his report suddenly fell outside the scope of his instructions remains unexplained.[111] Mr Grainger was also unable to provide any adequate explanation as to how his duty to assist the Court could be reconciled with the thoroughly uncooperative approach he took to the discussion with Dr Okongwu. It turned out that Mr Grainger did not really disagree with Dr Okongwu on the substance of these agenda items.[112]

D2.12 Mr Grainger also failed to comply with paragraph 58 of the Guidance for the Instruction of Experts in Civil Claims[113] that "*Where there are material facts in dispute experts should express separate opinions on each hypothesis put forward. They should not express a view in favour of one or other disputed version of the facts unless, as a result of particular expertise and experience, they consider one set of facts as being improbable or less probable, in which case they may express that view and should give reasons for holding it.*" Mr Grainger proceeded on the basis that LCF was a legitimate business without giving any consideration to the scenario advanced by the Claimants that LCF was a Ponzi scheme. Indeed, Mr Grainger did not even seem to understand this duty, pointing out in oral evidence that the Claimants' case was only "alleged" without appearing to realise that the same was true of D5/D6's case. This led him into the fallacy that because he had not been given any evidence by Kingsley Napley that, for example, LCF was a Ponzi scheme, then it was safe for him to conclude it was not.[114]

D2.13 Mr Grainger cited a number of documents given to him by Kingsley Napley that purported to evidence that high rates of commission were paid on sales.[115] He did not mention in his report that he had carried out any additional research but in his oral evidence, after first saying he had not carried out any additional research, then altered his position and said that he had:[116]

> 20 Q. You haven't conducted any research yourself to identify

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111 Day 34/page 115/line 15 – page 116/line 15 **[A5/34/29]**; Day 34/page 124/line 16 – page 125/line 15 **[A5/34/31]**; Day 34/page 129/line 4 – page 130/line 2 **[A5/34/33]**.

112 Day 34/page 117/lines 13-23 **[A5/34/30]**; Day 34/page 125/lines 16-20 **[A5/34/32]**; Day 34/page 130/lines 3-23 **[A5/34/33]**.

113 **[S1/10/12]**.

114 Day 34/page 144/line 10 – page 150/line 15 **[A5/34/36]**.

115 Grainger ¶11.6 **[D3/1/16]**.

116 Day 34/page 131/line 20 – page 133/line 4 **[A5/34/33]**.

Source: Mouseinthecourt.co.uk

21 any appropriate comparators?
22 A. Well, Dolphin is a former client of mine, so I had
23 first-hand knowledge of the Dolphin setup.
24 Q. I wasn't asking if they were a client. You hadn't
25 conducted any research to identify any appropriate

1 comparators?
2 A. Additional research, no, but I already had some
3 first-hand knowledge.
4 Q. But the contract that's referred to here is one that was
5 provided to you by your instructing party, as
6 I understand it?
7 A. Yes.
8 Q. So you'd essentially taken documents you had been given
9 by the party instructing you and put them into your
10 report?
11 A. No, I've also done some additional research around that.
12 Q. You understand you shouldn't be a mouthpiece for the
13 party instructing you?
15 14 A. No, absolutely, which is why I did additional research
15 to expand upon the information I was given.
16 MR JUSTICE MILES: Sorry, I'm a bit confused. I thought you
17 just said that you didn't do any additional research.
18 Have I misunderstood that?
19 A. No, in the sense of additional documents, no, but what
20 I did do was, for example, look on the internet and look
21 at other sources, trade sources and so on, particularly
22 in the case of Dolphin. I was involved in advising
23 Dolphin in the early days of their offer, so I remember
24 them being a start-up operation, for example.
25 MR ROBINS: You haven't mentioned any documents you found on

1 the internet or in trade sources in paragraph 11.6, have
2 you?
3 A. I have referred in my report to having relied on my own
4 knowledge and on other sources from the internet.

D2.14 Mr Grainger then went on to acknowledge that the entities referred to in the documents were not useful comparators.[117] This is information that might usefully have been included by Mr Grainger in his report. It is to be inferred from the fact that he did not do so that he was more concerned to advance his clients' case than to fulfil his duties to the Court.

D2.15 A further example of Mr Grainger presenting a potentially misleading picture in his report was in his comparison of the annualised fee he calculated that D6 charged LCF with the hypothetical fee for a three-year period that he thought a hypothetical fund manager might charge.[118] Mr Grainger acknowledged that in working out the annualised

[117] Day 34/page 135/line 22 – page 136/line 2 **[A5/34/34]**; Day 34/page 137/lines 13-16 **[A5/34/35]**; Day 34/page 138/line 20 – page 139/line 3 **[A5/34/35]**; Day 34/page 140/line 21 – page 141/line 13 **[A5/34/35]**.

[118] Grainger ¶¶10.13-10.21 **[D3/1/11]**.

Source: Mouseinthecourt.co.uk

fee charged by D6 over the lifetime of the bond he had not calculated a weighted average. The result was that the annualised fee he referred to in his report was markedly lower than it should have been.[119]

D2.16 Mr Grainger also sought to advance D5/D6's case in his oral evidence rather than answering a straightforward question:[120]

16 MR JUSTICE MILES: What about going on? So it starts with
17 this agreement of 25 per cent, there is no actual
18 written agreement ever put in place, and I think it was
19 put earlier by counsel for Mr Thomson that Mr Thomson
20 was often trying to reduce the commission, so, in other
21 words, on that case, there would be a sort of continuing
22 process of settling the commission and keeping it at
23 a certain level. If you then make the assumptions that
24 you have just been asked to make about sums being paid
25 to Mr Thomson or Mr Golding and that Mr Golding was

1 somehow influential in relation to LCF, what would your
2 answer then be about it being an arm's-length,
3 reasonable --
4 A. I've been asked by counsel to make a lot of assumptions
5 in the last number of questions. I would actually offer
6 the thought that, if the parties were still in
7 continuing negotiation, which is not uncommon in
8 commercial situations, then that might be evidence --
9 and I'm not trying to put a proposition forward; just
10 simply an observation -- that might also be evidence
11 that there was no such conspiracy from outset, but that
12 the parties were in a process of negotiating to get
13 better terms.
14 MR JUSTICE MILES: But what about the examples that were put
15 to you that money -- it was put, and this is the
16 question to you, that various kickbacks were being paid
17 to, first of all, Mr Thomson and then Mr Golding. So
18 you're being asked to assume that. What's your response
19 to that?
20 A. If kickbacks were being paid, and that was known from
21 outset, and during the continuing process of
22 negotiation, then I would agree with counsel's
23 contention.
24 MR JUSTICE MILES: You said, again, in the answer you just
25 gave, "if that was known from the outset", and I suppose

1 that's what I'm exploring with you. Why is it so
2 important to your answers to keep repeating that that
3 had to be known from the outset?
4 A. Well, it's the intention to effectively disburse funds
5 raised improperly. If that is taking place, to put it
6 in layman's terms, it's just wrong. But, on the other
7 hand, if it's something that evolved over time, whilst

[119] Day 34/page 108/lines 17-23 **[A5/34/27]**.

[120] Day 34/page 150/line 16 – page 152/line 20 **[A5/34/38]**.

Source: Mouseinthecourt.co.uk

8 it doesn't make it right, it's not the same as raising
9 funds with the deliberate intention of paying them away
10 improperly.
11 MR JUSTICE MILES: All right. I think the questions were
12 not really directed to a general question about whether
13 it was right or wrong, but to do with the idea that this
14 was an arm's-length transaction between reasonable
15 parties, and counsel was exploring that concept,
16 I think. One of the things he was asking you about was,
17 how is that assumption affected by a further assumption
18 that various kickbacks were being paid, and that's what
19 I think was being explored. But I will let Mr Robins
20 carry on with the questioning.

D2.17 Indeed, Mr Grainger appeared to identify so closely with the position of D5/D6 that he was unable to imagine the hypothetical negotiations between D6 and LCF from the latter's point of view:[121]

16 MR JUSTICE MILES: Do you think, putting it in broad terms,
17 the commercial consequences for each of the hypothetical
18 parties in the negotiation might be relevant to what
19 would be struck in an arm's-length negotiation?
20 A. They are relevant but I have never been involved in
21 a negotiation, nor have I seen any clients involved in
22 a negotiation, where they have actually analysed the
23 client's business. The client is normally deemed, when
24 negotiating terms for service, to be responsible for
25 their own end of the negotiation.

1 MR JUSTICE MILES: Looking at it -- there are two parties to
2 the negotiations. One of them is LCF.
3 A. Yes.
4 MR JUSTICE MILES: Did you think it might be relevant to
5 consider what the business impact of paying a particular
6 fee would be on LCF's business when working out what
7 would happen in the hypothetical negotiation?
8 A. If I was looking at this forensically, in terms of
9 looking after the event at both parties, yes, it's
10 relevant, but in terms of the negotiation process,
11 I wouldn't expect Surge to have analysed the LCF
12 business in great detail or vice versa. Both were
13 parties looking after their own interests.
14 MR JUSTICE MILES: The question you were addressing was what
15 would -- in very broad terms, what would hypothetically
16 reasonable parties, what fee would they come to; isn't
17 that right.
18 A. Yes, I agree.
MR JUSTICE MILES: One of the parties is LCF.
20 A. Yes.

[121] Day 34/page 125/line 16 – page 126/line 20 **[A5/34/32]**.

Source: Mouseinthecourt.co.uk

D3 The value of LOG's interest in IOG

D3.1 The Claimants' expert was Mr Osborne. He produced two reports.[122] Mr Osborne's evidence was clear and was not challenged in cross-examination.

D3.2 D2/D10 instructed Mr Wright to give evidence on this issue. Mr Wright produced two reports.[123] Following the settlement agreed between D2/D10 and the Claimants, Mr Wright did not attend to give evidence. No real weight can therefore be given to his reports and, where his evidence differs from that of Mr Osborne, it should be rejected.

D3.3 Mr Wright agreed with Mr Osborne on a number of significant matters including: (i) the appropriate valuation method; (ii) that the theoretical values calculated using the Black-Scholes model would have been unlikely to have been realisable in practice; (iii) that the market value of the relevant instruments will generally (Mr Osborne) or often (Mr Wright) be at a discount to the theoretical calculation of value; and (iv) that estimates of the underlying value of IOG's assets are not directly relevant to the valuation of LOG's interests in IOG.[124]

D4 The value of the land in the Dominican Republic

D4.1 The Claimants' expert was Mr Watson, who was the only expert who gave evidence in this field. He produced two reports, one dealing with the value of The Hill[125] and the other addressing the value of The Beach.[126]

D4.2 No other expert evidence was adduced on this topic and no serious challenge was presented to Mr Watson's evidence in cross-examination. His evidence should be accepted in full.

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122 **[D2/1/1]** and **[D2/4/1]**.

123 **[D2/2/1]** and **[D2/5/1]**.

124 **[D2/3/3]**.

125 **[D1/2/1]**

126 **[D1/1/1]**.

Source: Mouseinthecourt.co.uk

E. THE SANCTUARY SCHEME AND EL CUPEY LIMITED

E1 Introduction

E1.1 The Sanctuary investment scheme concerned the purchase of "off-plan" plots of land in the Dominican Republic known as The Hill by investors who had paid deposits. When D2 became aware that the investment vehicle, Sanctuary International Resorts Ltd, had run into financial difficulty, he put together a 'rescue package' by which additional deposits were raised from the Sanctuary investors and The Hill was placed in trust as security for those investors.

E1.2 The Claimants ask the Court to find the following facts in relation to the Sanctuary Scheme:

(1) The value of The Hill was at all material times substantially less than Sanctuary PCC's liabilities to the Sanctuary investors which were secured against The Hill through a trust.

(2) Tenedora did not obtain ownership of any land at The Beach until 2017.

(3) Tenedora never acquired a contiguous plot of land at The Beach that would support the intended development so that, whatever the theoretical value of the land at The Beach, the plots actually owned by Tenedora are essentially worthless.

(4) Most of the additional monies raised from the Sanctuary investors were misappropriated by D1, D2 and D4 or otherwise dissipated.

(5) Each of D1, D4 and D8 was aware of the matters above.

Source: Mouseinthecourt.co.uk

E2 Summary of the facts

The Hill

E2.1 The Hill was an undeveloped[127] plot of 1.3 million m^2 of land in the Dominican Republic, about 20 miles from the north coast, near a small village called Cupey. It was acquired by a Dominican Republic company, Inversiones 51588, in March 2012 for a sum of £708,752.[128] Inversiones was a subsidiary of Sanctuary PCC, a Guernsey company which was itself a subsidiary of Sanctuary.[129]

E2.2 There have been a number of valuations of The Hill.

E2.3 A draft valuation dated 24.12.13 was prepared by Jonathan Marshall and valued The Hill at US$ 7.3 million.[130] His report expressly stated that it was prepared for internal purposes and should not be relied upon for loan security. Mr Marshall was instructed to review a valuation carried out by a Julio Perdomo. Mr Marshall visited the Dominican Republic and met Mr Perdomo. He considered that the value reached by Mr Perdomo was excessive and applied a discount to it. His report was not a 'Red Book' valuation.[131]

E2.4 A revised valuation of The Hill by Jonathan Marshall was circulated on 20.03.14.[132] In this valuation, Mr Marshall estimated the value of the same site to be US$19.6 million. In this draft, Mr Marshall appears to have abandoned his reservations about the estimate prices per square metre suggested by Mr Perdomo and he omitted certain deductions. Mr Marshall's estimate of the gross development value of The Hill is also flawed: (i) the total remaining sum payable by the Sanctuary investors was c.£10 million less than the sum required to complete the project; and (ii) no account was taken of the interest

127 MDR00180289; MDR00116085

128 MDR00005360; Day 1/page 25/line 24 – page 31/line 13 **[A5/1/7]**.

129 D7D9-0000298

130 D2D10-00006624

131 Day 1/page 92/line 8 – page 94/line 15 **[A5/1/23]**.

132 D2D10-00006671

Source: Mouseinthecourt.co.uk

payable to the Sanctuary investors or on the finance that would be required to complete the development. In fact, on any view, the development was insolvent.[133]

E2.5 Three valuations of The Hill were produced by a Julio Cesar Perdomo Pena. This is the same individual as the "Mr Perdomo" whom Mr Marshall met in the course of considering his draft report.[134] The first, dated 17.05.17, assessed the value of The Hill at US$37,794,482.88. The bulk of this figure was accounted for by land which Mr Perdomo assigned a value to of US$100 per m^2; this was substantially above the figure of US$16.60 per m^2 he had discussed with Mr Marshall.

E2.6 The second valuation carried out by Mr Perdomo was dated 10.05.18 and estimated the value of The Hill to be US$39,594,940.90.[135]

E2.7 The third valuation carried out by Mr Perdomo and dated 13.11.18 assessed the value of The Hill at US$44,601,340.90.[136] By this time, the land containing the bulk of the value was given a value of US$125 per m^2.

E2.8 Mr Perdomo's methodology appears to have been to estimate the price per m^2 of land from comparables and then multiply this by the relevant area, without applying any discount. The values he reaches are extraordinary and his reports are obviously wildly in excess of even those produced by Mr Marshall's flawed analysis. Indeed, Mr Marshall felt unable to accept his values, not least because he believed that Mr Perdomo "*took little account of the extent of development authorised on each comparable.*"[137]

E2.9 Subsequent valuations have assessed the value of the Hill to be an order of magnitude lower than Mr Perdomo's assessments.

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133 Day 1/page 96/line 3 – page 102/line 3 **[A5/1/24]**.

134 Mr Marshall refers to Mr Perdomo himself having reviewed valuations carried out by Santiago Lopez: D2D10-00006624. The report from Mr Perdomo referring to this review is signed by a Julio Cesar Perdomo Pena: D1-0012360

135 MDR00005429

136 MDR_POST_00000152

137 D2D10-00006671 page 6

Source: Mouseinthecourt.co.uk

E2.10 Cushman & Wakefield carried out valuation of the Hill as at 01.06.20 which gave it a market value (following 12-24 months of marketing) of US$2 million and a liquidation value (following 3-6 months of marketing) of US$1 million.[138]

E2.11 Rofiasi Ingeneria carried out a valuation of The Hill as at 12.11.20,[139] which valued it at US$928,227, which is in line with Cushman & Wakefield's liquidation value.

E2.12 Mr Watson assessed the market value of The Hill as at 03.10.23 to be US$5.43 million.[140] He considered that its value between April and November 2017 was US$4.55 million.

E2.13 In any event, The Hill was not unencumbered property that could be used as security for LCF. It continued to be held on trust for the Sanctuary investors as described above. In summary, The Hill was owned by Inversiones, and the shares in Inversiones continued to be held on trust for El Cupey (and thereby ultimately the Sanctuary investors) despite later transfers of those shares.[141]

The Beach

E2.14 The Beach (or Magante) was another undeveloped site in the Dominican Republic. It consisted of 38 parcels of land.[142] The initial contract of sale, which was entered into on 22.08.12, remained unperformed. In late 2017 the acquiring entity, Tenedora 98520, renegotiated with some of the vendors and acquired some, but not all, of the plots of land.[143] Tenedora 98520 was a subsidiary of Sanctuary.[144]

E2.15 The Sanctuary investors had been offered the right to transfer their investment to The Beach. However, until late 2017, Tenedora did not own any of the land at The Beach; it

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138 MDR_POST_00002207

139 MDR_POST_00002202

140 **[D1/2/3]**

141 Day 1/page 111/line 1 – page 120/line 13 **[A5/1/28]**

142 Day 1/page 31/line 14 – page 33/line 3 **[A5/1/33]**

143 Day 1/page 33/line 4 – page 36/ line 7**[A5/1/34]**

144 D7D9-0000298. This structure chart incorrectly records the names of the subsidiary as Tenedora 58520.

Source: Mouseinthecourt.co.uk

simply had a right to purchase the land. Furthermore, in 2013 the decision had been taken by D2 and D4 not to proceed with the acquisition and development of The Beach.[145] Only in late 2017 did Tenedora begin to pay for and acquire some of the parcels of land (later registered in its name in 2018 and 2019).[146]

E2.16 There have been various valuations of The Beach. However, there are difficulties in comparing the valuations because they cover different areas of land.

E2.17 The 2012 sales contract between Tenedora 98520 and the various vendors[147] is for 38 parcels of land totalling 241,707.44m^2.[148] The contractual price was US$3,527,311.78.

E2.18 The report produced by Jonathan Marshall in or around May 2014[149] says the site extends to 23.5 hectares, which is 235,000m2. A copy of the Masterplan referred to in Mr Marshall's report[150] describes a site of 235,578m^2.

E2.19 A report produced in November 2016 by Rafael Oviedo[151] values an area of 258,000m^2. This area encompasses 32 certificates of title from different owners.

E2.20 In May 2018, Mr Perdomo produced a report in which he valued land labelled as Magante I, comprising 258,000m^2, land in the "Gisela terrains", comprising 35,000m^2, land in the "three Villas", comprising 2,848.79m^2, and land in the "terrains of Restaurante Quemado", comprising 2,652m^2.[152] In total, the area valued by Mr Pena is 298,501.75.m^2 (there is some approximation in the various individual site areas given in the report).

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145 D2D10-00005723; D2D10-00005724; D2D10-00005726; D2D10-00005729; D2D10-00006385; D2D10-00006379; D2D10-00052881

146 Day 1/page 111/line 1 – page 120/line 13 **[A5/1/28]**.

147 MDR00005290

148 The sales contract also notes, inconsistently, at page 13 that the total area is 244,907.44m^2.

149 D1-0000457

150 D7D9-000038

151 MDR_POST_00001239

152 D1-0010757

Source: Mouseinthecourt.co.uk

E2.21 A later report produced by Mr Perdomo in November 2018[153] values areas of land described as Magante I and Magante II, giving the area of the former as 298,501.75m^2 i.e. Mr Perdomo's designation of Magante I has now expanded.

E2.22 Cushman & Wakefield was instructed in May 2020 to value a site of area 298,501m^2.[154] This figure appears to have been taken from Mr Perdomo's valuations. Converting the area valued by Cushman & Wakefield from the price per square foot suggests the area valued was 299,687.52m^2. This roughly equates to the area of the plots described in the spreadsheet produced by Prime RDL's counsel in the Dominican Republic, Serulle & Associates, in around May 2020, which is described below.

E2.23 The spreadsheet produced by Serulle & Associates sets out the plots in which Tenedora 98520 had an interest, with a total area of 295,350.57m^2.[155] The spreadsheet records:

(1) 115,904.95 m^2 of land for which the titles have been transferred but the purchase price has not been paid in full.

(2) 126,411.45m^2 of land for which the purchase process is ongoing and where the sale price has not been paid in full. This category appears to include (at no. 21) the plot referred to by Mr Perdomo as "three Villas".

(3) A further plot of 33,995m^2, the "Gisela" plot, where the purchase price has not been paid in full and the process is ongoing.

(4) 19,039.17m^2 of fully-paid plots.

E2.24 The 295,350.57m^2 described in this spreadsheet consists of 32 plots from the 2012 sales contract and a further 18 plots which were not included in it. There is a further 53,461.17m^2 which is included in the 2012 sales contract but which is not referred to in

153 MDR_POST_00000158

154 MDR_POST_00001309

155 MDR_POST_00002209. This version has been updated by Mr Pitt following discussions with Rofiasi: MDR_POST_00002208.

Source: Mouseinthecourt.co.uk

the spreadsheet provided by Serulle & Associates and where no purchase process appears to be in train.

E2.25 In its appraisal report dated 12.11.20[156], Rofiasi identified the land of area 295,350.57m^2 as comprising parts of Magante I and Magante II. Rofiasi plotted the land that actually comprised Magante I, according to the development plans, and identified that it was actually 152,000m^2.[157] Rofiasi further identified that there was a sales process in place for only 91,025.63m^2 of the 152,000m^2 that comprised Magante I. These plots were marked in blue by Joe Pitt on the spreadsheet produced by Serulle & Associates.[158] Rofiasi valued the land with area 152,000m^2. It was this area that was also valued by Mr Watson, the expert witness in these proceedings.

E2.26 In summary, both Rofiasi and Mr Watson have valued what Rofiasi assessed to be the entirety of Magante I; albeit, Tenedora 98520 only has an interest in a proportion of this site.

E2.27 Hence the valuations are of limited (if any) value in circumstances where Tenedora only owned certain parcels of land and never owned the entire site for which a development plan was originally produced. The value of the scattered parcels of land actually owned by Tenedora is negligible.

The Sanctuary scheme

E2.28 Sanctuary International Resorts Limited ("**Sanctuary**") was initially owned by D4's brother Ryan Golding (20%), Mark Ingham (40%) and Andy Woodcock (40%).[159]

E2.29 Sanctuary marketed the sale of off-plan (i.e. before any construction work had started) villas on The Hill. It took deposits from investors[160] and agreed to pay interest to them

156 MDR_POST_00001611

157 MDR00181505

158 MDR_POST_00002208; MDR_POST_00002209

159 D7D9-0000298; D2D10-00007425; D8-0000044

160 E.g. D2D10-00005324

Source: Mouseinthecourt.co.uk

on their deposits[161]. It agreed that if an investor changed their mind, the investor did not have to pay the balance and acquire the property but could exercise an option to be repaid 120% of the deposit.[162] Sanctuary took deposits from over 280 investors. Mark Ingham and D3 were closely involved.[163]

E2.30 There is evidence to suggest that the commission was the lesser of 6% of the purchase price or 20% of the deposit – and in practice, because the deposits were ordinarily less than 30% of the purchase price, the lower of the two was 20% of the deposit. Thus, the sales people who brought in the money got to keep 20% of it for themselves as commission.[164]

E2.31 D7 was also involved. He sent invoices to Ecoresorts; and Sanctuary made payments to him. [165] He had dealings with Sanctuary investors. [166]

The 'rescue package'

E2.32 The scheme ultimately ran out of money and was unable to proceed with the development.[167] In around early 2013 Sanctuary became unable to pay the monthly interest due to investors. This was the point at which D2 became involved with Sanctuary.[168] He put together a 'rescue package' for the Sanctuary investors. D1 was also involved in this process.[169] Both were directors of Sustinere Group Plc (company number 02207817), which was the company said to be putting together the rescue package. Sustinere made payments to Sanctuary to prevent it becoming cash flow

161 E.g. D2D10-00005115; MDR00010653 and MDR00009816

162 E.g. D2D10-00005324

163 Day 1/page 40/line 2 – page 45/line 4 **[A5/1/10]**; MDR00010061; MDR00010062; MDR00009806; MDR00010006; D2D10-00066437

164 MDR00009957

165 MDR00010989; D2D10-00005258 page 3

166 D7D9-0000056

167 MDR00010499; MDR00010500

168 D8-0000097

169 D8-0000097

Source: Mouseinthecourt.co.uk

insolvent.[170] At around this time, shares in Sanctuary were transferred to D1.[171] Ultimately, D1 came to own 100% of Sanctuary PCC on trust for D10, D4 and D1.[172]

E2.33 Letters were sent to the Sanctuary investors about the 'rescue package' involving Sustinere,[173] and in June 2013, D2 went on a 'roadshow' to promote it.[174] The investors were told that: (i) they would have the benefit of security through a UK trust holding security over the land at The Hill; (ii) that there would be an improvement in the terms of the buyback option; (iii) their existing option over land at The Hill could be transferred to land at The Beach on the same terms; and (iv) monthly interest payments on sums invested would be restarted. For this deal, investors would need to pay an additional deposit amount. Most investors signed up to this deal. The additional deposits were paid to Buss Murton.[175]

E2.34 The trust arrangements put in place were that the shares in Inversiones were held by Sanctuary PCC on trust for El Cupey Limited, and the share in El Cupey Limited was held on trust for the Sanctuary investors, whether or not they had signed up to the 'rescue package'.[176] D1 and D2 were the initial directors of El Cupey Limited.[177]

E2.35 The new Sanctuary contractual arrangements were put in place.[178] The additional deposits from investors who had signed up to the 'rescue package' amounted to £2,401,760.[179] The monthly interest liability of Sanctuary to the El Cupey investors was approximately £88,000 per month from 2013 to the first half of 2016, at which point it

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170 Day 1/page 49/line 9 – page 52/line 4 **[A5/1/13]**; MDR00012700

171 D2D10-00007428; D2D10-00007429; D2D10-00007423

172 D2D10-00006709

173 D2D10-00005329; D2D10-00005357

174 MDR00012942

175 Day 1/page 52/line 5 – page 62/line 19 **[A5/1/13]**; MDR00013330; MDR00013555; D2D10-00005730

176 MDR00065292; Day 2/page 35/line 22 – page 37/line 17 **[A5/2/9]**; MDR00014026; D2D10-00005667; D2D10-00035753

177 Day 1/page 62/line 20 – page 65/line 2 **[A5/1/16]**.

178 D2D10-00005738; D2D10-00005798; MDR00065292

179 MDR00116025

Source: Mouseinthecourt.co.uk

reduced to £30,000 per month.[180] The total liability of Inversiones to the investors in relation to their buyback options was £27,282,386 as at June 2017.[181]

E2.36 The additional monies raised from the Sanctuary investors were not used to develop the site at The Beach, as the Sanctuary investors had been led to believe. [182] Instead, around £1.1 million of the additional sums raised were paid to companies owned by D4, D4's brother Ryan Golding and D2. For example, D1's company, One Monday, received payments of c.£1.2 million from Sanctuary.[183] One Monday then made various payments including: (i) £535,000 to Clydesdale Property Developments Limited (D4's company); (ii) £200,000 to LV Management (D2's company); (iii) £37,500 to D1 personally; and (iv) £50,000 to Ryan Golding.[184] LV Management received a further £370,000 direct from Buss Murton's client account where Sanctuary's funds were held and £60,000 was transferred to Sustinere.[185]

E3 D1's participation in and knowledge of the Sanctuary scheme

E3.1 D1 has been a director of Sustinere since 22.03.13.[186] D1 directed Sustinere to provide financial support to Sanctuary in May 2013.[187]

E3.2 As a director of Sustinere, D1 was involved in formulating the terms of the 'rescue package' provided to Sanctuary in mid-2013.[188] He explained in his witness statement that he "*was involved in the planning and financing*" the Sanctuary project.[189] While D1 sought to distance himself from the detail of the 'rescue package' in his oral evidence,

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180 MDR00116025

181 MDR00116025; Day 1/page 65/line 10 – page 77/line 1 **[A5/1/17]**; D2D10-00006944; D2D10-00006946

182 D2D10-00011455

183 D2D10-00049660

184 Day 1/page 81/line 18 – page 91/line 5 **[A5/1/21]**; D2D10-00008623; D2D10-00006194; D1-0000521

185 MDR00194997; D2D10-00049660

186 **[R1/22/1]**; Day 20/page 96/lines 1-22 **[A5/20/24]**.

187 MDR00012700; MDR00012710; Day 20/page 97/line 3 – page 98/line 1 **[A5/20/25]**.

188 D8-0000097

189 Thomson ¶18 **[C2/1/6]**. In the final sentence of this paragraph, D1 refers to the acquisition of "*properties*". In his oral evidence, he clarified that he was referring to the acquisition of the shares in Sanctuary and Sanctuary PCC: Day 20/page 117/line 19 – page 118/line 23 **[A5/20/303]**.

Source: Mouseinthecourt.co.uk

it was clear that he was kept informed of its progress by D2[190] and he was reluctantly compelled to acknowledge this.[191] It is clear that D1 played a more active role than simply being kept informed; for example, in May 2014 he actively requested the financial details of the Sanctuary scheme from Michael Peacock.[192]

E3.3 In formulating the 'rescue package' and through his involvement in planning and financing the Sanctuary project, D1 knew that Sanctuary sold villas off-plan to investors in the Sanctuary scheme and that the villas had not been built.[193] He also knew that Sanctuary had taken deposits from investors in the Sanctuary scheme and that interest payments were due to these investors.[194]

E3.4 D1 became a shareholder of Sanctuary in June 2013.[195] He acquired further shares in Sanctuary in December 2013.[196] Ultimately, as noted above, D1 came to own 100% of Sanctuary PCC which he held on trust for D10, D4 and D1.[197]

E3.5 D1 was a director of El Cupey between 18.07.13 and 01.08.13.[198] In this capacity, he signed the trust deed dated 30.07.13 by which Sanctuary PCC agreed to hold its shares in Inversiones on trust for El Cupey.[199] He therefore knew that The Hill was held on trust for the Sanctuary investors.

E3.6 D1 signed the new contracts with the Sanctuary investors who had signed up to the 'rescue scheme' on behalf of Sanctuary.[200] He was therefore aware of the terms of those contracts. In particular, he knew that the contracts provided that: (i) additional payments made by the Sanctuary investors would only be distributed in accordance with the

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190 See, for example, D2D10-00005332 and D2D10-00005361

191 Day 20/page 103/line 15 – page 106/line 13 **[A5/20/26]**.

192 D2D10-00007428

193 Day 20/page 103/lines 1-7 **[A5/20/26]**.

194 Day 20/page 103/lines 8-14 **[A5/20/26]**.

195 D2D10-00007428; Day 20/page 113/lines 4-22 **[A5/20/29]**.

196 D2D10-00007423; Day 20/page 115/lines 3-14 **[A5/20/29]**.

197 D2D10-00006709

198 **[A1/5/27]**; Day 20/page 106/lines 19-21 **[A5/20/27]**.

199 MDR00014026; Day 20/page 107/lines 4-23

200 See, for example, MDR00065292; Day 20/page 108/lines 2-25 **[A5/20/27]**.

Source: Mouseinthecourt.co.uk

instructions of the trust in favour of the Sanctuary investors[201]; and (ii) the trust would ensure that sufficient funds were paid out of the deposits into planning funds reserved to pay for planning consents and other purposes that the trust considered to be in the best interest of the Sanctuary investors as a whole.[202]

E3.7 D1 knew that additional deposits paid by Sanctuary investors who had signed up to the rescue package in an amount of c.£2.4 million were paid to Buss Murton.[203] D1 accepted in his oral evidence that he would have seen statements relating to Sanctuary's client account with Buss Murton.[204]

E3.8 D1 knew that c.£88,000 was payable each month in interest payments to the Sanctuary investors who had signed up to the 'rescue package'.[205]

E3.9 By April 2014, D1 had become the sole shareholder of Sanctuary PCC. As mentioned above, he was the beneficial owner of 5% of the shares and held the remaining shares on trust for D4 (and his family) and D10.[206]

E3.10 D1 knew that neither he, nor D4, nor D10 had paid the previous owners of Sanctuary for the acquisition of the shares in Sanctuary or Sanctuary PCC and that therefore the value of those shares was essentially nil.[207]

E3.11 D1 knew that there was no free equity in The Hill and that the value of the site, other than to the Sanctuary investors, was nil:

(1) D1 knew that The Hill had been purchased by Inversiones for £708,752. D1 sought to deny this in his oral evidence, but a copy of the agreement documenting the sale

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201 MDR00065292 page 4

202 MDR00065292 page 18

203 D2D10-00006944; Day 20/page 106/lines 14-18 **[A5/20/27]**; Day 20/page 109/lines 7-12 **[A5/20.28]**; MDR00013330.

204 Day 20/page 132/lines 4-7 **[A5/20/33]**.

205 D2D10-00006944; D2D10-00006946

206 D2D10-00006709; Day 20/page 115/line 18 – page 116/line 24 **[A5/20/29]**.

207 Thomson ¶18 **[C2/1/6]**; Day 20/page 117/line 19 – page 118/line 23 **[A5/20/30]**.

Source: Mouseinthecourt.co.uk

and the purchase price was found by the Claimants in LCF's books and records and it can only realistically have been placed there by D1.[208] Furthermore, a further copy of the agreement was attached to an email sent to D1 by Mark Ingham on 09.05.17.[209]

(2) As is mentioned above, D1 knew that The Hill was held on trust for the Sanctuary investors.

(3) D1 knew that Jonathan Marshall had produced a report in December 2013 that valued The Hill at US$7.3 million.[210] While D1 claimed that he could not remember this report[211], he acknowledged that his credit card might have been used to pay for Mr Marshall's visit to the Dominican Republic[212] and he was sent the draft report by D2 on 24.12.13.[213] D1 knew that this report caused some concern because it was a lower value than had been anticipated.[214] D1 sought to deny his knowledge of this by claiming, implausibly that he did not read emails if the subject line indicated that it was within someone else's remit, even if the emails was marked "*urgent*" and related to the accounts of a company of which D1 was a director.[215] After noticing from the documents presented to him that he was only copied into the email, D1 sought to use this to bolster his assertion that he did not look at emails that were not directed to him.[216] D1 clearly realised that his evidence was nonsensical because the following morning he tried to amplify it, having come up with what he evidently considered to be a more plausible story.[217] His evidence on his practice of not reading emails should be rejected, particularly in light of the other evidence that clearly shows his involvement in the Sanctuary scheme.

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208 Day 20/page 98/line 19 – page 101/line 8 **[A5/20/25]**.

209 MDR00086565; MDR00086574

210 Day 23/page 111/line 20 – page 112/line 15 **[A5/23/28]**;

211 Day 23/page 113/line 19 – page 114/line 2 **[A5/23/29]**.

212 Day 23/page 113/lines 11-18 **[A5/23/29]**.

213 D2D10-00006233

214 Day 23/page 115/line 9 – page 116/line 7 **[A5/23/29]**.

215 Day 23/page 114/line 21 – page 116/line 5 **[A5/23/29]**.

216 Day 23/page 117/line 15 – page 121/line 1 **[A5/23/30]**.

217 Day 24/page 8/line 5 – page 10/line 16 **[A5/24/2]**.

Source: Mouseinthecourt.co.uk

(4) D1 knew, from an email sent to him on 14.05.14 by D8 that the potential liability of Inversiones to the Sanctuary investors was c.£23.5 million and hence was substantially higher than the value of The Hill.[218]

(5) D1 knew of the revised report produced by Mr Marshall because it was sent to him by D2 on 30.03.14.[219] He knew that this report was flawed because it was predicated on further income from the Sanctuary investors being available to fund the development of The Hill when no such payments would be due until completion and he did not include any finance costs in his assessment.[220] On a further note, D1 would have been aware of the gross disparity between Mr Marshall's initial draft report and his revised version which calls into question Mr Marshall's competence and/or objectivity. D1 sought to claim that the fact that the development was intended to be staged meant that the development was viable and valuable; however, the basis on which he reached this self-serving conclusion is unevidenced and is at odds with the contemporaneous documents and Mr Watson's assessment of the value of The Hill at various times.[221]

E3.12 In his assessment of the value of LCF's security, D1 relied upon the valuation carried out by Mr Marshall in May 2014.[222] By using this valuation, D1 was implicitly accepting that the valuations carried out by Mr Perdomo were unbelievably high, something he obliquely acknowledged in his oral evidence: "*I can't, you know, sit here now and see why we used a draft from Mr Marshall. I can see that the in-country completed valuations – my sense is that they had a higher figure attached to them and we wanted to use a lower figure.*"[223] D1 also knew that Mr Marshall's valuation grossly overstated the value of The Beach and no reliance could be placed upon his valuation.

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218 D2D10-00006944; D2D10-00006946

219 D2D10-00006670; D2D10-00006671 Day 23/page 126/line 20 – page 127/line 15 **[A5/23/32]**.

220 Day 23/page 127/line 16 – page 137/line 11 **[A5/23/32]**.

221 Day 23/page 137/line 20 – page 141/line 24 **[A5/23/35]**.

222 D1-0000457

223 Day 23/page 164/lines 11-15 **[A5/23/41]**.

Source: Mouseinthecourt.co.uk

(1) Mr Marshall's valuation was not a Red Book valuation and was expressly stated to be for internal purposes only and that it was not to be relied upon for the purposes of loan security.

(2) Mr Marshall based his valuation on a schedule of sales prices showing a gross development value of US$119 million and billed costs totalling US$55 million that had been provided to him by D1. He expressly did not carry out any due diligence on those points and the report stated, "*You should therefore place limited reliance upon these figures and we would recommend that no irrevocable decision is taken with regard to the property without commissioning a formal valuation report*".[224]

E3.13 In fact, D1 knew that Tenedora had no valuable interest in The Beach:

(1) D1 knew that Tenedora had entered into an agreement to acquire the plots of land comprising The Beach for a total sum of US$3.5 million.[225]

(2) D1 knew that until late 2017, Tenedora did not actually acquire any of the plots of land at The Beach. While he claimed that he thought Tenedora was proceeding with the purchase, he was informed by Mark Ingham by email on 15.04.16 that Tenedora did not own any of the land and at The Beach and Alex Lee repeated this to D1 in an email on 16.03.17.[226]

(3) D1 knew that Tenedora never acquired all of the parcels of land which would enable the development of The Beach.[227]

E3.14 D1 was a shareholder of One Monday from 05.05.10 until its dissolution on 02.02.16 and was a director of One Monday from 09.05.12.[228] Throughout his time as a director, D1 controlled One Monday's finances. In his oral evidence, D1 tried to claim that he

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224 D1-0000457 page 10

225 Day 20/page 101/line 9 – page 102/line 25 **[A5/20/26]**.

226 MDR00035933; MDR00080319; Day 23/page 149/line 21 – page 160/line 21 **[A5/23/38]**.

227 Day 23/page 165/lines 12-17 **[A5/23/42]**.

228 **[A1/5/92]**.

Source: Mouseinthecourt.co.uk

had handed control of One Monday over to D3 and Michael Peacock and that D3 was added to the bank account mandate.[229] D1's evidence was unable to give a proper explanation as to why: (i) he had stated on a CV drafted for the FCA that he was the managing director of One Monday[230]; (ii) D3 was never on the banking mandate for One Monday (whereas D1 was on the banking mandate for One Monday)[231]; (iii) Nicola Wiseman (and, on the balance of probabilities, D1) had attended a meeting with Bank of Scotland at which getting D1 a debit card for the One Monday account was discussed[232]; (iv) he was kept informed about One Monday's finances by Nicola Wiseman[233]; (v) he signed the LCF annual report dated 30 April 2015 which stated that he was a director of One Monday[234]; (vi) D8 sent a payment services agreement to which One Monday was a party to D1[235]; and (vii) Oliver Clive corresponded with him in relation to One Monday.[236] D1 ultimately acknowledged that he "*could very well have been*" kept informed about payments made to and from One Monday[237] and that he "*may very well have had a hand in*" administering the payment services agreement.[238]

E3.15 D1 knew that £735,000 of the additional deposits received from the Sanctuary investors was transferred from Sanctuary PCC's client account with Buss Murton to One Monday and that One Monday made payments using the deposit monies including: £200,000 to LV Management (which D1 knew was D2's company[239]); £535,000 to Clydesdale Property Developments (which D1 knew was D4's company and of which D1 was a director[240]); £100,000 to D7; and that D1 received £37,500 from One Monday.[241] D1

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229 Day 20/page 119/line 1 – page 122/line 16 **[A5/20/30]**.

230 MDR00227556; MDR0000227558

231 MDR00227585

232 D2D10-00007627

233 See, for example, D2D10-00006245; D2D10-00006247; D2D10-00006248; D2D10-00006251; D2D10-00006254

234 **[L1/6/15]**; Day 20/page 126/line 16 – page 128/line 23 **[A5/20/32]**.

235 MDR00014024

236 D1-0001334; MDR00227554

237 Day 20/page 122/lines 17-20 **[A5/20/31]**.

238 Day 20/page 122/lines 13-16 **[A5/20/31]**.

239 Day 20/page 134/lines 16-20 **[A5/20/34]**; Day 20/page 137/lines 9-11 **[A5/20/35]**.

240 Day 20/page 93/line 15 – page 94/line 10 **[A5/20/24]**.

241 D1-0000521

Source: Mouseinthecourt.co.uk

knew that this application of the additional deposits was not in accordance with the terms of the deal with the Sanctuary investors and was not in their interests.

E4 D4's participation in and knowledge of the Sanctuary scheme

E4.1 D4's brother, Ryan, had been involved in Sanctuary from the outset, as noted above. Presumably this is how D4 became aware of it. D4 was then involved with D2 in formulating the 'rescue package' for the Sanctuary investors and was aware of the terms of the rescue package.[242] He was aware of the trust arrangement involving El Cupey.[243]

E4.2 D4 knew that additional deposits paid by Sanctuary investors who had signed up to the rescue package amounted to c.£2.4 million and that c.£88,000 was payable each month in interest payments to the Sanctuary investors who had signed up to the 'rescue package'.[244]

E4.3 D4 knew that Mr Marshall's draft valuation of The Hill was for US$7.3 million and that this was lower than had been anticipated as the value for the site.[245] He knew that he and D2 had decided not to proceed with the purchase of The Beach and that Tenedora therefore had acquired no interest in land in that site.[246]

E4.4 D4 received £535,000 from Sanctuary via One Monday and Clydesdale Property Developments.

E4.5 By April 2014 at the latest, D4 (and his family) was the beneficial owner of 71.25% of the shares in Sanctuary PCC.[247] He was presumably the owner of a beneficial interest in Sanctuary itself on the earlier dates when D1 acquired legal title to shares in it.

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242 D2D10-00012700; D2D10-00005332; D2D10-00005361

243 D2D10-00005667

244 D2D10-00006944; D2D10-00006946

245 D2D10-00006233

246 D2D10-00005723; D2D10-00005724; D2D10-00005726; D2D10-00005729

247 D2D10-00006709

Source: Mouseinthecourt.co.uk

E5 D8's participation in and knowledge of the Sanctuary scheme

E5.1 D8 arranged for payments to be made from LCCL to Sanctuary via Sustinere.[248]

E5.2 D8 knew of the creation of a 'rescue package' by D1 and D2 as directors of Sustinere.[249]

E5.3 D8 was aware of the terms of the 'rescue package'.[250]

E5.4 D8 handled the receipt of additional sums paid by the Sanctuary investors under the terms of the 'rescue package'. These monies were paid into Sanctuary's client account with Buss Murton.[251]

E5.5 D8 wrote to the Sanctuary investors setting out the terms of the revised agreement (which was with Inversiones) and enclosing a new contract.[252] He was therefore aware of the terms of the revised contracts with the Sanctuary investors.

E5.6 D8 made payments from Sanctuary's client account with Buss Murton to One Monday, Sustinere and LV Management, which it is to be inferred he knew was D2's company.[253] D8 knew that this was not in accordance with the terms of the deal with Sanctuary investors.

E5.7 D8 made payments from Sanctuary PCC's client account to D7. He therefore knew of the amount of commission being paid to D7.[254]

E5.8 D8 was involved in setting up the trust by which Sanctuary PCC held its shares in Inversiones on trust for El Cupey. D8 witnessed D1's signature on the trust deed dated

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248 MDR00012700

249 D8-0000097

250 D2D10-00005361

251 MDR00013330; MDR00013555

252 D2D10-00005798

253 MDR00194997; D2D10-00049660; D2D10-00008623

254 D7D9-0000850; D7D9-0001026; D7D9-0001027; D7D9-0001028; D7D9-0001046; MDR00015987; D2D10-00006245; D7D9-0001224; D7D9-0001225

Source: Mouseinthecourt.co.uk

30.07.13 and executed by Sanctuary PCC and El Cupey and sent the signed trust deed to D1, D2 and Andrew Visintin.[255] He was also aware of the subsequent continuation of those trust arrangements.[256]

E5.9 D8 was also involved in preparing a further trust deed by which Buss Murton Nominees would hold its share in El Cupey on trust for the Sanctuary investors.[257] D8 knew, because of his involvement in the El Cupey trust arrangements, that Sanctuary PCC did not have any interest in land. D8 was therefore fully aware of the trust arrangement for the benefit of the Sanctuary investors.

E5.10 D8 knew that c.£88,000 was payable each month in interest payments to the Sanctuary investors who had signed up to the 'rescue package' and that the potential liability of Inversiones to the Sanctuary investors was c.£23.5 million.[258]

[255] MDR00014026; D2D10-00005667

[256] MDR00116028

[257] D2D10-00035753

[258] D2D10-00006944; D2D10-00006946

Source: Mouseinthecourt.co.uk

F. PARADISE BEACH

F1 Introduction

F1.1 The Claimants ask the Court to find the following facts in relation to Paradise Beach:

(1) The interest of CV Resorts in Paradise Beach – namely, an unperformed contractual right to purchase the site – never had any material value.

(2) D1, D4 and D8 all knew that this was the case.

F2 Summary of the facts

F2.1 Paradise Beach was a partly developed resort in Cape Verde, owned by Paradise Beach SA. The intended purchaser was CV Resorts. CV Resorts acquired its contractual position from Stirling Mortimer in April 2015. Under the contract with Paradise Beach, which was executed on 13.04.15,[259] CV Resorts had to pay various sums for phases of the development.[260]

F2.2 Adding up the constituent elements and the different payment instalments, CV Resorts had to pay EUR 57 million (around £41 million at the prevailing exchange rate) to acquire the resort.[261] However, Savills advised D1 that the market value of the site was c. EUR 40.55 million (and that its 'worth value', i.e. value to the owner or prospective owner such as for investment purposes, was EUR 56.72 million). [262]

F2.3 The right held by CV Resorts therefore had no value, because it was the right to acquire something worth EUR 40.55 million at a cost of EUR 57 million. As D1 expressed in a contemporaneous email, CV Resorts was "*overpaying by quite a margin*". [263]

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259 MDR00005376

260 Day 2/page 53/line 9 – page 57/line 5 **[A5/2/14]**.

261 D2D10-00012921; D2D10-00012920

262 EB0004668

263 MDR00017747; MDR00017752; MDR00007482

Source: Mouseinthecourt.co.uk

F2.4 A further document (which D1 has very belatedly disclosed[264]) reveals that Savills also valued Paradise Beach with a reduced marketing period (and other assumptions) in the sum of only EUR 17.6m and that D1 was fully aware of this. [265]

F2.5 No asset was ever acquired: at most, there was only ever the contractual right to acquire the site, upon paying a sum in excess of its value. As a result, the right to acquire the site did not have any value.

F2.6 CV Resorts failed to pay the instalments due under the contract and this led to a legal dispute with Paradise Beach SA. Paradise Beach SA set out the ways in which CV Resorts had breached the contract in a letter dated 19.11.15.[266] In that letter Paradise Beach stated that if CV Resorts did not remedy all of its breaches, the contract would be terminated. This dispute continued[267] and ultimately it resulted in an agreed variation to the terms of the agreement in May 2016, which pushed out the dates for payment of the instalments. [268] The total price remained EUR 57 million.[269]

F2.7 However, CV Resorts again failed to pay the instalments, and the dispute with Paradise Beach SA was revived.[270] The dispute continued throughout 2016 and into 2017. CV Resorts remained in default of its obligations under the contract and Paradise Beach SA finally terminated the contract in June 2017.[271]

F2.8 CV Resorts never acquired Paradise Beach. It simply had a contractual right to acquire the site, upon paying a sum in excess of its value. As a result, the right to acquire the site did not have any value.

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264 On 25.03.24, which was after the cross-examination of D1 had started.

265 RS00000147

266 EB0008910; the covering email is EB0008909

267 EB0014785; EB0014904; EB0016763

268 MDR00042487; MDR00042489; MDR00042490

269 Day 2/page 64/line 10 – page 72/line 18 **[A5/2/16]**; MDR00056253

270 D2D10-00020961; D2D10-00020963; EB0032302; EB0032324; EB0035997; EB0036001; EB0036009; D2D10-00024621; D8-0010649

271 Day 2/page 72/line 19 – page 81/line 23 **[A5/2/18]**; EB0049496; EB0049497

Source: Mouseinthecourt.co.uk

F3 D1's participation in and knowledge of the Paradise Beach contract

F3.1 D1 was a director of CV Resorts between 23.01.15 and 15.08.15 and was therefore a director at the time at which CV Resorts entered into the contract with Paradise Beach SA.

F3.2 D1 was closely involved in arranging the Paradise Beach deal, along with D2, D4, D8 and Mark Ingham.[272] He met John and Ned Cotter, who were the beneficial owners of Paradise Beach SA, and "*had some hand in*" making a working financial model of the estimated values of the properties. He also obtained a valuation of the site from Savills.[273] As would be expected as one of the two directors of CV Resorts, he was included in discussions relating to the drafting of the agreement with Paradise Beach SA, along with D2.[274]

F3.3 D1 was aware from his conversations with Savills that CV Resorts was "*overpaying by quite a margin*" as he explained to D3 in an email dated 27.07.15.[275]

F3.4 D1 received the draft valuation report from Savills on 21.08.15.[276] This valuation assessed the market value of the Paradise Beach site at EUR 40.55 million. D1 therefore knew that the market value of the Paradise Beach site was very substantially less than the sum of EUR 57 million that CV Resorts was required to pay to acquire it under the contract with Paradise Beach SA.[277] It is apparent from a recently-disclosed document that D1 also knew that Savills valued Paradise Beach with a reduced marketing period (and other assumptions) in the sum of only EUR 17.6m.[278]

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272 D2D10-00008050; D2D10-00008127; Day 21/page 25/line 22 – page 30/line 1 **[A5/21/7]**.

273 Thomson ¶19 **[C2/1/6]**; Day 21/page 21/line 22 – page 25/line 13 **[A5/21/6]**.

274 D2D10-00009437

275 EB0004668

276 MDR00017747; MDR00017752

277 Day 21/page 30/lines 2-12 **[A5/21/8]**.

278 RS00000147

Source: Mouseinthecourt.co.uk

F3.5 On 29.05.16, D1 was sent the variation agreement by which the first dispute between CV Resorts and Paradise Beach SA was resolved.[279] He knew that the completion price under the variation agreement remained at EUR 57 million. It is to be inferred from this that he was aware of the dispute between CV Resorts and Paradise Beach SA and knew that CV Resorts had not paid any of the sums due under the contract.

F3.6 It is be inferred that D1 was aware in or around February 2017 that CV Resorts had not completed the purchase of any of the units from the fact that D8 informed a Cape Verde lawyer on 06.02.17 that LCF "*are ready to provide the €2 million to purchase the first set of units but they require proper security.*"[280] It is likely that D8 had previously discussed this with D1.

F3.7 D1 knew that CV Resorts had still not completed the purchase of any of the units at Paradise Beach by 21.04.17 because D8 sent an email to Alex Lee on this date, copying D1, in which he wrote "*CV Resorts does not at the moment have any property in its name only the contracts to acquire the land in the Cape Verde.*"[281] D1 could provide no explanation for this email in his oral evidence, simply saying he could not remember it.[282] At this stage in his evidence, he was still prepared to admit that he read his emails as a matter of practice.[283]

F3.8 D1's insistence that he thought CV Resorts was buying units[284] was fabricated, as was clear from his misreading of the documents concerning whose obligation it was to purchase a hotel, described at paragraph C3.6 above. It is clear that he was well aware that CV Resorts never acquired any interest in the Paradise Beach resort beyond an option to purchase it at a price substantially above the resort's market value.

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279 MDR00042487; MDR00042489

280 D2D10-00024621

281 MDR00084251

282 Day 21/page 41/lines 2-23 **[A5/21/11]**.

283 Day 21/page 41/line 24 0- page 42/line 12 **[A5/21/11]**.

284 Day 21/page 35/line 3 – page 42/line 5 **[A5/21/9]**.

Source: Mouseinthecourt.co.uk

F4 D4's participation in and knowledge of the Paradise Beach contract

F4.1 D4 was involved in arranging the Paradise Beach deal, along with D1, D2, D8 and Mark Ingham.[285]

F4.2 D4 knew that CV Resorts defaulted under the agreement because he was forwarded the letters dated 19.11.15 and 15.02.16 from Paradise Beach SA in which the defaults of CV Resorts were set out.[286] The first of these letters was forwarded by D8 to D3 who, it is to be inferred, passed it on to D4.[287] The second letter was forwarded directly to D4 by D8.[288] On 23.02.16, D4 received D8's initial analysis of the claims made against CV Resorts by Paradise Beach SA.[289]

F4.3 D4 was involved in discussions with John and Ned Cotter to resolve the dispute and authorised the entry by CV Resorts into a variation agreement in May 2016.[290] The effect of this variation agreement was to alter the timing of the instalments payable; however the total purchase price remained EUR 57 million.

F4.4 The purchase did not complete according to the timetable set out in the purchase agreement. D4 was aware of this because he was copied into an email dated 10.11.16 from D2 to John Cotter in which D2 sought an extension to the completion dates. In this email, D2 noted that "*the price in contemplation is far in excess of an open market sale.*"[291]

F4.5 D4 knew that CV Resorts never completed the purchase of a single unit at Paradise Beach and that this was the reason that Paradise Beach SA terminated the contract on 07.06.17.[292]

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285 D2D10-00008050; D2D10-00008127; Day 21/page 25/lines 18-21 **[A5/21/6]**.

286 EB0008910; EB0014785

287 EB0008909

288 EB0014784

289 EB0014904

290 MDR00042487; MDR00042489

291 EB0032302

292 EB0049496; EB0049497

Source: Mouseinthecourt.co.uk

F5 D8's participation in and knowledge of the Paradise Beach contract

F5.1 D8 was involved in arranging the Paradise Beach deal, along with D2, D4, D1 and Mark Ingham.[293]

F5.2 In February 2015, D8 was involved in drafting an agreement by which Stirling Mortimer would assign its rights in relation to Paradise Beach to CV Resorts.[294] This agreement was signed in April 2015.[295]

F5.3 D8 acted for CV Resorts in relation to the agreements between CV Resorts and Paradise Beach SA, which were executed on 13.04.15.[296] D8 was therefore aware of the terms of the agreement and, in particular, that to acquire the site at Paradise Beach, CV Resorts would have had to pay EUR 57 million. D8 subsequently summarised the payments in a spreadsheet for Michael Peacock.[297]

F5.4 D8 knew that CV Resorts defaulted under the agreement because he received the letters dated 19.11.15 and 15.02.16 from Paradise Beach SA in which the defaults of CV Resorts were set out.[298] He forwarded the first of these letters to D2 and D3 and the second to D2, D3 and D4.[299]

F5.5 On 23.02.16, D8 carried out an initial analysis of the claims made against CV Resorts by Paradise Beach SA and sent it to D2, D3 and D4.[300]

293 D2D10-00008127

294 EB0000543; EB0000544

295 D8-0000516

296 EB0002079; MDR00005376

297 D2D10-00012920; D2D10-00012921

298 EB0008910; EB0014785

299 EB0008909; EB0014784

300 EB0014904

Source: Mouseinthecourt.co.uk

F5.6 D8 acted in the dispute for CV Resorts and engaged in correspondence with Paradise Beach SA.[301] He was also involved in the variation agreement by which this first dispute was resolved in May 2016.[302]

F5.7 On 10.10.16, D8 sent an email to Jeremy Friedlander, copied to D2, D3 and Mark Ingham, in which he explained that no purchases of units at Paradise Beach had completed.[303] Attached to this email was a summary of the outstanding payments due.[304]

F5.8 On 10.11.16, D8 drafted an email for D2 and D3 to send to John Cotter seeking to dissuade Paradise Beach SA from terminating the contract.[305] On 12.01.17, Paradise Beach SA acceded to this request and allowed CV Resorts until 01.02.17 to remedy its breaches.[306] D8 forwarded these letters to D2 and D3.[307]

F5.9 CV Resorts did not remedy its breaches by 01.02.17 and on 06.02.17, D8 sought advice from a lawyer qualified in Cape Verde law. He explained that "*we are of the view that the price being paid for the site is too high and wish to persuade them to accept significantly less*" and that LCF was ready to provide EUR 2 million.[308]

F5.10 D8 knew that CV Resorts never completed the purchase of a single unit at Paradise Beach and that this was the reason that Paradise Beach SA terminated the contract on 07.06.17.[309]

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301 EB0016763

302 MDR00042487

303 D2D10-00020961

304 D2D10-00020963

305 EB0032324

306 EB0036001; EB0036009

307 EB0035997

308 D2D10-00024621

309 EB0049496; EB0049497

Source: Mouseinthecourt.co.uk

G. THE LAKEVIEW SITE

G1 Introduction

G1.1 The Claimants ask the Court to find the following facts in relation to the Lakeview site:

(1) The Lakeview site comprised 69 lodges of which, at the time of acquisition, 36 were let on 999-year leases and 24 were let to a timeshare club (Lakeview Title Limited).

(2) In January 2015, of the 69 lodges at the Lakeview site, LCCL owned only 9 and one of these was a service lodge.

(3) The value of the Lakeview site in and around January 2015 was between £2.6 million and £4.5 million depending upon the length of the marketing period.

(4) LCCL gradually acquired more lodges from January 2015.

(5) The GVA valuation of December 2014 and the valuations carried out by John Porter all significantly overstated the true value of the Lakeview site.

(6) D1, D4 and D8 all knew of the matters stated above.

G2 Summary of the facts

The Lakeview site

G2.1 Lakeview is a holiday resort in Bodmin, Cornwall, which contains a number of holiday lodges. There were 69 lodges in total plus one lodge used as an office.[310] At the time of acquisition of the site by LCCL: (i) 36 lodges were let on 999-year leases to third parties; (ii) 24 lodges were let to a timeshare club, Lakeview Title Limited; and (iii) only 9

[310] Day 23/page 176/lines 2-3 **[A5/23/44]**; MDR00013548

Source: Mouseinthecourt.co.uk

lodges were owned outright (including a lodge used as a service lodge).[311] The site comprised 4 one-bedroom lodges, 42 two-bedroom lodges, 5 two-bedroom bungalows, and 18 three-bedroom bungalows.[312]

The purchase of the Lakeview site by LCCL

G2.2 In 2012, the Lakeview site was owned by Vernon Knight Associates ("**VKA**"), which was a trading partnership between Mike and Penny Vernon. VKA's bank, Barclays, sought early repayment of VKA's borrowing. VKA agreed to sell the Lakeview site to Telos (IOM) Limited, a company incorporated in the Isle of Man, for £1.98 million. Telos accepted investments from 136 investors in the sum of c.£6.4 million for the purchase and development of the Lakeview site. Telos failed to pay the purchase price and forfeited its deposit.[313]

G2.3 D2 and D4 decided to purchase the Lakeview site. The proposed price was initially £4.5 million, mostly consisting of deferred consideration. [314] This was considered to be too high: "*We are all agreed that [£4.5m] is way in excess of what the property and business are worth*". [315] D2 and D8 were involved in a plan to renegotiate the price downwards.[316] Negotiations followed in which the price was reduced.[317] LCCL exchanged contracts with the vendors to acquire the site for £2.75 million,[318] but, prior to completion, there were further renegotiations regarding the price,[319] resulting in a variation agreement.[320] LCCL ultimately acquired the Lakeview site for £1.525 million.[321]

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311 Day 23/page 176/lines 2-3 **[A5/23/44]**; MDR00013548 pp 18, 33, 34

312 Day 2/page81/line24 - page86/line18 **[A5/2/21]**; MDR00013548 pp 18, 33, 34

313 Day 2/page 87/line 20 – page 94/line 24 **[A5/2/22]**; MDR00010655

314 D2D10-00005037; D2D10-00005051; D2D10-00005052

315 D2D10-00005103

316 MDR00010046

317 D2D10-00005120; D2D10-00005127; MDR00010217

318 MDR00010568; MDR00010569; MDR00010600; MDR00010610; MDR00010616; MDR00010668

319 MDR00011028; MDR00011079; MDR00011079; MDR00011223

320 MDR00015182

321 Day 2/page 95/line 5 – page 108/line 18 **[A5/2/24]**; Claimants' written opening submission ¶¶B4.5-B4.19 **[A2/1/13]**.

Source: Mouseinthecourt.co.uk

G2.4 D1 and D2 approached the Telos investors with a proposal to raise money to finance the purchase price.[322] This proposal was presented to Telos investors on a Lakeview roadshow. [323] It was proposed that Telos investors would loan monies which would be repayable with interest at 8% per annum and that 10% of the proceeds of the sale of Lakeview (in due course) would be held by a trust for the benefit of the Telos investors.[324] Many Telos investors responded positively to this proposal. [325] The Telos investors paid a total of £728,672.88.[326]

G2.5 The bulk of the completion monies were obtained ultimately from Ortus, a bridging lender, which made a secured loan of £800,000 to LCCL, which was guaranteed by D1, D2 and D10.[327] The sale of the Lakeview site to LCCL completed on 05.04.13. The total consideration paid was c.£1.6 million, consisting entirely of borrowed monies.[328]

Acquisition of additional lodges

G2.6 LCCL and associated companies incrementally bought back a number of the lodges but only four of these purchases occurred before January 2015. [329] A significant increase in the number of lodges held occurred on 06.12.16 when Waterside Villages plc, to which the Lakeview site was transferred in late 2015, accepted the surrender of the timeshare clubs 24 leases in return for a payment of £762,000.[330]

G2.7 The process of acquiring lodges was protracted. Often, LCCL would enter into an option to buy a lodge in the future at a fixed price and would pay option fees pending the exercise of its option. Sometimes the purchase price was renegotiated; sometimes

322 D2D10-00005186; D2D10-00005187; D2D10-00005189; D2D10-00005190

323 MDR00010855; MDR00010856

324 MDR00011181; MDR00011187; MDR00011188

325 MDR00011363; MDR00011270; MDR00011281; MDR00011282; MDR00011417; MDR00011408

326 Day 2/page 108/line 19 – page 127/line 23 **[A5/2/27]**; MDR00013464; D2D10-00007195

327 D7D9-0000100; MDR00012401; MDR00012445; MDR00012447; MDR00012403

328 Day 2/page 127/line 24 – page 128/line 2 **[A5/2/32-]**; Day 2/page 130/line 12 – page 134/line 13 **[A5/2/33]**; Claimants' written opening submissions ¶¶B4.17-B4.23 **[A2/1/15]**.

329 **[A1/14/2]**; **[A1/14/3]**.

330 Day 2/page 146/line 25 – page 147/line 15 **[A5/2/37]**.

Source: Mouseinthecourt.co.uk

contracts were exchanged but completion was delayed for months while efforts were made to negotiate the purchase price downwards.[331]

G2.8 The Claimants have obtained a complete suite of relevant title documents from the Land Registry and from that information have produced a table, which can be found at **[A1/14/1]** which shows the dates at which various lodges were acquired and the prices paid for them. By the time the lodge acquisitions stopped, 60 of the 69 lodges were owned by LCCL and related companies.[332]

The value of the Lakeview site

G2.9 D1 was involved in the roadshow to the Telos investors in order to raise funds from the Telos investors for the purchase of the Lakeview site.[333] In particular: D1 was involved in preparing a presentation to the Telos investors which set out the proposed development of the Lakeview site, including the construction of a 105-bedroom hotel and the various options available to the Telos investors[334]; and he was closely involved in drafting a letter to the Telos investors, which he asked D8 to review.[335]

G2.10 Although D1 was not able to recall in his oral evidence the sums raised from the Telos investors, he accepted that he would probably have seen a spreadsheet produced by Michael Peacock which showed that the total sum raised from the Telos investors was £728,572.88 and that the annual interest due to the Telos investors was c.£58,000.[336]

G2.11 On 28.11.12, Andrew Visintin informed D2 and Clint Redman by email that the contemplated purchase price of £4.5 million was according to Andrew Visintin "*way in excess of what the property and business are worth*" and that he considered that £1.5

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331 Day 2/page 147/line 21 – page 148/line 15 **[A5/2/37]**; MDR00013166; MDR00013168

332 Day 2/page 148/line 16 – page 152/line 5 **[A5/2/37]**.

333 Day 21/page 63/line 9 – page 77/line 8 **[A5/21/16]**.

334 MDR00011181; Day 21/page 64/line 9 – page 66/line 6 **[A5/21/16]**.

335 MDR00011187; MDR00011188; Day 21/page 72/line 9 – page 73/line 5 **[A5/21/18]**.

336 D2D10-00007195

Source: Mouseinthecourt.co.uk

million was the right price.[337] In the event, LCCL purchased the Lakeview site for £1,609,269.[338]

G2.12 In January 2013, GVA valued the Lakeview site in the sum of £4.65 million.[339] This valuation correctly noted that 36 of the lodges were subject to long leases and 24 of the lodges were subject to timeshare agreements.

G2.13 In July 2013, GVA produced a valuation for Ultimate Capital Limited.[340] This gave the Lakeview site a market value of £4.5 million, which decreased to £3.6 million if the marketing period was restricted to 180 days. This valuation also correctly noted that 36 of the lodges were subject to long leases and 24 of the lodges were subject to timeshare agreements.

G2.14 Savills produced a valuation for LUKI in early 2014.[341] This report estimated the market value of the Lakeview site at £4 million rising to £4.125 million if the tie restricting occupation of the Manor House to an owner or manager of the site were lifted. This valuation incorrectly stated that there were 11 lodges owned by LCCL, when in fact at this point LCCL owned only 9 lodges, of which one was a service lodge.

G2.15 Savills also produced a valuation for LCCL in early 2014.[342] This report also estimated the market value of the Lakeview site at £4 million rising to £4.125 million if the tie restricting occupation of the Manor House to an owner or manager of the site were lifted. This valuation again incorrectly stated that there were 11 lodges owned by LCCL, when in fact at this point LCCL owned only 9 lodges, of which one was a service lodge.

G2.16 GVA produced a further valuation dated December 2014,[343] which was produced for International Resort Group plc and marked for the attention of D1. It assessed market

337 D2D10-00005103

338 MDR00013168

339 MDR00011619 in particular pages 31, 33, 55

340 MDR00013548 in particular pages 33, 34, 55

341 MDR00014615 in particular pages 18, 21, 25, 26, 28, 54, 55, 56, 58

342 MDR00014871 see in particular page 60

343 MDR00009421 see in particular pages 1, 3, 4, 34, 55, 58, 56, 57, 62

Source: Mouseinthecourt.co.uk

value as at 11.04.14 to be £12.4 million on the basis of a special assumption that the proposed business plan will be achieved in full and without delay. The business plan was not achieved and so the value of £12.4 million is defunct. This GVA valuation assessed market value as at 11.04.14 with no special assumption to be £7,150,000. However, this valuation is also based on an inaccurate assumption, namely that LCCL owned 26 lodges. It did not; in fact it owned only 9 lodges, of which one was a service lodge.[344] GVA's report stated:[345]

> "*The Lodge previously used as an Office and Lodges 3-5, 7, 9, 11-13, 15, 17, 19-20, 25-26, 36, 43, 45-48, 61, 63 and 65-67 are held in hand. You advise us that you have bought in 13 lodges since our last inspection and now own 16 A frame lodges (two with hot tub), 1 two bedroom lodge and 9 three bedroom lodges (six with hot tub). Our valuation is on the assumption that the purchase of the leasehold interest in the additional 13 lodges has completed …"*

G2.17 As noted above, this assumption was factually inaccurate. At best, this valuation was a valuation on a prospective basis to ascertain how much the Lakeview site would be worth if additional lodges, which had not been acquired, were to be acquired.

G2.18 Savills produced a further valuation dated for LCCL 17.01.15.[346] Its conclusions as to the market value of the Lakeview site were unchanged from its 2014 report. As with its earlier report, Savills based its valuation on there being 11 lodges owned by LCCL.

G2.19 The true position in respect of lodges and the real value can also be seen in the GVA valuation dated 29.01.15 for Ultimate Capital Limited[347], which held security over the Lakeview resort. This report assessed the market value as at 12.01.15 to be £4.5 million, reduced to £2.6 million if the sale period was limited to 90 days. In this report, which is to a commercial lender to whom GVA could potentially be liable in negligence for any error, was based on the fact that LCCL owned 8 lodges.[348]

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344 Day 2/page 82/line 1ff **[A5/2/21]**.

345 MDR00009421 page 34

346 MDR00016309

347 MDR00015672 pages 1-4, 36, 37, 72

348 The Savills report dated 17 January 2015 for LCCL (MDR00016309), which valued the Lakeview resort at £4 million, said variously that LCCL owned 11 and 12 lodges.

Source: Mouseinthecourt.co.uk

G2.20 John Spacey carried out three valuations of the Lakeview resort:

(1) In December 2016, Porters Intrinsic Valuations produced four reports for LCF on the value of different components of the Lakeview resort, which in total gave the market value of the Lakeview resort as £15,030,000.[349] Of this figure, £9,360,000 was attributable to the value of the lodges.[350] Mr Spacey assigned 3-bedroom lodges, of which he recorded 17, a value of £180,000 and 2-bedroom lodges, of which he recorded 45, a value of £140,000. These values were substantially above the prices at which lodges had been sold in open market transactions.[351]

(2) On 01.12.17, Mr Spacey, now trading as The Cobbs Consultancy, sent Global Resort Properties Limited an updating letter in which he stated the value of the Lakeview resort had risen to £22.6 million.[352] Of this figure, £13.6 million was due to the value of the lodges. Mr Spacey recorded that there were 69 lodges, of which 7 were 2-bedroom lodges valued at £200,000 each and 62 were 3-bedroom lodges valued at £250,000 each. Not only were these values out of kilter with open market sales[353] but Mr Spacey had also erroneously increased the number of 3-bedroom lodges and decreased the number of 2-bedroom lodges. In addition, Mr Spacey has increased the value of the development land from £1.5 million in December 2016 to £4.5 million a year later.[354] As his letter is not a Red Book valuation, the basis on which he has decided this was appropriate is unknown.

(3) On 04.06.18, Mr Spacey sent Terry Mitchell a further updating letter which he stated the value of the Lakeview resort had risen to £33,199,350.[355] The development land was said (inexplicably) to have increased in value from £4.5 million to £11,865,000 in a few months. The lodges were now valued at £17,355,000. Inconsistently with his

349 D1-0003191; D1-0003192; D1-0003193; D1-0003194

350 D1-0003193

351 See, for example, MDR00050958; MDR00055202; MDR00046904; MDR00055827; Day 3/page 7/line 2ff **[A5/3/2]**.

352 MDR00138648

353 Day 3/page 7/line 2ff **[A5/3/2]**.

354 Day 3/page 12/line 23ff **[A5/3/3]**.

355 MDR_POST_00000153

Source: Mouseinthecourt.co.uk

previous reports, Mr Spacey valued 7 x 2-bedroom lodges (at £240,000) and 57 x 3-bedroom lodges (at £275,000). The significant increase in values in a short space of time was not justified by Mr Spacey and the number and configuration of lodges differs from those actually at the Lakeview resort.[356] In fact, there were in total, as there always had been, 18 x 3-bedroom lodges on the site.[357]

G2.21 The values given in Mr Spacey's letter of 01.12.17 are predicated upon a refurbishment having taken place. As at 01.12.17, some limited refurbishment work appears to have taken place, as some works are noted in a draft information memorandum for an ultimately abortive GRP bond issue.[358] However, it is clear that the bulk of the refurbishment work envisaged by Mr Spacey had not been completed by April 2018 from an email dated 16.04.18 from Terry Mitchell to D2, in which Terry Mitchell wrote of Mr Spacey's valuation: "*The only point is that the valuation is based upon the lodges being refurbished whereas they may not be completed until end May of after subject to availability of vacant lodges.*"[359] The refurbishment appears to have been completed by October 2018.[360] The effect of the refurbishment could not justify the increase in value seen in Mr Spacey's letter of 04.06.18 because it had already been priced into his earlier revision on 01.12.17.

G2.22 The Lakeview site was sold by the LCF Administrators on 28.04.22 for £10.1 million, following an extensive marketing process.[361] The price actually achieved in an arm's length sale on the open market following extensive marketing was thus substantially lower than that contained in Mr Spacey's valuations.

G3 D1's participation in and knowledge of the Lakeview site

G3.1 D1 was appointed a director of LCCL on its incorporation on 18.12.12.[362]

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356 Day 3/page 17/line 5ff **[A5/3/5]**.

357 Day 2/page 83/line 25ff **[A5/2/21]**.

358 D1-0003910

359 MDR00142548

360 MDR00181196

361 MDR_POST_00002345

362 MDR00010544; **[A1/5/64]**; Lloyd 1 **[C1/6/1]**.

Source: Mouseinthecourt.co.uk

G3.2 D1 acted as a witness on the declaration of trust by which Buss Murton (Nominees) Limited agreed to hold the single share in LCCL on trust in the following proportions: 71.25% for D4 and his family; 23.75% for D10 and 5% for D1.[363]

G3.3 D1 was involved in the roadshow to Telos investors to raise funds for the completion of the purchase of the Lakeview site. He acknowledged that he was involved in the preparation of a PowerPoint presentation setting out the proposed development of the Lakeview site (including the construction of a 105-bedroom hotel) and the options available to the Telos investors.[364] D1 also accepted in his oral evidence that he was closely involved in the production of a letter to the Telos investors which also set out the options open to them.[365] A spreadsheet shows that the total amount raised from the Telos investors was £728,552.88 and that the annual interest due to them was c.£58,000.[366] While D1 could not recall the spreadsheet, he said in his oral evidence that it looked as though it had been produced by Michael Peacock and that he would probably have seen it at the time.[367] D1 should therefore be taken to have known these figures.

G3.4 On 20.12.12, D1 signed the sale agreement with VKA on behalf of LCCL.[368] In March 2013, following the renegotiation between the parties, D1 also signed the supplemental agreement, which decreased the price to £1,525,000, on behalf of LCCL.[369] D1 was therefore aware of the purchase price of the Lakeview site, as he acknowledged in his oral evidence.[370]

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363 MDR00224886; D1-0000314; D1-0000315; MDR00014818

364 MDR00011181; Day 21/page 63/line 9 – page 71/line 5 **[A5/21/16]**.

365 MDR00011187; MDR00011188; Day 21/page 71/line 6 – page 73/line 5 **[A5/21/18]**.

366 D2D10-00007195.

367 Day 21/page 73/line 6 – page 77/line 8 **[A5/21/19]**.

368 MDR00010600; MDR00010616; Day 21/page 57/lines 12 - 15 **[A5/21/15]**.

369 MDR00011370; MDR00011371; Day 21/page 58/line 9 – page 61/line 22 **[A5/21/15]**.

370 Day 21/page 78/lines 3-11 **[A5/21/20]**.

Source: Mouseinthecourt.co.uk

G3.5 On 05.04.13, D1 signed a facility agreement in the sum of £800,000 with Ortus to obtain bridging finance for the purchase of the Lakeview site. D1, along with D2 and D10 also signed the facility agreement as a guarantor.[371] D1 accepted this in his oral evidence.[372]

G3.6 D1 knew that at the time at which the Lakeview site was acquired that: (i) there were 69 or 70 lodges in total, depending upon whether the lodge used as an office was included in the figure; (ii) 24 lodges were owned by the timeshare club; (iii) 8 lodges plus the service lodge plus the lodge used as an office were owned outright by LCCL (in his oral evidence, D1 said seven lodges plus an office but this small discrepancy can be attributed to fading memory over time); and (iv) the remaining lodges were held on long leases.[373]

G3.7 The bridging loan from Ortus was due to expire in July 2013. D1 was involved in arranging the refinancing in June 2013.[374] The bridging loan was refinanced with a loan from Ultimate Capital.[375] D1 knew that Ultimate Capital had obtained a valuation of the Lakeview site in July 2013 from GVA and accepted that he would have seen it at the time and he was therefore aware of the quantum of that valuation.[376]

G3.8 D1 was involved in efforts, along with D2 and D4, to raise finance against the Lakeview site and as part of these efforts, D1 was involved in instructing Savills to provide a valuation of the Lakeview site.[377] Savills addressed its report to D1.[378] D1 was familiar with the content of this report and knew the quantum of the Savills valuation.

G3.9 D1 accepted in his oral evidence that he would have seen the valuation of the Lakeview site obtained for Ultimate Capital from GVA in January 2015.[379]

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371 MDR00012401

372 Day 21/page 77/lines 9-23 **[A5/21/20]**.

373 Day 21/page 82/line 18 – page 83/line 16 **[A5/21/21]**; Day 23/page 175/line 22 – page 176/line 9 **[A5/23/44]**.

374 D7D9-0000311; D7D9-0000312; MDR00012906

375 D2D10-00005425

376 Day 21/page 85/line8 – page 87/line 24 **[A5/21/22]**.

377 D2D10-00005688; MDR00014825

378 MDR00014871

379 Day 23/page 171/lines 6-12 **[A5/23/43]**.

Source: Mouseinthecourt.co.uk

G3.10 D1 was involved in the GVA valuation produced for IRG in December 2014 and was aware that the value of £12.4 million contained in this valuation was predicated on a special assumption that the business plan, which included the development of a 105-bedroom hotel, would be "*achieved in full and without delay*."[380] D1 knew that this figure grossly overstated the value of the Lakeview site.

G3.11 **First**, this GVA valuation was based on LCCL owning 26 lodges. D1 knew that this was false. D1 knew precisely how many lodges LCCL owned at any one time. D1 was heavily involved in LCCL's lodge buyback programme in 2013 and 2014 and would have known that no purchases of new lodges completed in this period or, indeed, before late 2015.[381] D1 was the addressee of emails about the lodge buyback programme [382]; was the principal person who gave instructions to D8 in relation to the lodge buyback programme[383]; and, in his oral evidence, "*absolutely*" accepted that he was kept informed about when contracts were exchanged and when completions occurred.[384] When he recognised that this posed a difficulty for him, D1 then changed his evidence, and asserted that he did not know about which lodges were acquired and when.[385] D1's later evidence should be rejected: it is (a) inconsistent with the available documents, (b) inconsistent with his initial evidence on this point and (c) entirely self-serving.

G3.12 In his oral evidence, D1 suggested that he would not have picked up the number of lodges GVA valued from the report.[386] This answer should not be accepted, as the contemporaneous documents show that D1 was seeking to explain the contents of the report to third parties so that they would accept that that the Lakeview site should be valued at £12.4 million.[387] Further, the instruction to GVA as to the number of lodges to include in the valuation was likely to have come from D1.

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380 MDR00009421; Day 25/page 60/line 9 – page 61/line 20 **[A5/25/15]**.

381 MDR00021552; MDR00055827; Day 25/page 52/line 20 – page 52/line 20 **[A5/25/13]**; Day 25/page 53/line 3 -page 60/line 8 **[A5/25/13]**.

382 MDR00015248

383 MDR00012615; MDR00012674; MDR00012787; MDR00014064; MDR00014237; MDR00014238; MDR00014307; MDR00014518; Day 25/page 38/line 9 – page 52/line 20 **[A5/25/10]**.

384 Day 24/page 15/line 24 – page 16/line 21 **[A5/24/4]**.

385 Day 24/page 18/line 2 – page 19/line 24 **[A5/24/5]**.

386 Day 25/page 63/line 8 – page 67/line 9 **[A5/25/17]**.

387 MDR00026834; MDR00026837; MDR00026840; Day 25/page 67/line 10 – page 71/line 4 **[A5/25/17]**.

Source: Mouseinthecourt.co.uk

G3.13 **Second**, D1 knew that the business plan referred to in the GVA valuation report had not been achieved "*in full and without delay*" and, in particular, that a 105-bedroom hotel had not been built at the Lakeview site.[388] D1 could not offer any coherent explanation for relying on the report in such circumstances:[389]

> 25 So you understood the 12.4 was on the assumption the
>
> 1 business plan had been achieved in full?
> **2 A. No, it says "[On the] assumption that the proposed**
> **3 business plan will be achieved in full", so it is**
> **4 a process that has to happen. So you have a business**
> **5 plan. If you are putting that business plan -- my**
> **6 understanding of this is, if you put that business plan**
> **7 in place, that's what the current value is.**
> 8 Q. If you immediately -- if you build the foundations for
> 9 one lodge, it is immediately worth 12.4 million?
> **10 A. No. The business plan, if we go back to it, involved**
> **11 refurbishment, involved starting to buy back in. Yes,**
> **12 we had got the planning back in place, we had done all**
> **13 of those things, and we were putting the business plan**
> **14 in place. So, I don't think the market value there says**
> **15 that it is completed, which is, I think, what you said**
> **16 before. It says "achieved in full and without delay.**
> 17 Q. It says "achieved in full", yes. Doesn't that mean
> 18 completed?
> **19 A. I read that differently, Mr Robins.**
> 20 Q. Are you saying you thought the valuation had risen to
> 21 12.4 million by virtue of the fact that some lodges had
> 22 been bought back and some foundations had been built?
> **23 A. No, I read that -- the market valuation at that date, if**
> **24 nothing else is going to happen on the site. If you**
> **25 have got no other plans, you're not refurbishing, you're**
>
> **1 not doing anything, that's the value of it. However, if**
> **2 you start to put your plans in place to do all of these**
> **3 other things, then the valuation is the bottom one. And**
> **4 they had, or we had, started that process.**
> 5 Q. Mr Thomson, is that another example of talking the book
> 6 up?
> **7 A. No. That was -- that's how we took market valuation**
> **8 with -- when making assumptions of business plan. As**
> **9 long as the company evidenced that it had put that**
> **10 business plan -- had started to put that business plan**
> **11 in place --**
> 12 Q. And achieved it in full, without delay?
> **13 A. "Will be achieved in full and without delay". So there**
> **14 is a time period to put that in place. It doesn't say,**
> **15 "It will be worth this when you complete your business**
> **16 plan", because then, if you had all the lodges in hand,**
> **17 if you had 36 new very nice lodges, if you had increased**
> **18 the value of the central facilities, built a 105-bedroom**

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388 MDR00026840; MDR00009421; Day 25/page 61/line 21 – page 63/line 8 **[A5/25/16]**.

389 Day 25/page 71/line 25 – page 74/line 25 **[A5/25/18]**.

Source: Mouseinthecourt.co.uk

19 hotel, the value would be well in excess of
20 12.4 million.
21 Q. So, to be clear, are you saying, at the end of 2014, the
22 value was already 12.4 million?
23 A. The market value -- again, perhaps I'm not explaining
24 myself properly, sorry. The market value has an
25 assumption. If you are putting that plan into place,

1 that is the value of what it is, but you need to be
2 putting that plan into place. That's the value at that
3 time. What the gross development value will be after
4 you've put that in place, that's a different question.
5 It is not saying that.
6 Q. If we go back to page 56, we saw the proposed business
7 plan --
8 A. Can we make it a bit bigger, please?
9 Q. When they say the assumption is that that is achieved in
10 full, they mean that that plan is implemented and
11 completed?
12 A. No, the plan is implemented. As you have just said,
13 Mr Robins, it doesn't say "completed". Yes, the plan is
14 being put into place. Yes, lodges are being bought
15 back. Yes, lodges are being refurbished. You can't
16 resale on a fractional basis until you have them in
17 hand. Yes, planning permission had been secured.
18 Tender documents were prepared. So, the plan was being
19 put into place. So, I read that as, yes, that's the
20 value if you are putting the plan into place without
21 delay, but I would expect, when all of that is built --
22 and it hasn't been, but if all of that was built and
23 done, and everything had been refurbished and all the
24 lodges had been bought back, the price would be well in
25 excess of 12.4 million.

G3.14 D1's novel interpretation of the meaning of "*in full and without delay*" was not shared by, for example, Simon Welsh of Hypa Management, who understood it, correctly, to mean "*on completion*" of the business plan.[390] Ultimate Capital also refused to accept the valuation because it was based upon an assumption which was incorrect.[391]

G3.15 D1 also knew that the John Spacey valuations of Lakeview were wildly inaccurate because: (i) the values of the lodges estimated by John Spacey was very significantly above the actual prices at which D1 knew LCCL had purchased lodges; and (ii) the number and configuration of the lodges contained in the reports was wrong and D1 knew them to be wrong.[392]

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390 MDR00026840

391 D2D10-00010793; Day 25/page 78/line 18 – page 81/line 24 **[A5/25/20]**.

392 MDR00015248; Day 25/page 83/line 17 - page 87/line 12 **[A5/25/21]**.

Source: Mouseinthecourt.co.uk

G4 D4's participation in and knowledge of the Lakeview site

G4.1 D4 was the main figure behind the purchase of the Lakeview site.[393] D2 seems to have been the public face of D4's involvement: D2 routinely forwarded emails regarding the proposed acquisition of Lakeview to D4.[394] D4 was closely involved in internal discussions regarding the proposed renegotiation of the price.[395]

G4.2 D4 was involved in raising monies from the Telos investors.[396] Ben Beal was under the impression that the bridging finance to acquire the Lakeview site was "*the finance required for Spencer*". [397]

G4.3 Following the acquisition, D4 became the majority owner of the Lakeview site, via his beneficial interest in LCCL.[398] D4 was the person who had overall control of LCCL.[399]

G4.4 In light of the above, D4 would have known how much LCCL paid for the Lakeview site (namely, the sum of £1,609,268.62).

G4.5 D4 was involved in the instruction of Savills to produce a valuation of the Lakeview site.[400] He must therefore have known about the quantum of that valuation.

G4.6 D1 was understood by D8 and Jo Baldock to be D4's representative.[401] In his oral evidence, D1 balked at the suggestion he was D4's employee but acknowledged that he represented D4's interests in LCCL.[402] D1 also held D4's shares on trust for him.

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393 D2D10-00005037; D7D9-0000100

394 D2D10-00005056; D2D10-00005060; D2D10-00005059; D2D10-00005103

395 D2D10-00005120; D2D10-00005127; D2D10-00005141

396 Day 21/page 71/line 9 – page 72/line 8 **[A5/21/18]**.

397 D7D9-0000100

398 MDR00224886; D1-0000314; D1-0000315; MDR00014818

399 MDR00014819

400 D2D10-00005688; MDR00014825

401 D7D9-0000311; MDR00012906

402 Day 21/page 79/line 10 – page 80/line 9 **[A5/21/20]**.

Source: Mouseinthecourt.co.uk

G4.7 It is to be inferred from D4's overall control of the Lakeview operation and his representation by D1 that D1 would have kept D4 informed of all significant matters relating to the Lakeview site and therefore that D4's knowledge would have been the same as that of D1.

G5 D8's participation in and knowledge of the Lakeview site

G5.1 D8 was instructed by LCCL to deal with the purchase of the Lakeview site from VKA and so knew the details of the negotiations and the eventual purchase.[403]

G5.2 D8 principally received instructions from D2 but he knew that D4 was also interested in the acquisition.[404]

G5.3 D8 knew that D2 negotiated a loan of £200,000 by Geoffrey Hunt and John Banks, the directors of Telos, to pay the deposit. D8 drafted an undertaking from Bewl Holiday Homes LLP that Mr Hunt and Mr Banks would be repaid from the proceeds of sale of Hook House.[405] D8 also knew that ultimately an undertaking to this effect was given by Buss Murton to Mr Hunt and Mr Banks.[406] The £200,000 arrived in Buss Murton's client account and D8 instructed that it be paid to the vendors' solicitors.[407]

G5.4 D8 incorporated LCCL, which was to act as the purchasing entity, on 18.12.12.[408] He appointed himself as the company secretary of LCCL on the same date.[409]

G5.5 D8 sent the execution version of the purchase agreement to D2, Andrew Visintin and D1.[410] D8 witnessed D1's signature of this agreement on behalf of LCCL and sent the

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403 MDR00010014; MDR00010015; D2D10-00005127; MDR00010217; MDR00010218; MDR00010224

404 MDR00010381; MDR00010153; D2D10-00005354; D2D10-00005141

405 MDR00010324; MDR00010327; MDR00010351; MDR00010655

406 MDR00010450; MDR00010

407 MDR00010501; MDR00010506; MDR00010508

408 MDR00010405

409 MDR00010559; **[A1/5/64]**.

410 MDR00010568; MDR00010569

Source: Mouseinthecourt.co.uk

signed copy to the vendors' solicitors.[411] D8 then sent the purchase agreement executed by the vendors to D1 and D2.[412]

G5.6 D8 was aware that the completion date for the purchase was 28.02.13 and that the purchase price was £2,750,000 with £200,000 having been paid on exchange of contracts, a sum of £950,000 payable on completion and the remainder of the purchase price payable in instalments.[413]

G5.7 D8 was involved in identifying various issues with the Lakeview site which enabled a renegotiation of the purchase price in mid-February 2013.[414] This resulted in a supplemental agreement between the vendors and LCCL under which completion was deferred to April 2013 and the total purchase price payable was £1,525,000. D8 knew of this supplemental agreement and its terms.[415]

G5.8 D8 knew that completion was delayed beyond the revised completion date of 10.03.13 and that this meant that LCCL had to make compensation payments.[416] It is to be inferred that D8 knew that LCCL could not complete because it did not have sufficient monies to pay the purchase price.

G5.9 D8 knew that Clint Redman and D1 were trying to engage with Telos investors via a roadshow in early 2013 and was involved in the communications with the Telos investors.[417] In particular, D8 assisted D1 in drafting a letter to the Telos investors which set out the options open to them.[418]

G5.10 The Telos investors who signed up to the revised offer made payments to Buss Murton. D8 had control of the account into which these payments were made and kept D1 and

411 MDR00001602; MDR00010600

412 MDR00010610; MDR00010616

413 MDR00010668

414 MDR00011028; MDR00011079

415 MDR00015181; MDR00015182; MDR00011732

416 MDR00011504; MDR00011732

417 MDR00010855; MDR00010856

418 MDR00011187; MDR00011188

Source: Mouseinthecourt.co.uk

D2 informed of such payments.[419] D8 knew that by 26.03.13, LCCL had received £230,470.17 from the Telos investors because he set out the payments received in a spreadsheet;[420] he knew that by 04.04.13, £518,802.47 had been received from the Telos investors;[421] and he knew that by 04.07.13, £728,572.88 had been received from the Telos investors and that LCCL was liable to pay interest to the Telos investors, in an amount of £58,293 per year.[422]

G5.11 D8 knew that bridging finance was required to complete the purchase. One of the potential providers was Ultimate Capital. On 04.07.13, D8 told Ultimate Capital that the Telos investors had provided "*approximately £800,000*."[423] This was an overstatement of the true position; D8 must have known the true figure, given his visibility over the Buss Murton client account. D8 also told Ultimate Capital that the shareholders of LCCL had provided "*funding in the region of £800,000*". This was untrue and D8 knew it was untrue because he knew the purchase price was £1,525,000 and that the deposit had been funded by way of a loan from Mr Banks and Mr Hunt.

G5.12 In the event, bridging finance was provided by Ortus. D10 was added to a draft Ortus guarantee on 03.03.13.[424] It is to be inferred that this was on the basis of information provided to Ortus by D8. However, D8 had obviously done this on the instructions of D2, because when D8 met D10 on 03.04.13, she "*had not fully appreciated*" that she was to be providing a guarantee to Ortus.[425]

G5.13 D8 knew that Ortus had provided £747,157 of the sums due on completion and that LCCL had provided £377,578.38.[426] D8 also knew that the total sum paid by LCCL,

419 MDr00011509; MDR00011525

420 MDR00011656; MDR00011657

421 MDR00012395

422 D2D10-00007195

423 MDR00013464

424 MDR00011994; MDR00011995

425 MDR00012262

426 MDR00013166

Source: Mouseinthecourt.co.uk

including the deposit and compensation payments for the delays to completion was £1,609,268.62.[427]

G5.14 It is to be inferred from: (i) D8's position as company secretary of LCCL; (ii) his involvement in the purchase of the Lakeview site; (ii) his involvement in obtaining bridging finance and in refinancing that bridging finance[428]; (iv) his involvement in the lodge buyback programme[429]; and his receipt of the GVA valuations produced in January 2013[430], that D8 knew: first, the number of lodges held by LCCL at any given time; second, the values at which the lodges were acquired; and third, the contents of the various valuations of the Lakeview site. D8 would therefore have known that the GVA valuation finalised in December 2014and the John Spacey valuations, of which he was aware[431], grossly overvalued the Lakeview site.

427 MDR00013168

428 MDR00012906

429 MDR00015248

430 MDR00010904; MDR00013124; MDR00013126; MDR00013131

431 MDR00014619; MDR00014798; D2D10-00010793. The John Spacey valuation dated 13.12.16 was disclosed by D8: D8-0008149; D8-0008150; D8-0008151; D8-0008152; D8-0008153; D8-0008154.

Source: Mouseinthecourt.co.uk

H. SAFE/LCF

H1 Introduction

H1.1 The Claimants ask the Court to find the following facts in relation to SAFE and LCF:

(1) SAFE made materially misleading statements to potential investors in order to persuade them to invest in SAFE bonds.

(2) Monies raised by SAFE from its investors was not used to fund SMEs in a way that would generate a return to enable SAFE to pay interest to investors and make capital repayments. Instead, these monies were used to: (i) pay the interest due to the Sanctuary investors; (ii) pay very high rates of commission to D7; and (iii) make payments to D2, D4 and D10.

(3) SAFE was a Ponzi scheme from its inception.

(4) At all material times, D4 had ultimate control of SAFE and LCF.

(5) Each of D1, D4, D7 and D8 were aware of the matters above and participated in raising monies for SAFE from investors on a false basis and in the Ponzi scheme.

(6) D1 sought to mislead SAFE's auditors about its lending to Sanctuary PCC by backdating a loan agreement.

(7) In July 2015, D2 and D4 made an agreement by which they agreed that D1 would be given the shares in LCF and that the ratios in which they would divide monies would be altered.

Source: Mouseinthecourt.co.uk

H2 Summary of the facts

Ownership of SAFE

H2.1 The company later called LCF was incorporated as "Southern Eastern Counties Finance Limited". It was called "Sales Aid Finance (England) Limited" ("**SAFE**") from 18.02.13 until it became "London Capital & Finance Limited" on 01.07.15 and then "London Capital & Finance Plc" from 11.11.15.[432] At incorporation, D2, Paul Sayers, and Michael Peacock were directors. D1 replaced those individuals and was the sole director from 15.08.13.[433]

H2.2 D1 owned the entire share capital of SAFE. He held all of the shares in SAFE on trust for D4. The reason for this trust arrangement was to ensure that D4 was not recorded as the owner of SAFE at Companies House.[434]

H2.3 The sensitivity about D4's involvement in any companies arose from the fact that D4 had been disqualified from acting as a director of a company, and from acting directly or indirectly in the promotion, formation or management of a company, for a period of eight years from 04.04.11. It was a criminal offence for D4 to contravene this prohibition. D4 gave a disqualification undertaking after accepting a number of instances of unfit conduct in relation to Clydesdale Enterprises Limited, which entered liquidation on 07.04.09 with assets of nil and a deficiency of £45,000. D4 failed to provide documentation to the liquidators and failed to explain where the money had gone.[435]

H2.4 Shares in various companies owned by D4 were held on trust for him in order to conceal his legal ownership of the shares of those companies, and his involvement in the management of those companies, including Clydesdale Property Developments

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[432] **[A1/5/71]**.

[433] MDR00013671; MDR00013673; Day 3/page 20/line 23 – page 22/line 2 **[A5/3/5]**.

[434] MDR00013661; MDR00014315; MDR00014316; EB0000535; Day 3/page 22/line 3 – page 24/line 3 **[A5/3/6]**.

[435] MDR00226310; Day 3/page 32/line 15 – page 37/ line 3 **[A5/3/8]**.

Source: Mouseinthecourt.co.uk

Limited[436] and LCCL, as well as SAFE. D1, D2 and D3 knew of D4's disqualification undertaking and that it was a sensitive topic.[437] D4 acted through proxies and, as can be seen in numerous documents which record the respective entitlements of D1, D2, D3 and D4 in various companies it is plain that a reference to D3 is often a code for a reference to D4.[438]

LUKI and D1's first experience of bond issues

H2.5 D2 and D4 used a company called Lakeview UK Investments Limited ("**LUKI**") to issue a bond in order to raise monies to develop the Lakeview site. This project was worked on by D1 and D2. [439] The "advisor and manager" was going to be SAFE.[440] LUKI was going to be the issuer and proposed to raise £20 million (later £17 million) to lend to LCCL, which would use the monies to develop the Lakeview site.[441] SAFE issued drawdown requests to LUKI, signed by D1, and the proceeds would be paid to LCCL.[442] D1 (for SAFE) certified the value of the underlying assets.[443] The LUKI Bond was D1's first experience of a bond issue.[444]

H2.6 The LUKI bond was not successful and only raised a fraction of the monies it sought to raise (and only around £5.1 million by mid-2016). The Lakeview site was transferred to Waterside Villages Plc, and LCCL retained the "development land", which was charged by way of security for LUKI's liabilities to investors in the bond issue. However, the land was only valued at £1.53 million in December 2016, meaning that the liabilities to the LUKI investors were significantly under-secured.[445]

436 EB0139143

437 MDR00014818

438 Day 3/page 26/line 8 – page 31/line 14 **[A5/3/7]**; e.g. MDR00017070 and MDR00016481 clause 5

439 D2D10-00005364

440 MDR00006349

441 D2D10-00005364; MDR00014250

442 MDR00007786

443 MDR00007787

444 Day 3/page 31/line 15 – page 37/line 3 **[A5/3/8]**.

445 Day 3/page 37/line 4 – page 39/line 3 **[A5/3/10]**.

Source: Mouseinthecourt.co.uk

The SAFE bonds

H2.7 D1, D2, D4 and D7 were involved in the issue of bonds by SAFE that would later be carried over into LCF. D2 had resigned as a director of SAFE on 15.08.13 but shortly before his resignation, he was planning a new business venture for SAFE as the issuer of bonds, along with D1, D4 and D7. D2 explained that the bond issue would be backed by the two existing sites "owned" in the Dominican Republic, which he said were worth around US$200 million following development.[446]

H2.8 D1 prepared an information booklet for a loan scheme for SAFE, directed at members of the public, based on lending at an interest rate of 8.5%. Drafts of the booklet stated that year-on-year lending in the UK SME sector had slowed dramatically, and that SAFE would provide finance to businesses in that sector. It explained that the directors of SAFE had significant lending/financing experience. Members of the public were encouraged to loan money to SAFE, which in turn would lend it to SMEs. The booklet went on to explain that all funds would be held in escrow until loan agreements, guarantees, and legal charges were taken.[447]

H2.9 D1 sought input from D7 and D8 on the draft.[448] D8 had suggested that the draft refer to SAFE providing security of 150% of all money raised. In response, D7 noted that "*the problem with what is being suggested is that the money may not be lent out in line with what's described in the prospectus ie cash for Simon and Spencer etc*".[449] A draft was circulated to Mark Ingham and to D2. It is plain that D2 remained involved in SAFE's business despite his resignation as a director. The draft continued to be developed, and would later refer to a bond (rather than a loan scheme) but the basic details continue to be the same: the SAFE bond offered interest at 8.5%; asset security of 150%; the funds will be lent to SMEs in order to meet demand for finance in the south-east; and SAFE

446 D7D9-0000433; D2D10-00005732; D2D10-00005731; Day 3/page 40/line 19 – page 43/line 12 **[A5/3/10]**.

447 MDR00013635; D1-0000326; Day 3/page 43/line 13 – page 48/line 19 **[A5/3/11]**.

448 MDR00013699; D7D9-0000439

449 D7D9-0000453

Source: Mouseinthecourt.co.uk

would conduct a financial review of every application prior to making lending decisions. It was circulated between D1, D2, D4, and D7, who were all involved in its drafting.[450]

H2.10 The SAFE brochure appended a letter from Buss Murton LLP, explaining that SAFE had the benefit of certain guarantees from companies owned by the stated directors of SAFE. However, those companies were not beneficially owned by the stated directors of SAFE. Draft guarantees were prepared for some of these, but none were ever executed. The letter falsely represented that the guarantees were already in place.[451]

H2.11 From around 11 September 2013, members of the public began investing in SAFE bonds.[452] D7 was paid a commission of 20%[453] (increasing to 25% in early 2014)[454]. D1 and D2 were closely involved in the running of SAFE and were kept informed of investments and developments.[455]

H2.12 D4 provided strategic direction and was involved in the management of SAFE and its business decisions. For example, he was behind the decision to make a special offer whereby SAFE paid 110% of principal upon maturity, in addition to interest payments, which D1 then implemented.[456] Investments continued to be made throughout 2013 and into 2014, and SAFE raised funds from members of the public.[457]

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450 MDR00013699; MDR00013700; D7D9-0000453; D7D9-0000468; D7D9-0000469; D7D9-0000470; D7D9-0000474; D7D9-0000477; D7D9-0000478; D7D9-0000485; D7D9-0000500; MDR00013709; MDR00013713; D7D9-0000448; D7D9-0000443; MDR00013709; MDR00013710; Day 3/page 48/line 2 – page 60/line 21 **[A5/3/12]**; Day 3/page 64/line 9 – page 65/line 7 **[A5/3/16]**.

451 Day 3/page 60/line 22 – page 64/line 8 **[A5/3/15]**; Day 4/page 1/line 6 – page 8//line 1 8 **[A5/4/1]**; D7D9-0000469 page 15; MDR00013990 page 2 (attaching MDR00013991 and MDR00013992); MDR00014029; MDR00013990 page 2; MDR00014035 (attaching MDR00014036 and MDR00014037.

452 D7D9-0000505; MDR00007764; D1-0000338; MDR00007771; D1-0000339; MDR00007596

453 MDR00007770; D7D9-0000570; MDR00007916; D7D9-0001026; D7D9-0001027; D7D9-0000850

454 D7D9-0001224; D7D9-0001225; D7D9-0001232; D7D9-0001233; D7D9-0001237

455 D2D10-00006220; D7D9-0001026; D7D9-0001057; D7D9-0001066; D7D9-0001114; D7D9-0001144; D7D9-0001160

456 D7D9-0000835; D7D9-0000836; D7D9-0000841

457 Day 3/page 65/line 8 – page 77/line 13 **[A5/3/17]**; D2D10-00006239; D2D10-00006240

Source: Mouseinthecourt.co.uk

SAFE's lending to Sanctuary PCC

H2.13 Sanctuary PCC became SAFE's first borrower. The loan application by Sanctuary PCC was signed by D1, purportedly as a director of Sanctuary PCC. Sanctuary PCC and SAFE entered into a loan agreement for £675,000, dated 1 October 2013 (signed by D1 and Michael Peacock, and witnessed by D8). A debenture was also executed, but Sanctuary PCC did not have any property to offer as security.[458]

H2.14 When Sanctuary PCC drew down funds from SAFE, the monies were paid by SAFE to D1's company, One Monday. [459] One Monday used these monies to make payments to D2, D4 and D10.[460] Hence, from its inception, LCF used monies from its investors to make payments to D2, D4 and D10.[461]

H2.15 Some of the monies paid by SAFE to One Monday were then paid to a company called Leisure & Tourism Limited (run by Michael Peacock).[462] The bank statements and ledgers for Leisure & Tourism Limited show that these monies were used to meet the monthly interest liabilities of the Sanctuary investors that had been promised to them by D2.[463] In this way, a substantial part of the money from new SAFE investors was used pay the interest that was due to the existing Sanctuary investors on their deposits.

H2.16 D1 kept on top of the arrival of monies from SAFE investors and their subsequent disbursement. [464]

H2.17 By April 2015, Sanctuary PCC owed almost £1.3 million to SAFE and had exceeded the limit of £675,000.[465] In October 2015, SAFE (now called LCF) was in the process of

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458 Day 3/page 77/line 16 – page 83/line 13 **[A5/3/20]**; MDR00007911; MDR00007894; MDR00007895; MDR00007913

459 MDR00007910

460 MDR00015987; D2D10-00008623

461 Day 3/page 83/line 14 – page 89/line 24 **[A5/3/21]**.

462 D2D10-00008623 rows 73, 88, 91, 96, 103 and 119; MDR00225566 tab 6; D2D10-00006668; D2D10-00007732

463 Day 3/page 89/line 12 – page 94/line 9 **[A5/3/23]**.

464 D2D10-00007452; D2D10-00008230; D2D10-00008819

465 MDR00195285

Source: Mouseinthecourt.co.uk

being audited. Oliver Clive & Co, its auditors, asked D1 for a copy of the loan agreement with Sanctuary PCC.[466] They also asked for an explanation of why the money apparently loaned to Sanctuary PCC was being loaned to One Monday. D1 told the auditors that there was no copy of the Sanctuary loan agreement to hand.[467] D1 then created a backdated loan agreement from SAFE to Sanctuary PCC.[468] It referred to SAFE (LCF's former name), contained a limit of £2 million, and was backdated to 2 October 2013. D1 provided a version signed by D1 and Michael Peacock to LCF's auditors on 26 October 2015, in order to give the false impression to Oliver Clive & Co that Sanctuary PCC's borrowing was within the facility limit agreed with SAFE.[469]

Arrival of D5 and Kerry Venn

H2.18 D5 and Kerry Venn (then Kerry Graham) ran a website called The Investment Experts. It responded to queries from members of the public seeking investment advice. D5 and Kerry Venn explain in their evidence that they were not investment experts. What they were doing was collecting the personal data of members of the public, and selling it to financial advisors, who in turn would seek to sell investments to those people and earn a commission. The inquiries which D5 and Kerry Venn sold were called "leads".[470]

H2.19 D2 and D4 were interested in buying leads from D5 and Kerry Venn. On 25.02.15, D5 and Kerry Venn had a meeting with D2, D4 and D7.[471] In advance of the meeting, Ben Beal provided Kerry Venn with the SAFE investment memorandum. [472]

466 MDR00019239

467 MDR00019253; MDR00019260; MDR00019297

468 MDR00019406; MDR00019412; MDR00019429; MDR00019430; MDR00019432; MDR00019433; MDR00019475; MDR00019476; MDR00019513; MDR00019514

469 Day 3/page 99/line 1 – page 106/line 17 **[A5/3/25]**.

470 SUR00129198 page 3; SUR00000867-0001; SUR00000868-0001; SUR00000869-0001; SUR00000867-0001; SUR00000879-0001; Day 3/page 106/line 18 – page 111/line 6 **[A5/3/27]**.

471 SUR00158306-0001; SUR00128938-0001

472 SUR00128941-0001

Source: Mouseinthecourt.co.uk

H2.20 Kerry conducted "*some cursory internet searches*". [473] Essentially, she Googled the various names. [474] She sent a note of her findings to D5. [475]

H2.21 At the meeting, D2 and D4 outlined three proposals: (i) a proposed £50 million fund for oil and gas exploration, which D5 and Kerry Venn considered high risk and unlikely to result in many members of the public deciding to invest; (ii) a bond issue based on the Leisure & Tourism industry, involving IRG, L&TD, the Lakeview resort in Cornwall, and a resort in Cape Verde, which D5 and Kerry Venn also thought would be also unattractive to investors; and (iii) SAFE.[476]

H2.22 Kerry Venn has explained:

(1) "*Simon Hume-Kendall himself was working for an oil and gas company and he was in the final stages of getting an investment memorandum or a retail prospectus, I think, not that we knew what retail prospectus was at the time, but it was in the final stages of getting his oil investment ready for sale to the public. We were -- made all the right noises, "Oh, it's wonderful and we're very interested" but actually we thought, from a marketing and sales perspective, this would be a harder thing to sell to the public*";[477]

(2) "*I recall there being some uncomfortable moments in the meeting. Simon and Spencer had a few different business interests that they wanted our help to promote. Simon's real interest was an oil bond, but Paul and I thought that this was less attractive than working for SAFE because we couldn't see that the public would be interested in an oil bond; it seemed too speculative and risky. Simon tried to give Paul a prospectus for the oil bond to look at, but Paul did not take it as he said he didn't need to. I could see that moment had caused a little offence, and, given we wanted to walk out of the meeting with business, I remember trying to placate the situation by saying I would take a copy of it instead*";[478]

(3) "*Anyway, we then moved onto: we've got this leisure and tourism business that was also a bond. Again, we didn't want to say the wrong thing to put them off, but land in Cape Verde is not what the retail public really want to invest in: too high risk*";[479]

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473 Venn 1 ¶24 **[C2/4/6]**.

474 **[M1/2/13]**.

475 SUR00000897-0001

476 **[M1/2/8]**; **[M1/2/1]**; **[C2/4/7]**.

477 **[M1/2/8]** middle of page

478 Venn 1 ¶27 **[C2/4/7]**.

479 **[M1/2/8]**.

Source: Mouseinthecourt.co.uk

(4) "*We weren't that keen because they mentioned Cape Verde and we thought: "That everyday person on the street is not going to want to invest in Cape Verde" because it doesn't sound as good as what we really wanted*"; [480]

(5) "*We wanted -- it was called London Capital and Finance, it was called Sales Aid Finance England. We wanted that because JRM was already selling it. He had some success selling it. He knew how to sell it, and we thought the retail public only really want two things: things they understand: a property investment or a lending to companies kind of investment. These are the things that we would be able to sell. These are the things we'd be good at marketing. This is what we really wanted, and that's the way we tried to lead the conversation, and they did say, "Yes, we will introduce you to Andy Thompson."*" [481]

(6) "*... there were three separate distinct products. So you could either market a bond that is for the oil and gas industry. A bond that's for a leisure and tourism company or a bond that's for a company that lends to SMEs. So, they were described as three separate and distinct investments. Not in any way related*". [482]

H2.23 D5 and Kerry Venn's role was envisaged as providing leads, a website, and online reputation management, in exchange for a fee.[483]

H2.24 After the meeting, Kerry Venn typed up her notes and sent them to D5.[484] Among other things, she wrote:

> "*Spencer Golding: No public information, couldn't look up his history but clearly a key player in the team.*
> *SAFE (Sales Aid Finance England). Charge SMEs 12-15% and give a return of 8.5% to investors, this is paid quarterly. Money tied in for 2 years. Loans no longer than 1 year and 150% asset backed security. The company also put up £4.5mil security from their own Real Estate portfolio. This is a section 21 exemption bond but are moving towards full FCA accreditation. They have £1mil in this fund.*
> *Leisure and Tourism 2 Divisions IRG International Resorts Group www.irgplc.com this is basically a land bank*
> *LTD - built out holiday resort in Cornwall and Cape Verde.*
> *Lake view in Cornwall (http://www.lakeviewcornwall.co.uk/) has 70 units and 105 bed apart hotel. Looking to raise up to £100mil, will be the smallest high yield fully FCA regulated bond. The bond money stays in escrow until defined draw down*

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480 **[M1/2/9]**.

481 **[M1/2/9]**.

482 **[M1/2/16]**.

483 SUR00158301-0001; D7D9-0010714; SUR00158306-0001; SUR00128938-0001; SUR00128942-0001 SUR00000913-0001; SUR00000914-0001; SUR00000897-0001; Day 3/page 111/line 20 – page 119/line 2 **[A5/3/28]**.

484 SUR00000913-0001; SUR00000914-0001

Source: Mouseinthecourt.co.uk

targets are reached. £2mil, £10mil, the. £10mil tranches. End of year plan is to take this to AIM.

… Initial opportunity: overview website and potentially websites for all three funds. Brochures Online reputation management."

H2.25 D5 and Kerry Venn begin a trial of selling leads for £150 per lead. They used a new company, D6, to invoice for these services. The first ever invoice from D6 was dated 13.03.15 but was numbered no. 11 to make it appear that more invoices have been sent out. The second invoice was numbered no. 22. D5 and Kerry Venn chased D7 for payment of invoices, and D7 told them that he would contact D4 following which the invoice was paid. The trial came to an end and D7 provided feedback.[485]

H2.26 D5 proposed a joint venture with SAFE to D7. D5's proposal in outline was that D5 and Kerry Venn would provide leads, as well as sales and marketing materials, and that in return they would be paid £500,000 upfront, a further £500,000 on reaching a certain investment threshold, and 5% of all funds delivered. D2 was not attracted by this offer: he explained to D4 and D7 his view that the arrangement should be success-driven, and he was concerned by the lack of "conversions" of leads. Ultimately, the proposal was not pursued. D5 was told that D4 was not keen on an upfront payment.[486]

H2.27 D5 and Kerry Venn remained keen about the possibility of collaborating with D7. [487]

The decision to rebrand SAFE as LCF

H2.28 The company "SAFE" was rebranded as "LCF" in the summer of 2015. This took place at around the same time as the acquisition of the company "London Oil & Gas Limited" (company number 02504629) from Eric Bosshard and his family. D2 was heavily involved in this process and he envisaged that a company called "London Oil & Gas" would form part of his "London Group" of companies, with London Trading &

485 SUR00000913-0001; D7D9-0001769; D7D9-0001771; D7D9-0001772; D7D9-0001772; D7D9-0001773; SUR00001285-0001; D7D9-0001776; D7D9-0001777; D7D9-0001778; MDR00220327 page 1; D7D9-0001781; SUR00000957-0001; SUR00000962-0001; D7D9-0001783; D7D9-0001790; Day 3/page 119/line 22 – Day 3/page 124/line 12 **[A5/3/30]**.

486 D7D9-0001827; D7D9-0001834; D7D9-0001836; D7D9-0001838; Day 3/page 124/line 12 – page 130/line 1 **[A5/3/31]**.

487 **[M1/2/10]**.

Source: Mouseinthecourt.co.uk

Development Limited as the parent company. By 4 June 2015, D2 envisaged that one of the subsidiaries of London Trading would be "London Capital & Finance" and that SAFE should be renamed "London Capital & Finance". SAFE was renamed "London Capital & Finance Limited" on 1 July 2015.[488]

H2.29 D5 and Kerry Venn agreed to prepare a website and branding materials for the rebranding of SAFE as LCF, for a fee of £10,000 plus VAT. D5 and Kerry Venn completed this work quickly so that they could begin selling the LCF bond to their clients as soon as possible. D7 and D5 agreed to join forces for this purpose: D5 would help to generate the leads, and D7 would convert them into bond sales. D7's sales operation was then folded into D5's marketing operation. Following this agreement, D7 put D5 in touch with D1, who contacted D5 for the first time.[489]

H2.30 In an email dated 09.07.15, D5 informed Pat McCreesh of Blackmore that D5 and D7 were joining forces. D5 explained that he had had "*to cut a very strong deal*" to secure D7, whose "*sales skills are **second to none***".[490] D5 also said that D7 had been earning 20% commissions when marketing the SAFE bond, that the product was being rebranded, and that he was comfortable that the LCF product was not a "*rinse*" even though he anticipates that Pat McCreesh would be screaming "*rinse*". D5 reassured Pat McCreesh that his involvement in selling LCF bonds would not affect his work selling Blackmore bonds.[491]

Preparation of a new LCF website and marketing materials

H2.31 D5, Kerry Venn, and their team proceeded to prepare the website and branding materials for LCF, including "objections and their rebuttals" for members of the public interested in investing in LCF.[492]

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488 Day 3/page 120/line 2 – page 141/line 1 **[A5/3/30]**; Day 4/page 8/line 2 – page 10/line 18 **[A5/4/2]**.

489 SUR00129022-0001; SUR00129022-0001; D7D9-0001869; EB0004401; D7D9-0001923; EB0004428; Day 4/page 10/line 19 – page 14/line 25 **[A5/4/3]**.

490 SUR00001292-0001

491 Day 4/page 17/line 20 – page 25/line 11 **[A5/4/5]**.

492 Day 4/page 14/line 24 – page 17/line 19 **[A5/4/4]**.

Source: Mouseinthecourt.co.uk

H2.32 D5, Kerry Venn, and D7 (and their team) required further information about LCF in order to market it, including the number of loans issued, the type of loan, the purpose of the loans, the average term, the interest rates, and testimonials from borrowers. D1 was chased to provide this information. When a draft letter was circulated stating that LCF has only lent out £1.1 million to investors, D5 suggested in an email dated 20.07.15 that the reference to this figure should be removed, because it "*makes the entire operation look very small*"; Kerry Venn agreed because prospective investors would have a "*natural expectation*" that LCF "*is a multi-million pound organisation*".[493] This figure was then removed from the letter.[494]

H2.33 The LCF brochure was then reformatted to look more professional but it continued to contain the same basic contents as the SAFE brochure, including the text about the shortage of funding for SMEs and the business model of lending to SMEs. D2 approved payment of the second invoice (£5,000, plus VAT) for the work of D5 and Kerry in rebranding SAFE as LCF.[495]

The Golding-SHK Agreement

H2.34 On 16.07.15, D8 sent a draft of the "Golding-SHK Agreement" to D2 and D4, copying D1.[496] This agreement was between D2, D3, D4, LCCL, and London Trading. It was signed by D2, D3, and D4. It states that D4 is one of the owners of LCCL with a share of 71.25%. This document marks the change to the "new ratios" going forwards, whereby the division between the interests of D2, D4, D1 and D3 will be 45%, 45%, 5% and 5%. Among other things, the agreement deals with the sale of LCCL to London Trading (as explained below) and provides that D1 and D3 will each have a 5% interest in London Trading, that D1 will own the shares in LCF, and that LCF will enter into an agreement with London Trading to be "*responsible for all fundraising for LTDG and its group of companies*". D1 was not a signatory to this agreement but he has a copy of it.[497]

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493 SUR00129111-0001

494 SUR00157268-0001; SUR00001422-0001; SUR00129102-0001; SUR00129107-0001; SUR00129110-0001; SUR00129109-0001; SUR00129111-0001; Day 4/page 31/line 9 – page 39/line 14 **[A5/4/8]**.

495 SUR00129114-0001; SUR00129115-0001; MDR00016475; MDR00016477; Day 4/page 31/line 9 – page 39/line 14 **[A5/4/8]**.

496 D8-0001352

497 EB0139239; Day 4/page 41/line 5 – page 49/line 22 **[A5/4/11]**.

Source: Mouseinthecourt.co.uk

H2.35 At around the same time as the Golding-SHK Agreement was entered into, the involvement of D4 in the management and direction of LCF increased. LCF moved from being run on a day-to-day basis by D1 and D2, to being run on a day-to-day basis by D1 under the supervision of D4, who operated as D1's boss.[498]

H2.36 D2 nonetheless remained involved in LCF's affairs. For example, D2 (along with D4) approved a "reinvest letter", designed to encourage SAFE investors to roll over their investment to LCF, rather than demand the return of funds.[499]

H3 D1's participation in and knowledge of SAFE

H3.1 D1 became the sole director of SAFE (later LCF) on 15.08.13.[500] D1 was also the sole registered shareholder[501] but he held the shares in SAFE on trust for D4.[502] D1 knew that D4 was the person who was ultimately in charge of SAFE.[503]

H3.2 D1 was involved in drafting an information booklet/brochure for SAFE. The basic proposition was that SAFE would lend money to SMEs to generate a return of 8.5% per annum.[504] D1 was involved in drafting the SAFE loan note. [505] D1 was sent a copy of the formatted SAFE loan note agreement by Mark Ingham.[506] He also received the formatted SAFE brochure. [507] He was also sent a link to SAFE's website.[508] D1 therefore knew of the terms on which SAFE was seeking to raise money from investors.

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498 Day 4/page 49/line 23 – page 50/line 8**[A5/4/13]**.

499 MDR00019845; EB0007117; MDR00019931; MDR00020959; MDR00020961; Day 4/page 58/line 5 – page 63/line 13**[A5/4/15]**.

500 MDR00013671; MDR00013673; **[A1/5/71]**.

501 MDR00013661; **[A1/5/71]**.

502 MDR00014315; MDR00014316; EB0000535

503 Day 22/page 81/line 7 – page 84/line 5 **[A5/22/21]**.

504 MDR00013635; MDR00013699; D7D9-0000438; D7D9-0000439; MDR00013700; D1-0000326

505 D7D9-0000440; D7D9-0000441

506 D7D9-0000477; D7D9-0000478

507 D7D9-0000487; D7D9-0000488

508 D7D9-0000500

Source: Mouseinthecourt.co.uk

H3.3 D1 signed Sanctuary PCC's application for a loan from SAFE.[509] He also signed the loan agreement between Sanctuary PCC and SAFE dated 1 October 2013 in an amount of £675,000 on behalf of Sanctuary PCC.[510]

H3.4 D1 knew that by the end of April 2015, Sanctuary PCC had borrowed a total of £1.3 million from SAFE and had breached its facility limit.[511]

H3.5 In October 2015, D1 dishonestly backdated a facility agreement to 22 October 2013 between SAFE and Sanctuary PCC to mislead SAFE's accountant and auditor, Oliver Clive, that Sanctuary PCC had never breached its facility limit.[512]

(1) On 22.10.15, SAFE's accountant, Nick Angel of Oliver Clive & Co, asked D1 various questions. Among other things, Nick Angel asked D1 to provide him with a copy of the facility agreement between SAFE and Sanctuary PCC.[513]

(2) Katie Maddock sent a further email to D1 at 1.07pm[514] attaching a scanned copy of this document which had now been signed by D1 on behalf of Sanctuary PCC and by Michael Peacock on behalf of SAFE.[515] It was still dated 02.10.13 in typescript on the front page. Katie then sent a copy to Oliver Clive & Co.[516]

(3) D1 asked his assistant Katie Maddock to help him to answer Nick Angel's questions.[517] She provided D1 with a copy of the facility agreement between SAFE and Sanctuary PCC with a limit of £675,000.[518] D1 seems to have realised that this

509 MDR00007911

510 MDR00007913

511 MDR00195285; Day 19/page 137/lines 14-23 **[A5/19/35]**.

512 MDR00019239; MDR00019253; MDR00019260; MDR00019297; MDR00019298; MDR00019430; MDR00019406; MDR00019412; MDR00019429; MDR00019430; Day 19/page 137/line 24 **[A5/19/35]** Day 20/page 17/line 18 **[A5/20/5]**.

513 MDR00019239

514 MDR00019475

515 MDR00019476

516 MDR00019513; MDR00019514

517 MDR00019253

518 MDR00019260

Source: Mouseinthecourt.co.uk

would not be sufficient. He emailed Nick Angel on 23.10.15 to say that he did not have a signed copy of the facility agreement to hand.[519] He attached an unsigned version of the loan agreement which stated that the loan amount was £2 million.[520]

(4) At 9.08am on 26.10.15, D1 provided Katie Maddock with a pdf version of the unsigned draft facility agreement between SAFE and Sanctuary PCC dated 02.10.13 (in typescript on the front page) containing a facility limit of £2 million.[521] The signature blocks anticipated that D1 would sign for both parties.[522]

(5) Katie Maddock sent an email to D1 at 11.15am, stating, "*Please find attached the signed sanctuary loan agreement, please check over the signature page. Does it not need to say Michael Peacock for Sales Aid Finance rather than yourself?*"[523] The attached document, still dated 02.10.13 in typescript on the front page, had been signed by D1 on behalf of Sanctuary PCC and by Michael Peacock on behalf of SAFE.[524]

(6) D1 then provided her with a further draft, still dated 02.10.13 in typescript on the front page.[525] This time, however, in the signature panel for SAFE, D1's name had been replaced by the words, "*an officer of the company*".[526]

H3.6 In his oral evidence, D1 was unable to deny that the revised facility agreement had been produced in 2015 but suggested that the increase had been orally agreed only 3 weeks after the £675,000 agreement was entered into, that the revised facility agreement had been lost and that he had sought to reconstruct the revised facility agreement in 2015.[527] This was thoroughly implausible and at odds with the sequence of events shown in the

519 MDR00019297

520 MDR00019298

521 MDR00019406; MDR00019412

522 MDR00019412

523 MDR00019429

524 MDR00019430

525 MDR00019432

526 MDR00019433

527 Day 19/page 143/line 9 – page 145/line 6 **[A5/19/36]**.

Source: Mouseinthecourt.co.uk

contemporaneous documents. That D1 was seeking to mislead Oliver Clive is evident from the fact that he did not simply tell them the increase had been agreed but the document lost but instead produced a backdated agreement.

H3.7 D1 knew that monies drawn down by Sanctuary PCC under its facility agreement with LCF were paid to One Monday.[528]

H3.8 As the director of One Monday with control and oversight of its bank account, D1 knew that One Monday paid monies borrowed by Sanctuary PCC from SAFE to D2 (both directly and via LV Management), D4 and D10 and that there was no legitimate basis for these payments.[529]

H3.9 D1 knew that SAFE was paying D7 a commission to raise monies and that this commission increased from 20% to 25% in around April 2014.[530]

H3.10 D1 knew that money from the new SAFE investors was used to pay c.£88,000 per month in interest to the existing Sanctuary investors.[531]

H3.11 By reason of the matters described in the three preceding paragraphs, SAFE would only have been able to pay interest to its investors and repay principal by using money raised from other investors. In other words, from the outset, SAFE operated as a Ponzi scheme and D1 knew this.

H3.12 D1 knew about the existence and terms of the Golding-SHK Agreement and understood it to be the basis on which he was given the shares in LCF.[532] In his oral evidence, D1 tried to deny this but he was unable to explain why he had sent an email to D3 on 18.04.16 attaching an unsigned copy of the Golding-SHK Agreement and writing "*After*

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528 Day 22/page 84/line 22-page 85/line 25 **[A5/22/21]**.

529 MDR00224970; MDR00007905; MDR00007906; MDR00007907; MDR00007908; MDR00007909; MDR00015987; D2D10-00008230; MDR00224827; D2D10-00008623 rows 121, 122, 123, 166, 168, 169, 204

530 D7D9-0000850; D7D9-0001026; D7D9-0001027; D7D9-0001028; D7D9-0001046; MDR00015987; D2D10-00006245; D7D9-0001224; D7D9-0001225; D7D9-0001232; MDR00015987 row 49

531 Day 22/page 91/line 17 – page 93/line 9 **[A5/22/23]**.

532 D8-0001352; D8-0001654; D8-0001655; EB0018295; EB0018297

Source: Mouseinthecourt.co.uk

you left, I dug out a copy of the doc we talked through, it is an unsigned copy as I didn't have to sign it so I don't have a signed copy but in the first paragraph at the top of page 2 it confirms that all the shares in LCF be passed to me."[533]

H4 D4's participation in and knowledge of SAFE

H4.1 D4 was the beneficial owner of SAFE.[534] He was also a shadow director and/or *de facto* director of SAFE for the reasons explained at Section H7 below. It was D4 who set the strategic direction for SAFE.[535]

H4.2 D2 and D4 had a meeting with D7 on 12.08.13 to discuss fundraising by SAFE. D2 emailed D7 afterwards to say, "*This model is expected to raise at least £3,000,000 over the next 12 months and if you are able to achieve the £3,000,000 you will receive a 5% share (or pro rata if you raise less) of the existing two sites we own in the UK and Dominican Republic … We hope this is in line with what you understood and hope it gets you excited*".[536] D2 had shared a draft of this email with D4.[537]

H4.3 D4 received a copy of the SAFE loan note agreement and various drafts of the SAFE brochure. He knew of the terms on which SAFE was seeking to raise money from investors.[538]

H4.4 D4 maintained overall control of SAFE's activities. For example, he decided that SAFE should make a special offer to attract new investors, involving repayment of 110% of principal on maturity with interest of 8.5% per annum until then.[539] It is to be inferred from the fact that to take advantage of this offer, funds had to be invested before a tight time limit, that D4's motive in proposing this offer was simply to raise monies as quickly

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533 EB0018295; EB0018297; Day 22/page 113/line 7 – page 115/line 24 **[A5/22/29]**.

534 EB0000535

535 See, for example, D7D9-0000835; D7D9-0000836; D7D9-0000841

536 D7D9-0000433; D2D10-00005732

537 D2D10-00005731

538 D7D9-0000477; D7D9-0000478; D7D9-0000485; D7D9-0000487; D7D9-0000488

539 D7D9-0000835; D7D9-0000836; D7D9-0000841

Source: Mouseinthecourt.co.uk

as possible and that D4 did not consider whether the offer was financially viable for SAFE because he knew that SAFE was operating as a Ponzi scheme.

H4.5 D4 decided the commission rate to be paid to D7.[540] D4 therefore knew that D7 was paid a commission of 20%, rising to 25%, to raise funds for SAFE.

H4.6 It is to be inferred from his involvement with SAFE and the Sanctuary scheme that D4 knew that SAFE had entered a facility agreement with Sanctuary PCC.

H4.7 D4 received payments from One Monday that had purportedly been borrowed by Sanctuary PCC under its facility agreement with SAFE.[541] It is to be inferred from D4's involvement with SAFE that he knew where these funds had originated.

H4.8 D4 knew that SAFE would not be able to repay its investors because the monies it raised from them were being dissipated. D4 therefore knew that SAFE was operating as a Ponzi scheme.

H4.9 As a signatory to the Golding-SHK Agreement, D4 was aware of its terms.

H5 D7's participation in and knowledge of SAFE

H5.1 In August 2013, D7 was involved in discussions with D2 and D4 about fundraising by SAFE.[542]

H5.2 D7 was aware of the terms on which SAFE proposed to raise funds from investors and the information provided to SAFE's investors in relation to this fundraising through his review of drafts of the information booklet/brochure and the fact that he was sent a link to SAFE's website.[543]

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[540] Day 22/page 83/line 19 – page 84/line 5 **[A5/22/21]**.

[541] D2D10-00008623 rows 121 and 166; MDR00224827

[542] D7D9-0000433; D2D10-00005731 ; D2D10-00005732

[543] D7D9-0000453; D7D9-0000469; D7D9-0000477; D7D9-0000478; D7D9-0000487; D7D9-0000488; D7D9-0000500

Source: Mouseinthecourt.co.uk

H5.3 D7 knew that money raised by SAFE was intended to be paid to D2 and D4, rather than applied as set out in the information booklet/brochure ("*The problem with what is being suggested is that the money may not be lent out in line with what's described in the prospectus ie cash for Simon and Spencer etc*").[544]

H5.4 D7 was engaged to raise money for the SAFE bonds.[545] He was paid a 20% commission for this[546], which increased to 25% in or around April 2014.[547] D7 sold the bonds for SAFE with Jo Baldock. He therefore knew of the sums that SAFE had raised.[548] He also knew that his commission was paid from the funds raised from investors, rather than from any monies generated by SAFE from its investments.[549]

H5.5 D7 knew that D4 maintained overall control of SAFE and that D1 did as D4 instructed him to do.[550]

H5.6 By reason of the matters set out above, D7 knew that SAFE had no realistic prospect of repaying its investors other than by using monies raised from new investors and therefore that SAFE was operating as a Ponzi scheme.

H6 D8's participation in and knowledge of SAFE

H6.1 In December 2013, D8 was involved in producing a draft trust deed by which D1 held all of the shares in SAFE on trust for D4.[551] D8 subsequently sent the executed trust deed to D3 and D4.[552]

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544 D7D9-0000453

545 MDR00007916; MDR00015061; D7D9-0010957

546 MDR00007770; D7D9-0000570

547 D7D9-0001224; D7D9-0001225; D7D9-0001232; MDR00015987 row 49

548 See, for example, D7D9-0000502; MDR00007771; D1-0000339; MDR00007596; MDR00007739; MDR00007597; MDR00007601; MDR00007599

549 D7D9-0000512

550 D7D9-0000835; D7D9-0000836; D7D9-0000841

551 MDR00014315; MDR00014316

552 EB0000535

Source: Mouseinthecourt.co.uk

H6.2 D8 was aware of the terms on which SAFE proposed to raise funds from investors and the information provided to SAFE's investors in relation to this fundraising through his review of drafts of the information booklet/brochure.[553]

H6.3 D8 drafted a letter from Buss Murton dated 28 August 2013 for inclusion in the SAFE information memorandum.[554] The letter stated that SAFE had the benefit of security over Bewl Holiday Homes LLP (£2,250,000), LCCL (£1,250,000) and Sanctuary PCC (£1,000,000). D8 knew at the time that he signed this letter that no security documents had been executed.[555] The letter he produced was therefore deliberately misleading. Further, D8 had no basis for believing that the amounts secured were as set out in his letter.

H6.4 D8 knew that on 23 September 2013, SAFE had entered into a facility agreement with Sanctuary PCC.[556] D8 was involved in drafting the security documents, including a debenture granted by Sanctuary PCC to SAFE.[557] D8 knew, because of his involvement in the El Cupey trust arrangements, that Sanctuary PCC did not have an interest in land and that the security therefore did not bite on any assets.

H6.5 By reason of the fact that all monies received by SAFE were held in its client account at Buss Murton, D8 knew that monies purportedly borrowed by Sanctuary PCC under its facility agreement with SAFE were paid to D1's company One Monday.[558]

H6.6 D8 knew that c.£88,000 was payable each month in interest payments to the Sanctuary investors who had signed up to the 'rescue package' and that the potential liability of Inversiones to the Sanctuary investors was c.£23.5 million.[559] It is to be inferred from his operation of the various client accounts that he knew that the monthly interest payments were being paid by Sanctuary PCC with monies borrowed from SAFE.

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553 MDR00013699; MDR00013700

554 D7D9-0000468; D7D9-0000469

555 MDR00013990; MDR00014029; MDR00014035

556 MDR00007894; MDR00007913

557 MDR00007895

558 MDR00015987; D2D10-00008230

559 D2D10-00006944; D2D10-00006946

Source: Mouseinthecourt.co.uk

H6.7 By reason of the matters set out above, D8 knew that: (i) the money raised from the Sanctuary investors was being misapplied; (ii) money raised from SAFE investors had been obtained by misleading them; (iii) Sanctuary PCC was using monies borrowed from SAFE to pay the interest due to the Sanctuary investors; and (iv) that SAFE was paying very high commissions to D7. He therefore knew that SAFE would not be able to repay its investors other than by using monies from new investors and was operating as a Ponzi scheme.

H6.8 D8 drafted the Golding-SHK Agreement and so was aware of its terms and effect.[560]

H7 D4's continued control of LCF

H7.1 D4's continued role is apparent from his involvement in communications regarding LCF. On 09.09.15, Alex Lee provided a spreadsheet relating to the LCF client account to D1, who forwarded it to D7 cc D4 saying, "*There were not* [sic] *new funds crediting today*".[561]

H7.2 On 22.09.15, D7 sent D4 an update of LCF's "*pipeline*" of prospective investors.[562] Indeed, this information was provided to D4 before it found its way to D1: D7 forwarded the email to D4, and later that evening, D4 forwarded the information to D1, who forwarded it to Katie Maddock at LCF.

H7.3 On 15.09.15, Kerry Venn (neé Graham) sent an email to D1 saying that she was "*ready to do a minimum order print to provide prospective investors with hard copy brochures*".[563] D1 forwarded it to D4: "*Hi Spencer, see below, did they mention this to you today?*"[564]

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560 D8-0001352; D8-0001654; D8-0001655

561 MDR00017238

562 MDR00017630

563 MDR00017375

564 MDR00017379

Source: Mouseinthecourt.co.uk

H7.4 On 17.09.15, when D1 had drafted a LCF bond prospectus, he sent it to D7 and D4 asking them to review it and to provide their comments.[565]

H7.5 On 13.10.15, Kerry sent an email to D5 cc D7 which casts light on D4's position:[566]

> "***As requested, I phoned Spencer**. He had a moan about two things:*
> *1. He downloaded the brochure on the website and it still has the old management team*
> *2. The website looks 'sparse'*
> *I told him that Andy provided new biogs that were not detailed enough to use, I had explained this to Andy who asked me to give him examples of what I wanted, I emailed 4 examples and have chased multiple times but I am still waiting.*
> *Andy said he is too busy to get me the pictures to go with the biogs. He asked me to stop chasing him and he will do it ASAP.*
> *I queried what he meant by 'sparse' because I think it looks sleek, professional and is concise in an effective way. He said his team would look over it again and give specific feedback on Thursday. I then said there was something I wanted to add but had been awaiting content from Andy since July: real case studies / customer testimonials. Spencer seemed to think this would make a big improvement and said he would chase Andy to get it to us.*
> ***Ultimately, I don't think he is pissed off with us, I think he is pissed off with Andy and he asked me to keep the pressure on Andy and 'chase him harder'**."*

H7.6 The continued role of both D4 and D2 is also apparent from the emails regarding a draft reinvestment letter. Some of the loans from early investors to SAFE were falling due for repayment. D1 wanted D7 and Jo Baldock to try to persuade those investors to reinvest. He emailed Jo Baldock on 02.11.15, cc D3 and D7, saying, "*It looks like most of the SAFE clients are wanting to be repaid … is it something that can be addressed to try and stop so many wanting to exit?*"[567] On 02.11.15, Katie Maddock circulated a draft letter for clients nearing the end of terms to try to persuade them to reinvest instead of requesting repayment.[568] On 10.11.15, Katie emailed D4 and D3, cc D1, saying that she had "*shown the letter to Simon, Elten and John all of whom are happy with it*".[569]

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565 MDR00017414; MDR00017417

566 SUR00002637-0001

567 MDR00019845; EB0007117

568 MDR00019931

569 MDR00020959; MDR00020961

Source: Mouseinthecourt.co.uk

H7.7 D4's role is also apparent from the fact that D5 and Kerry consulted him about LCF's business without reference to D1. On 11.11.15, Kerry emailed D5 to say that LCF had begun to require investors to complete an "*onerous*" self-assessment test.[570] D5 forwarded her email to D4, explaining that "*we are required by your lawyers to have a much harder sign-up process than our (much larger) competitors … Can we not at the very least match their sign up process for compliance? We will be committing commercial suicide to have a harder sign up than the big brands*".[571] The next day, Kerry emailed D3 to thank him for his assistance, saying, "*I understand we can go ahead with our proposed simpler appropriateness test*".[572] D1 was not involved in the conversation and knew nothing about it until after the decision had been made.[573]

H7.8 Similarly, when D5 was concerned about LCF's delay in paying commissions to D6, D5 and D7 understood that D4 was the person who could resolve it. On 16.11.15, D5 asked D7, "*any news from Spencer in releasing all the comms that are tied up?*"[574]

H7.9 Sometimes D4 was mentioned in the same breath as D1. On 16.11.15, Ashleigh Newman-Jones of D6 (the son of Steve Jones) told D5 cc Kerry and Steve that the revised LCF website was "*ready for approval from Andy/Spenser* [sic]".[575] A proposed change in LCF's bond rates was "*subject to Spencer and Andy's approval*".[576]

H7.10 At the same time, the documents indicate that D1 was subservient to D4, who had the power to overrule him. On 17.11.15, for example, D1 emailed Kerry to say that the LCF investment memorandum was not sufficiently accessible on the LCF website.[577] Kerry forwarded his email to D5, saying, "*We need to override him and speak to Spencer*".[578]

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570 EB0007893

571 EB0007893

572 EB0007944

573 EB0007948

574 SUR00129980-0001

575 SUR00003210-0001

576 SUR00002626-0001

577 MDR00021955; MDR00021963

578 SUR00003280-0001

Source: Mouseinthecourt.co.uk

H7.11 D4's continued role as the directing mind and will of LCF's business is also apparent from the episode relating to compound interest. On 18.11.15, Katie Maddock told D1 that a new investor, Mr Norris, had "*decided to compound the interest on the 2 year term*".[579] D1 seems to have told Katie Maddock that LCF had never offered compound interest: she emailed Jo Baldock, Steve Jones and Kerry Graham in those terms (cc D1 and D7) attaching a mark-up of the application form, highlighted in purple and annotated in manuscript with the words, "*WHO AUTHORISED THIS? What is this? We DO NOT do compound interest*".[580] Kerry replied, "*Re the compounded interest: John Russell Murphy agreed this with Spencer two weeks ago*".[581] Kerry also emailed Scott Allen of D6, cc D7, explaining, "*Don't worry about Katie's comments re compound interest, I know this was agreed between JRM and Spencer and have pushed back on this point*".[582]

H7.12 Subsequently, D1 fell into line and proceeded to implement D4's decision: D1 emailed Kobus Huisamen on 16.01.16 to explain that "*we were initially offering simple interest but are now going to be offering compound interest*".[583]

H7.13 A similar tale is told by the episode regarding the role of D6's sales team. On 30.11.15, Kerry emailed D5 and D7 ("*Shocking potential issue!*") to raise a "*potential looming problem*":[584] D1 had told Kerry that D6 should be "*moving away from having a sales team*" in favour of online-only sales without the assistance of a salesperson. Kerry told D5 and D7 that this "*contradicts our last meeting with Spencer when he suggested we expand our sales team to have bigger capacity for face to face meetings*": "*I'm glad we are meeting Spencer tomorrow and can clarify/correct this madness!*";[585] "*Let's put it down to Andy being Andy and see if it actually gets raised with Spencer tomorrow*".[586]

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579 MDR00022125

580 MDR00022130

581 MDR00022136; SUR00003349-0001

582 SUR00130016-0001

583 MDR00027313

584 EB0009131

585 EB0009131

586 SUR00003797-0001

Source: Mouseinthecourt.co.uk

H7.14 D4's role is also apparent from the issue of the new logo. D5 emailed D4 on 05.01.16 to say, "*Spencer, The conversation is below, it was with Kerry. Not that it really matters,* ***it's your company and you can have any logo you want.*** *My team all think the original logo is better. Two logos attached, 1 and 2. Please choose which you prefer. Simple. If you want the new logo then we will make the changes to the site …*" (emphasis added).[587]

H7.15 The continued role of both D4 and D2 in LCF's business is also apparent from two further matters. First, when Mark Ingham emailed D1 on 22.01.16 about amendments to LCF's brochures, he copied the email to D4 and D2.[588] On 09.02.16, Mark Ingham emailed Rocky O'Leary to explain that D4 had called him about the new LCF brochures, demanding to know when they would be ready ("*Spence called – I said these could (subject to Roc's confirmation) be got out by the end of the week*").[589]

H7.16 Secondly, in early 2016, D4 and D2 were both involved in the discussions with D5 and D7 about the possibility of D6 working exclusively for LCF.

H7.17 On 03.02.16, D8 provided D2 and D3 with a draft exclusivity agreement.[590] On 05.02.16, D8 provided D2 and D4 with a third draft of the agreement. D2 sent it to D7, saying that it should "*get the ball rolling*".[591] D2 also explained that "*Spence has very bad flu and he has had zero input into this after our initial instruction*".

H7.18 The attachment was a draft exclusivity agreement between London Group plc (defined as "*London*") and D5/D7 (defined as "*Surge*").[592]

H7.19 The draft agreement defined "*Financial Products*" to mean "*an investment opportunity bond or other financial instrument issued by LCF and others to a Prospective Client who is introduced by Surge*". It defined "*Introduction*" to mean "*the provision to LCF of the contact details of a Prospective Client who purchases a Financial Product*".

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587 MDR00025912

588 MDR00028240

589 MDR00030461

590 EB0013597; EB0013598; EB0013599

591 D7D9-0004835

592 D7D9-0004836

Source: Mouseinthecourt.co.uk

H7.20 The recitals stated:

> "*(A) Surge has developed a method of access a large contact base are interested in investing in high quality opportunities*
> *(B) From proceeds of the Financial Products London is currently obliged to pay an introductory commission of 25%*
> *(C) London has agreed to pay to Surge the sums referred to in this agreement in consideration of Surge acting exclusively for London in introducing contacts as may be agreed between the parties …*".

H7.21 Clause 2.1 provided, "*London appoints the Surge to identify Prospective Clients exclusively for LCF and others agreed with London and to make Introductions of such persons on the terms of this agreement*".

H7.22 Clause 2.2 provided, "*Surge shall … act exclusively for London and use its best endeavours to make Introductions of Prospective Clients*".

H7.23 Clause 5.1 provided, "*London shall pay to Surge the sum of £40,000 per month together with all approved costs and expenses which are agreed on a quarterly basis*" (in addition to the commission of 25%).

H7.24 Clauses 5.2 and 5.3 provided that Surge could also obtain 10% of London Group plc.

H7.25 On 17.02.16, D5 replied to D2 to say, "*Thanks for the agreement and my apologies it has taken so long to reply. Would it be possible for John and I to meet with you and Spencer early next week to discuss it in person?*"[593]

H7.26 D2 replied (cc D4 and D7) to say he would be happy to meet to discuss it.[594]

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593 D2D10-00014833

594 D2D10-00014833

Source: Mouseinthecourt.co.uk

H7.27 D5 sent a summary of draft exclusivity terms[595] to D7:[596]

> "*1. SF will provide exclusive marketing to LG for a fixed fee of £40k per month.*
> *2. LCF will pay 25% commissions for funds received by SF.*
> *3. LCF will pay for 10% for commissions re-broked by SF.*
> *4. If SF reach £30m funds or more within 12 months of signing of agreement they will receive 10% shareholding in LG.*
> *5. If SF reach £50m funds or more within 12 months of signing of agreement they will receive 20% shareholding in LG.*
> *6. SF will pay for all marketing costs of LCF.*
> *7. PC has current contractual obligations to Blackmore Group and therefore any current or future arrangement with BG will remain outside of this agreement*".

H7.28 D5 also sent this to D6's accountant, Mark Partridge.[597] The draft exclusivity terms were due to be discussed at a meeting between D5 and D2 on 23.02.16.[598]

H7.29 However, there does not seem to have been any agreement in respect of this matter. D5's "to do" list on 11.04.16 still included "*LCF exclusivity*".[599]

H7.30 The continued role of both D4 and D2 in LCF's business is also apparent from the fact that they were routinely consulted by D6 personnel about administrative problems which arose from time to time in connection with LCF's dealings with investors.

H7.31 On 07.09.17, for example, Jo Baldock provided D5 with an agenda (which included various LCF delays and administrative problems) for discussion with D4.[600]

H7.32 Similarly, on 19.07.18, when there had been complaints from LCF investors about delays by LCF's staff in Eridge in dealing with ISA transfers ("*Further to my email this morning we have since had 2 dissatisfied clients regarding their transfers*"), Jo Baldock told Katie Maddock of LCF that D6 would be "*happy to take over the process from here*

595 SUR00009048-0001; SUR00009050-0001

596 SUR00009047-0001; SUR00009049-0001

597 SUR00009051-0001; SUR00009052-0001

598 SUR00009378-0001; SUR00009379-0001

599 SUR00014423-0001

600 SUR00082929-0001; SUR00082937-0001; SUR00082945-0001

Source: Mouseinthecourt.co.uk

as we have the resources".[601] Kerry asked D7, "*Worth forwarding to Simon and Elten so they can see first-hand the issues around Eridge being slow? Or perhaps that's too much of a dig?*"[602] D7 replied, "*Already have*".

H7.33 D7 emailed D5, Jo Baldock and Kerry to explain, "*The transfers will be dealt with by us very soon. Spencer is instructing Andy to pass the work to our office next week*".[603]

H7.34 As is clear from the matters stated above, each of D1, D4, D5, D6, D7 and D8 knew that D4 was the person who ultimately called the shots in relation to LCF. Kerry Venn acknowledged in her oral evidence that she thought D4 was the "*king pin*" at their first meeting and she dealt with him on that basis.[604] D5 also agreed that on meeting D4 he thought that he was the "*king pin*" and that he thought D4 was "*the man in charge*" of LCF and that D4 was "*very important to LCF*."[605]

H7.35 In his oral evidence, D1 maintained that D4 had no influence in LCF after the shares in LCF were transferred to him in July 2015.[606] This assertion cannot stand in the light of the matters set out above and should be rejected.

H7.36 Further, when presented with evidence that D4 had already engaged D6 without any involvement from D1 in February 2015, D1 claimed that "*I could have stopped that, but I chose not to.*"[607] D1's evidence should be rejected. It is clear that it was D4 who always had control over LCF's relationship with D6 and the level of commission that LCF would pay. This is evidenced by the fact that as soon as D4 decided that he wanted to receive from D6 1% of the monies D6 raised for LCF, D6 immediately stopped paying D1 a monthly sum equivalent to 0.5% of monies raised.[608]

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601 MDR00160744

602 D7D9-0007543

603 D7D9-0007542

604 Day 32/page 35/lines 15-20 **[A5/20/9]**.

605 Day 28/page 87/line 19 – page 88/line 12 **[A5/28/22]**.

606 Day 26/page 166/line 21 **[A5/26/42]**; Day 26/page 168/lines 6-8 **[A5/26/42]**.

607 Day 4/page 103/line 11 – page 105/line 15 **[A5/4/26]**.

608 Day 26/page 165/line 17 – page 166/line 17 **[A5/26/42]**; Day 31/page 39/line 21 – page 40/line 12 **[A5/31/10]**.

Source: Mouseinthecourt.co.uk

I. THE LAKEVIEW SPA

I1 Introduction

I1.1 The Lakeview SPA is the first of five major transactions by which LCF sought to conceal the misappropriation of monies from LCF. The transaction had no legitimate commercial rationale, as D1, D2, D3, D4 and D8 all knew.

I1.2 The Lakeview SPA was executed on 27 July 2015; although, no signed copy has been disclosed. The effect of the Lakeview SPA was that the shares in LCCL (which had been registered in the names of D1 and D10) were sold to London Trading for £2,105,263.10. London Trading was owned by D4, D2, D1 and D3. Accordingly, the beneficial ownership of D1 and D4 in the LCCL shares did not change, notwithstanding the transaction by which those shares had purportedly changed hands.

I1.3 A number of backdated documents purported to increase the purchase price under the Lakeview SPA, in order to provide an ostensible justification for the misappropriation of bondholder monies.

I1.4 The Claimants ask the Court to find the following facts in relation to the Lakeview SPA:

(1) There was no commercial rationale for the sale of the shares in LCCL to London Trading because the beneficial ownership of LCCL was unchanged by the transaction.

(2) The Lakeview SPA was therefore simply a means to justify the extraction of monies from LCF.

(3) There was no justification for any of the retrospective increases in the price payable under the Lakeview SPA.

(4) The documents effecting the various retrospective price increases under the Lakeview SPA were dishonestly backdated in order to disguise the fact that the price increases were retrospectively applied.

Source: Mouseinthecourt.co.uk

(5) The security purportedly provided to secure L&TD's borrowing was of negligible (and, in any event, grossly insufficient) value.

(6) L&TD did not generate any income and its only source of funds was LCF.

(7) Each of D1, D4 and D8 knew of and participated in the matters set out above.

(8) D1 and D4 authorised and/or directed the payment by LCF of monies to D1, D2, D3 and D4 via L&TD.

(9) D1, D2/D10, D3 and D4 together received c.£15.3 million of monies from LCF via L&TD which receipt was ostensibly justified by the Lakeview SPA but in fact constituted the misappropriation of those monies from LCF.

(10) D1 and D8 were involved in dishonestly backdating documents, including the L&TD facility agreement, a default notification letter from L&TD and a facility extension request from L&TD in order to mislead third parties such as LCF's auditors.

(11) D1 repeatedly allowed L&TD to breach its facility limit for no good commercial reason.

I2 Summary of the facts

The shares in LCCL

I2.1 The shares in LCCL were initially held by D1 (75%) and D10 (25%). D1 held his shares as nominee for D4, and D10 held her share as nominee for D2: D4 and D2 were the beneficial owners of LCCL.[609]

[609] MDR00010565; MDR00011009; Day 5/page 25/line 17 – page 32/ line 23 **[A5/5/7]**.

Source: Mouseinthecourt.co.uk

I2.2 The beneficial interests in LCCL changed in the course of 2013. While the legal shareholders remained with D1 and D10, the beneficial interests were as follows: D1 owned 5%; D4 owned 71.25%; and D2 owned 23.75%.[610]

The Lakeview SPA

I2.3 In April 2015, D2 and D4 decided to sell the shares in LCCL to a company controlled by them which would borrow money from LCF to pay the purchase price.[611] It was initially discussed that D1 and D10 would sell their shares in LCCL to London Trading for £6.75 million, to be paid by loan notes repayable in 8 years.[612] However, it was subsequently decided that smaller sums (£1.5 million to D4, and £750,000 to D1 and D10) would be paid in a shorter timeframe. The proposed price was then revised again to £2,105,263.10, on the basis that D4 would receive £1.5 million for his share of 71.25%, D10 would receive £500,000 and D1 would receive £105,263.15.[613]

I2.4 While none of the Defendants has disclosed a signed copy of the Lakeview SPA, it is clear from the contemporaneous documents it was executed (and that the loan notes to be granted by way of payment were issued to D1 and D10) on 27 July 2015.[614]

I2.5 The amount of the loan notes that became payable to D1 and D10 by London Trading in return for the shares in LCCL could not be justified on any basis. As set out at above at G2.11 to G2.19, the assets held by LCCL were worth between £4 million and £4.55 million. Against this, LCCL owed substantial liabilities of £6.5 million (including £1 million to D4, £1.4 million to Ortus, and £4.1 million to LUKI). Hence, LCCL's liabilities exceeded its assets and its shares were not worth anything.[615]

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610 EB0000596; EB0000597; MDR00224886; MDR00015796; D8-0062179; EB0000610; EB0077171; EB0139146; D2D10-00038963; EB0067777; MDR00217539; Day 5/page 95/line 20 – page 99/line 11 **[A5/5/24]**.

611 EB0139239

612 D8-0000501; EB0003027

613 D8-0001326; D8-0001327; MDR00016398; D8-0001352; EB0004601; D8-0001354; D8-0001355; EB0004601; D8-0001354; D8-0001355; Day 5/page 99/line 12 – page 103/line 12 **[A5/5/25]**.

614 EB0004763; D8-0001462; D8-0001461; D8-0001463; D8-0001471; D8-0001473; D8-0001474; EB0004765; EB0004768; MDR00016435; MDR00017071; MDR00017068; MDR00017070; MDR00017071; MDR00005885; MDR00016700; Day 5/page 108/line 10 – page 110/line 18 **[A5/5/27]**.

615 Day 5/page 110/line 24 – page 114/line 13 **[A5/5/28]**; MDR00002220

Source: Mouseinthecourt.co.uk

The Lakeview SPA did not result in a change in the beneficial ownership of LCCL

I2.6 Under the Lakeview SPA, the shares in LCCL were sold to London Trading. London Trading was owned by the same individuals who owned LCCL, and in the same proportions. The shares in London Trading were held by International Resorts Partnership LLP, which (as at 8 July 2015) held those shares on trust for D4 (71.25%), D2 (23.75%), and D1 (5%).[616]

I2.7 At around the same time as the Lakeview SPA, it was proposed that the shares in London Trading would be held in new ratios between D4 (45%), D2 (45%), D1 (5%) and D3 (5%) once the transaction had completed; although the consideration under the Lakeview SPA would be paid according to the "old ratios" set out above.[617]

I2.8 As a result, before and after the Lakeview SPA was entered into, there was no change in the identity of the beneficial owners of the shares in LCCL: it was a sale by the beneficial owners to themselves. As regards D1 and D4 in particular, they had a beneficial interest in LCCL shares before the sale and continued to have a beneficial interest in LCCL after the sale and notwithstanding the sale.

Proposed mechanism for retrospectively increasing the price payable under the Lakeview SPA

I2.9 On 18 August 2015, D8 emailed D2 and D3 (cc D1 and D4) a version of the Lakeview SPA which contained a new clause 3.4 which contained a mechanism for allowing a retrospective increase in the price by reference to the values of the "Telos claim" and the "Timeshare claim". This revised version of the Lakeview SPA was never signed.[618]

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616 Day 5/page 95/line 20 – page 99/line 11 **[A5/5/24]**.

617 EB0139239; Day 5/page 103/line 13 – page 108/line 9 **[A5/5/26]**; Day 5/page 114/line 24 – page 117/line 6 **[A5/5/29]**.

618 EB0005518; D8-0001740; EB0005581; EB0005583; Day 5/page 117/line 16 – page 120/line 14 **[A5/5/30]**; Day 5/page 120/line 22 – page 127/line 3 **[A5/5/30]**.

Source: Mouseinthecourt.co.uk

I2.10 A further draft of the Lakeview SPA was prepared by D8 on 6 October 2015.[619] This draft included a revised clause 3.4, which also made reference to potential value in in the "Megante Asset", which was defined to mean an agreement between LCCL and Sanctuary PCC, by which LCCL agreed to fund the development of the site at The Beach, in consideration for a share of the proceeds of sale of that site upon sale. This revised draft of the Lakeview SPA was never executed.[620]

I2.11 These "assets" could not justify any retrospective increase in price:

(1) The facts relating to the "Telos claim", i.e. the assignment from Telos to LCCL of potential claims against Telos' directors, long predated the execution of the Lakeview SPA on 27.07.15. Hence any value in this "asset" would already have been included in the purchase price;[621]

(2) The facts relating to the "Timeshare claim", i.e. a dispute between LCCL and the timeshare club relating to contributions to common costs and the payment of certain invoices for that purpose totalling £445,000, also predated the Lakeview SPA. Any value in this "asset" would also already have been included in the purchase price; [622]

(3) There was never any agreement between LCCL and Sanctuary PCC, by which LCCL agreed to fund the development of the site at The Beach, in consideration for a share of the proceeds of sale of that site upon sale. No such agreement has been disclosed by any of the Defendants and it is more likely than not that such an agreement never existed: (i) the company holding the contractual rights in respect of The Beach (Tenedora) had not acquired any parcels of land at The Beach, (ii) the shares in Tenedora had been sold by Sanctuary PCC to International Resorts Group Plc[623], and (iii) there does not appear to be any agreement by which LCCL

619 MDR00018231

620 Day 5/page 127/line 4 – page 130/line 17 **[A5/5/32]**.

621 MDR00094591

622 D2D10-00006280; D2D10-00011307; D2D10-00010334; D2D10-00009921; D2D10-00011413; EB0005565; D2D10-00011415; D2D10-00011415

623 MDR00005334

Source: Mouseinthecourt.co.uk

had agreed to fund the development of The Beach. Thus, the so-called "Megante Asset" was also incapable of justifying any retrospective price increase.

I2.12 It is apparent that D8 was trying (presumably on instructions from D2 and D4) to produce a mechanism which could be activated in future to increase the price payable so as to match the amount taken under the Lakeview SPA by D4, D2, D3 and D1.

Backdated increase in the purchase price under the Lakeview SPA to £3.5 million

I2.13 At some point between 27 July 2015 and 4 September 2015, LCCL transferred the Lakeview site to Waterside Villages Plc, with the exception of the "development land". The "development land" had been charged to LUKI in order to secure the liabilities of investors in the LUKI bond.[624]

I2.14 On 7 October 2015, there were discussions between the parties to retrospectively increase the price paid under the Lakeview SPA. This increase would not make use of clause 3.4. The initial proposal was for the price to be increased to £3.5 million. However, a revised agreement reflecting this increase was not executed. In January 2016, there was further discussion about increasing the price under the Lakeview SPA between D1, D2, D3, D4, and D8. D8 proposed that the price could be further increased by adding CV Resorts as a subsidiary of LCCL with retrospective effect. A version of the Lakeview SPA with an increased price of £3.5 million, and containing the new clause 3.4, was then executed and backdated to 27 July 2015.[625]

L&TD facility agreement and lack of any security

I2.15 The Lakeview SPA was the purported justification for substantial payments made from LCF to D4 and D10 via L&TD. When L&TD distributed those funds to D4 and D10, it was recorded in the bank statements as a "share payment". These sums were ostensibly paid out of LCF as loan advances to L&TD. However, (i) there was no facility agreement

[624] Day 3/page 39/line 4 – page 39/line 4 **[A5/3/10]**; Day 7/page 2/line 3 – page 8/line 5 **[A5/7/1]**.

[625] EB0006449; MDR00025728; EB0011191; D2D10-00011772; D8-0001903; EB0012057; EB0012103; Day 5/page 130/line 18 – page 137/line 12 **[A5/5/33]**.

Source: Mouseinthecourt.co.uk

in place when the first payments were made by LCF to L&TD, and (ii) LCF had no security for the monies being loaned to L&TD.[626]

I2.16 In January 2016, two draft facility agreements had been circulated by Alex Lee to D8 (cc D1): an "old" facility to cover existing payments, and a "new" facility for future drawdowns.[627] Alex Lee explained: "*The 'old' refers to the facility that has already been drawn down and the other is for the proposed new facility*".[628] These were then combined into a single facility for £25 million, provided by Alex Lee to D8 (cc D1) on 4 March 2016.[629] This facility was signed towards the end of March 2016 but backdated to 27 August 2015.[630]

I2.17 The L&TD facility referred to the agreement between CV Resorts and Paradise Beach SA, land in the Dominican Republic owned by Inversiones, and Tenedora.[631] However, the security referred to in the L&TD facility was illusory. As explained above:[632] (i) CV Resorts did not own any land at Paradise Beach and held a worthless right to pay EUR 57 million in order to acquire a site with a market value of EUR 40 million (and a distressed sale value of only EUR 17.6 million); (ii) the shares in Inversiones were held on trust for El Cupey for the ultimate benefit of the Sanctuary investors by way of security for their deposits; and (iii) Tenedora had not acquired The Beach. There was therefore nothing to secure L&TD's liability to LCF.[633]

Backdated increase in the purchase price under the Lakeview SPA to £6 million

I2.18 In July 2016, the price in the Lakeview SPA was retrospectively increased again as payments from LCF to L&TD approached the revised purchase price of £3.5 million.

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626 Day 5/page 137/line 15 – page 144/line 5 12 **[A5/5/35]**.

627 MDR00027236 to MDR00027239; MDR00027246 to MDR00027262; MDR00027263 to MDR00027279; MDR00027297 to MDR00027300; MDR00028014 to MDR00028016; MDR00028022 to MDR00028024

628 MDR00028014

629 MDR00032258; MDR00032341 to MDR00032344; MDR00032341; MDR00033977; MDR00034010 to MDR00034013

630 Day 5/page 138/line 14 – page 139/line 13 **[A5/5/35]**; Day 5/page 144/line 6 – page 145/line 18 **[A5/5/36]**; Day 6/page 15/line 19 – page 17/line 17 **[A5/6/4]**; MDR00034010; EB0017004; **[J1/1/1]**.

631 **[J1/1/3]**.

632 At Section F2.

633 Day 5/page 145/line 18 – page 147/line 4 **[A5/5/37]**.

Source: Mouseinthecourt.co.uk

Initially, the price was proposed to be increased to £4.5 million but, as payments continued, the price was increased further to £6 million with retrospective effect. The further version of the Lakeview SPA was signed by D1, D2, and D10 in July 2016 and backdated to 27 July 2015.[634]

Exceeding the L&TD loan facility limit

I2.19 Within 2 months of the signature (and backdating) of the third version of the Lakeview SPA to increase the purchase price retrospectively to £6 million, the payments to D1, D4 and D10, funded by LCF, exceeded this figure.

I2.20 By January 2017, the payments from LCF to L&TD exceeded £19.6 million. When the 25% fee paid to Surge was accounted for, the gross sum owed by L&TD to LCF stood at more than £27 million. L&TD had exceeded the limit in its facility with LCF.[635] To conceal this a letter requesting an increase to the facility limit was produced and backdated.[636]

Backdated increase in the purchase price under the Lakeview SPA to £14,260,000

I2.21 In March and April 2017, D1, D2, D3, and D4 discussed activating the mechanism in clause 3.4 of the Lakeview SPA to retrospectively increase the purchase price. Initially it was suggested that the increase should be to £13.85 million. A draft agreement recorded the ostensible basis for the increase in value: the "Megante Asset" would be given a value of £4 million, the "Telos claim" would be given a value of £1 million, and the "Timeshare claim" would be given a value of £2.85 million. There was no basis for the values these "assets" were given. This draft agreement was not executed.[637]

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634 D2D10-00018954; D2D10-00018955; MDR00195208; MDR00050334; D2D10-00019278; MDR00050335; MDR00049432; MDR00050415; MDR00050416; MDR00050417; D2D10-00019413; D2D10-00019414; D2D10-00019467; D2D10-00019468; MDR00005903; MDR00005908; MDR00225501; MDR00225502; MDR00225503; Day 5/page 149/line 11 – page 151/line 22 **[A5/5/38]**.

635 Day 5/page 149/line 11 – page 154/line 11 **[A5/5/38]**.

636 MDR00071397; MDR00071398; MDR00071400; D8-0008772; D8-0008773; D8-0008775; D8-0008776; MDR00071455; MDR00071456; D8-0008779; Day 6/page 6/line 22 – page 12/line 5 **[A5/6/2]**.

637 EB0043657; D8-0013127; D1-0003697; D1-0003699; EB0043658; D8-0013149; EB0043659; D8-0013150; Day 6/page 20/line 14 – page 25/line 20 **[A5/6/5]**.

Source: Mouseinthecourt.co.uk

I2.22 Instead, payments continued from LCF to L&TD, which in turn made payments to D1, D3, D4, and D10 (as nominee for D2). As at 22 May 2017, the total paid out under the Lakeview SPA to those Defendants was recorded as being £14,260,361.10.[638]

I2.23 On 22 May 2017, the parties discussed activating clause 3.4 to retrospectively increase the purchase price under the Lakeview SPA to £14,260,361.10 – i.e., the precise amount that had already been paid to D1, D3, D4 and D10 under the Lakeview SPA. D2 proposed the use of rounder numbers, so that the reverse engineering of the increased purchase price under the Lakeview SPA was less obvious. In the variation agreement, the purchase price was recorded as £14,260,000 instead, paid in the "old ratios" which represented the position as at 27 July 2015 (even though the money in fact paid to D1, D3, D4, and D10 as nominee for D2, was only paid in the "old ratios" up to £6 million, after which the money was divided according to the "new ratios"). The variation agreement was signed on 16 August 2017 and backdated to 16 August 2016.[639]

I2.24 A further variation agreement dated February 2018 then split the £14,260,000 consideration differently, in order to match the payments which were actually made (i.e. starting with the "old ratios" up to £6 million and moving to the "new ratios" thereafter).[640]

I3 The sums paid out in relation to the Lakeview SPA

I3.1 In the course of the Claimants' oral opening submissions, the Court asked how much money in total had been paid under the heading "Share Payment" by 18 April 2017.[641]

I3.2 There are two contemporaneous documents recording the sums paid out to each of D1, D2/D10, D3 and D4 in relation to the Lakeview SPA. D3 recorded the sums in a

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638 EB0046646; D8-0013976; D8-0013977; D2D10-00028391; D2D10-00028392; Day 6/page 25/line 2 – page 29/line 22 **[A5/6/7]**.

639 EB0048525; D2D10-00028396; EB0048527; MDR00088015; MDR00088016; D2D10-00028398; EB0048652; EB0048653; D1-0003894; EB0048653; D1-0003930; D8-0015763; D8-0015764; MDR00091073; D2D10-00029050; D2D10-00029051; D2D10-00029052; MDR00090480; D1-0004424; D1-0004423; D1-0004427; D1-0004430; EB0055027; EB0055033; MDR00005904; MDR00219446; Day 6/page 29/line 22 – page 37/line 25 **[A5/6/8]**.

640 Day 6/page 45/line 15 – page 47/line 23 **[A5/6/12]**; MDR00219483

641 Day 6/page 22/lines 6-9 **[A5/6/6]**.

Source: Mouseinthecourt.co.uk

spreadsheet which showed that the payments made totalled £14,260,361.10 plus repayment of a loan of £1 million to D4.[642] There is also another spreadsheet, whose author is unclear, which allocates the sums paid out slightly differently.[643]

I3.3 In order to answer the Court's question, the Claimants analysed the relevant L&TD bank statements.[644] This analysis showed that £15,859,307.61 had been paid out under the heading "Share Payment". However, it seems that some of the payments to D4 were deemed to be loan repayments: D3's spreadsheet includes the repayment of a loan of £1 million made by D4 to LCCL and £300,000 advanced to D1 by way of loan. D3's spreadsheet also includes payments totalling £35,000 which are recorded as a loan from D4 to D1 (which does not appear in the L&TD bank statements).

I3.4 The Claimants are unable to explain these discrepancies. However, as stated above, the parties themselves worked on the basis that £14,260,361.10 had been paid – hence the revision of the price to £14,260,000. It is clear that some internal reconciliation took place which is not reflected in payments made from the bank statements. D3 sent his spreadsheet to D8 on 13.04.19 together with other documents recording payments made to D1, D2, D3 and D4 in relation to the Elysian SPA, the Prime SPA, the LPE SPA and the LPT SPA.[645] It is therefore likely accurately to record the belief of D1, D2, D3 and D4 as to the sums received by them.

I4 D1's participation in and knowledge of the Lakeview SPA

I4.1 D1 knew that at the time of the Lakeview SPA, the shares in LCCL were held beneficially for D4 (and his family) as to 71.25%, D2 as to 23.75% (via D10), and himself as to 5%.[646]

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642 EB0123430

643 MDR00072440

644 **[A4/4/1]**.

645 EB0123427; EB0123428; EB0123429; EB0123432

646 EB0000596; EB0000597; EB0000610; EB0077171; EB0139146; D2D10-00038963; EB0067777; Day 24/page 19/line 3 – page 21/line 20 **[A5/24/5]**.

Source: Mouseinthecourt.co.uk

I4.2 D1 was a director of London Trading from 19 February 2015 to 13 January 2016.[647] D1 knew that the London Trading was owned in the same proportions as LCCL.[648]

I4.3 In his oral evidence, D1 sought to deny that he owned 5% of London Trading, relying on the so-called "MOU" and the so-called "SPA". This evidence was untruthful: as is explained in more detail in Section O2 below, the MOU and SPA are backdated documents, which do not make sense on their terms, and which cannot be reconciled to the chronology of events according to the contemporaneous documents. D1's evidence was contradictory: he sought to explain that he had been 'bought out' of his 5% share, yet in doing so, conceded that he still had "*a beneficial interest in 5%*".[649] The court should therefore reject D1's attempt to deny his 5% ownership of London Trading.

I4.4 D1 therefore knew that the Lakeview SPA did not involve a change in beneficial ownership of LCCL. D1 therefore knew that the Lakeview SPA did not provide any justification for payment of monies from LCF to L&TD.

I4.5 D1 knew that the purchase monies would be provided by LCF and that they would be routed via L&TD.[650] That LCF would be funding London Trading's purchase of the shares in LCCL was recorded in the Golding-SHK Agreement of which D1 was aware as is explained above at H2.34 and H3.12.[651]

I4.6 D1 was involved in discussions at the time about the purchase price and the terms of the LCCL SPA, of which he was aware.[652] It is clear from the documents that D1 was copied into email correspondence and was kept informed of developments regarding the terms of the proposed Lakeview SPA. In particular, D1 knew that the shares in LCCL had been sold for loan notes issued by London Trading in the total sum of £2,105,263.15.[653] D1

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647 **[A1/5/85]**.

648 MDR00002220; EB0002053; EB0004189; EB0004190; EB0004242; EB0004246; EB0072043; EB0132731; EB0007549; EB0007134; EB0139158; Day 24/page 21/line 21 – page 25/line 11 **[A5/24/6]**.

649 Day 24/page 27/line 21 – page 34/line 7 **[A5/24/7]**.

650 EB0002372

651 EB0139239

652 D8-0000501; D8-0000507; D8-0001352; MDR00016481; D8-0001354; Day 24/page 23/line 4 – page 27/line 20 **[A5/24/6]**.

653 MDR00016700; D8-0001722

Source: Mouseinthecourt.co.uk

also executed the LCCL on or around 27.07.15 as one of the vendors.[654] D1 therefore knew of the terms and effect of the Lakeview SPA.[655]

I4.7 D1 knew that LCCL's assets were less than its liabilities, as at the date of the Lakeview SPA. D1 knew that LCCL owed liabilities of £1.4 million (to Ultimate Capital), and that LCCL owed £3.9 million (to LUKI) in May 2015 which later increased to £4.4 million by August 2015.[656] In his oral evidence, D1 accepted that he would have known this information at the time.[657] For the reasons given at Section G3 above, D1 also knew that the value of the Lakeview site at the time of the Lakeview SPA did not exceed £4.5 million. It follows that D1 knew that LCCL was insolvent, and therefore that its shares were worthless and could not justify the price under the original Lakeview SPA let alone the subsequent price increases.

I4.8 D1 knew about discussions in August 2015 about increasing the purchase price under the Lakeview SPA, which resulted in a mechanism for increasing the purchase price under the Lakeview SPA in the future.[658]

I4.9 D1 knew that an increased purchase price would mean that he received more money.[659]

I4.10 D1 was closely involved in increasing the price payable under the Lakeview SPA to £3.5 million and was kept informed of developments at every stage.[660]

I4.11 At some point before 14.01.16, D1, D2 and D10 signed a revised version of the Lakeview SPA containing (i) a price of £3.5 million (in the form of loan notes issued by London Trading) and (ii) the version of clause 3.4 which referred to "the Megante Asset, the Telos Claim and the Time Share Claim". Although this revised version of the

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654 D1-0001994 page 45

655 MDR00017071; MDR00017068; MDR00017070; MDR00017071; MDR00005885

656 D2D10-00010793; D2D10-00011930

657 Day 25/page 79/line 25 – page 83/line 16 **[A5/25/20]**.

658 EB0005518; EB0005581; EB0005583; Day 24/page 34/line 6 – page 37/line 5 **[A5/24/9]**.

659 Day 24/page 37/line 6 – page 38/line 6 **[A5/24/10]**.

660 EB0006449; D2D10-00011772; D8-0001903; MDR00025728; Day 24/page 38/line 7 – page 39/line 10 **[A5/24/10]**.

Source: Mouseinthecourt.co.uk

Lakeview SPA was signed at some point between 03.01.16 and 14.01.16, it was backdated to 27.07.15 on the front page to make it seem that the price payable by London Trading had always been £3.5 million and that the Lakeview SPA had always contained the price adjustment mechanism in clause 3.4.[661] D1 sought to claim in his oral evidence that he did not backdate this document but he acknowledged that the agreement was dated "2015" and that he signed it in 2016:[662]

14 A. I just want to know the date. The date has been written
15 in there. I could very well have been asked to sign
16 this document -- that's not my writing to put the date
17 on it, so I may very well have signed an undated
18 document, but I do take the point that it has "2015" in
19 there and I take the point that you made with regard to
20 the email from Mr Sedgwick to me in 2016. I was asked
21 to sign a document by way of my buyout agreement,
22 because I still had a beneficial interest. I signed the
23 document because I was asked to. Should I have signed
24 it? Should I be criticised for that? Should I have
25 made sure there was a date on the front of it? Yes,

1 I should have done. I didn't. I don't know there is
2 much else I can say.

I4.12 In his oral evidence, D1 was unable to explain how the Telos claim would have realised any value that would justify an increase in price and sought to claim that it was largely dealt with by D2:[663]

A. Again, same answer: I didn't deal with the Telos claim.
8 The Telos claim was dealt with largely by
9 Mr Hume-Kendall. I believe that the Telos claim did
10 actually ultimately produce a decent sum of money.
11 I don't know what that was. I understand it was
12 successful. I didn't value that. I didn't put the
13 figure in. I didn't come up with the figure. Others
14 did. Again, this is -- I believe this -- I was told
15 I was part of this because of my buyout and because of
16 the original agreement back in 2015. I didn't put this
17 together.

I4.13 In fact, D1 knew that the "Telos claims" could not justify any increase in the price under the Lakeview SPA. D1 knew that the Telos claims had been assigned to LCCL long before the date of the first Lakeview SPA on 27.05.15, and that any potential value

661 EB0012080; EB0012103; D2D10-00013930; Day 24/page 54/line 16 – page 57/line 2 **[A5/24/14]**.

662 Day 24/page 56/line 14 – page 57/line 2 **[A5/24/14]**.

663 Day 24/page 114/lines 7-17

Source: Mouseinthecourt.co.uk

would have existed as at that date.[664] His oral evidence should be rejected as a clumsy attempt to distance himself from something that he knows is indefensible.

I4.14 D1 knew that the "Timeshare claim" could not justify an increase in the price under the Lakeview SPA because the facts that gave rise to the dispute predated the Lakeview SPA and so would have already have been encompassed in the original purchase price.[665] In his oral evidence, D2 claimed that the timeshare club was principally dealt with by D2, he accepted that he might have been told of the interactions between LCCL and the timeshare club.[666] It is to be inferred from this role as a director of LCCL and his heavy involvement at the Lakeview site that he was well aware of the dispute with the timeshare club.

I4.15 D1 knew that the so-called "Megante Asset" (as defined) could not justify an increase in the price under the Lakeview SPA because he knew, for the reasons given in Section E3 above, that Tenedora had yet acquired any land in the Dominican Republic. D1 also knew that there was no agreement by LCCL to fund the development of The Beach for Sanctuary, and D1 knew that the shares in Tenedora had been sold to IRG so that such an arrangement would in any event have been impossible. D1 suggested in his oral evidence that the decisions were made by D2 and D4[667], but he was a director of LCCL, he was involved in discussions concerning the variation of the Lakeview SPA[668], he signed a version of the Lakeview SPA making reference to the "Megante Asset", he received payments purportedly justified by the value of the "Megante Asset" and he was involved in the Sanctuary scheme. His self-serving attempts to distance himself from knowledge of these matters should therefore be rejected.

I4.16 D1 knew that D8 had proposed a further mechanism for increasing the price payable under the Lakeview SPA based on a supposed increase in the value of the Paradise Beach resort. The obstacle to this was that CV Resorts had not in fact been a subsidiary of LCCL in 27.05.15. D8 thought that this could easily be overcome by backdating the

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664 Day 24/page 39/line 11 – page 41/line 13 **[A5/24/10]**.

665 Day 6/page 60/line 25 – page 68/line 8 **[A5/6/15]**.

666 Day 24/page 43/line 14 – Day 24/page 43/line 20 **[A5/24/11]**.

667 Day 24/page 44/line 11 – page 47/line 20 **[A5/24/11]**.

668 See, for example, EB0006449; MDR00025728; Day 24/page 47/line 20 – page 50/line 21 **[A5/24/12]**.

Source: Mouseinthecourt.co.uk

transfer of shares in CV Resorts.[669] While this suggestion was not ultimately taken up, D1 accepted in his oral evidence that it would have involved "*remaking up the past*" and accepted that it involved inserting a false and misleading justification for future price increases.[670]

I4.17 D1 said in his oral evidence that he signed the documents because they were put in front of him, and that he would have received explanations why an increase in the price would be proper. This evidence is implausible and should be rejected: D1 was involved in the formulation of the Lakeview SPA, and could not give any coherent account of how an increase in the price might be justified in circumstances where the Lakeview SPA had already been signed on 27 July 2015.[671] The matters described at I4.12 to I4.16 clearly demonstrate that D1 was not concerned with whether the mechanism for price increases under the revised Lakeview SPA had any basis in fact; he knew they did not. He was simply concerned to have a fig-leaf for extracting more money from LCF.

I4.18 D1 knew that the purchase price under a further version of the Lakeview SPA was further increased beyond £3.5 million, and that the variation agreement was backdated to 27.07.15.[672]

I4.19 D1 was informed by D8 in an email dated 20.07.16 that the purchase price would be increased to £6 million.[673] D1 subsequently signed a revised (and backdated) version of the Lakeview SPA with a purchase price of £6 million. D1 knew that this agreement had been backdated when he signed it.[674]

I4.20 D1 gave contradictory oral evidence about the state of his knowledge. On the one hand, he had no recollection of discussions regarding an increase in the price under the Lakeview SPA. On the other hand, he asserted that he was provided with explanations

669 MDR00025728

670 Day 24/page 48/line 25 – page 53/line 5 **[A5/24/12]**.

671 Day 24/page 54/line 16 – page 60/line 11 **[A5/24/14]**.

672 D2D10-00018954; D2D10-00018955; MDR00195208; MDR00050334

673 MDR00050334; D2D10-00019278; MDR00050335

674 MDR00049432; MDR00050415; D2D10-00029051; MDR00005908; D2D10-00029050; D2D10-00029051; Day 24/page 85/line 21 – page 87/line 7 **[A5/24/22]**.

Source: Mouseinthecourt.co.uk

by D8 and others about the increase in value of the underlying assets. D1 sought to distance himself from having signed the revised version of the Lakeview SPA. D1's evidence was unreliable and appears to have been tailored in order to give the impression that he acted properly at the time.[675] D1 suggested that he acted on the assurances of lawyers at the time. It is plain from the documents that D1 must have known that he was signing a backdated document which did not reflect terms agreed on or about 27 July 2015.[676] D1's evidence is implausible and cannot be accepted.

I4.21 D1 was also involved in the proposed further increase in the price under the Lakeview SPA in April 2017, when around £13.85 million had been paid from LCF pursuant to the Lakeview SPA.[677] D1 knew that there was no proper justification for this price.[678]

I4.22 D1 was privy to proposals to further increase the purchase price under the Lakeview SPA to £14,260,361.10 shortly after the previously suggested price of £13.85 million, in circumstances where D1 had received additional payments from L&TD in the meantime that he knew consisted of monies lent by LCF to L&TD.[679]

I4.23 That D1 knew that the explanations for the increases were manufactured is also clear from an email sent by D8 to D1 on 13.06.17, in which D8 wrote that the proposed variation agreement to further increase the price payable under the Lakeview SPA should not be completed because the increased asset values "*conflicted with certain other things [D2] was seeking to achieve*", and that D8 was tasked with finding other means of achieving this.[680]

I4.24 D1 knew that the figure was later amended to £14,260,260 because he was party to emails in which this figure was discussed and he executed the variation agreement on 16.08.17.[681]

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675 Day 24/page 79/line 22 – page 84/line 17 **[A5/24/20]**.

676 Day 24/page 91/line 25 – page 94/line 23 **[A5/24/23]**.

677 D1-0003697; D1-0003699; Day 24/page 104/lines 9-25 **[A5/24/26]**.

678 Day 24/page 113/line 3 – page 115/line 7 **[A5/24/29]**.

679 MDR00088015; Day 24/page 116/line 5 – page 117/line 19 **[A5/24/29]**.

680 MDR00090480; Day 24/page 122/line 25 – page 126/line 17 **[A5/24/31]**.

681 D1-0004424; D1-0004423; D1-0004427; EB0055027; EB0055033; MDR00005904; MDR00219446

Source: Mouseinthecourt.co.uk

I4.25 D1 knew that the increases in price under the Lakeview SPA had no proper basis but were necessary to provide ostensible justification for the increasing amounts of money being misappropriated from LCF by D1, D2, D3 and D4.

I4.26 As a director of LCF, D1 knew about and approved the payment of monies from LCF to L&TD. D1 knew that L&TD was beneficially owned by D4, D2, D1 and D3 in the ratios 45: 45: 5: 5.[682] He knew how L&TD would use those monies.

I4.27 D1 was also participating in LCF's lending to L&TD knowing that there was no real prospect that those funds would ever be repaid. D1 knew that L&TD had no other source of funding except funds transferred to it from LCF and that it was not generating any revenues or profits from any commercial activities.[683]

I4.28 D1 facilitated drawdowns by L&TD from LCF from August 2015 onwards without any agreement in place with LCF. This is plain from the contemporaneous documents, which show that a facility agreement between LCF and L&TD was only being prepared and executed for the first time from January 2016 onwards.[684] D1's oral evidence was that he would not have permitted a drawdown without an agreement in place. However, in his witness statement, D1 could not identify a single document to support the assertion that there would have been a prior facility agreement.[685] D1's evidence is contrary to the clear documentary record and should be rejected.

I4.29 D1 knew that new bondholder investments into LCF would be used to fund drawdowns by L&TD, which would result in payments to himself and his associates. In his oral evidence, D1 suggested that he might have regarded these payments as made pursuant to his so-called "buyout" agreement[686], but this was untruthful: the MOU and SPA were

682 Day 24/page 88/line 22 – page 89/line 19 **[A5//24/22]**.

683 Day 24/page 84/line 18 – page 85/line 6 **[A5/24/21**.

684 MDR00027236 to MDR00027239; MDR00027246 to MDR00027262; MDR00027263 to MDR00027279; MDR00027297 to MDR00027300

685 Day 24/page 73/line 2 – page 77/line 11 **[A5/24/19]**.

686 Day 24/page 77/line 11 – page 79/line 21 **[A5/24/20]**.

Source: Mouseinthecourt.co.uk

fabricated agreements which did not exist at the time for the reasons explained at Section O2 below.

I4.30 D1 was, in reality, the only *de jure* director of LCF to approve payments from LCF to L&TD. In his oral evidence, D1 sought to suggest that other directors approved such payments and were more responsible than himself for making payments to L&TD. D1 claimed that he was rarely in the office ("*It's been a feature of various different people's interviews that I wasn't in the office often*", "*I was often out of the office doing other things*"[687]) but he had to accept that there was no need for him to be in the office in order to approve payments.[688] This was an obvious example of D1 changing his evidence when it appeared to him to better suit his case. When questioned on his involvement in August and September 2015 onwards in increasing the price under the Lakeview SPA, D1 had protested that his main focus was LCF.[689]

I4.31 In January 2017, D1 asked D8 to provide a backdated letter to be sent from L&TD to LCF, in order to create the false impression to third parties that LCF had not lent to L&TD in excess of the facility limit. D8 duly obliged by providing D1 with a letter backdated to 20.12.16.[690] D1 also asked D8 to provide a backdated letter from L&TD notifying LCF of a default in relation to the filing of its accounts. This was to give the false impression that LCF had been notified of the default before it happened. D8 provided a letter backdated to 25.10.16.[691]

I4.32 In his oral evidence, D1 refused to accept the obvious point that LCF would be in an awkward position when it came to audit, because LCF would have continued to lend to a company which was in default. D1 insisted that he was only concerned about rectifying

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687 Day 24/page 99/line 8 – page 100/line 22 **[A5/24/25]**.

688 Day 24/page 100/line 23 – page 101/line 18 **[A5/24/25]**.

689 "*I was concentrating on now trying to figure out what I'm going to do with LCF and move on*" Day 24/page 31/lines 7-9 **[A5/24/8]**; "*I'm endeavouring to get LCF going*" Day 24/page 35/lines 9-10 **[A5/24/9]**; "*I was concentrating more on LCF"* Day 24/page 36/line 24 **[A5/24/9]**; "*But, looking at the time, August '15, I was endeavouring to get LCF off the ground*" Day 24/page 35/lines 20-22 **[A5/24/9]**; "*I was off trying to put LCF together*" Day 24/page 47/lines 5-6 **[A5/24/12]**; *"Looking at the time period, I was very, very busy dealing with LCF*" Day 24/page 70/lines 4-5 **[A5/24/18]**.

690 MDR00071397; D8-0008775; D8-0008776; MDR00071455

691 MDR00071397; MDR00071398; MDR00071400; D8-0008772; D8-0008773; MDR00071455; MDR00071456

Source: Mouseinthecourt.co.uk

the default.[692] D1's evidence is implausible: (i) in an email dated 14.12.16 to which he was copied, Katie Maddock specifically identified it as a concern that LCF's auditors would notice that LCF had continued to lend to a company in default[693]; and (ii) D1 accepted that he did not tell LCF's auditors that the letter had been backdated.[694] It is plain that D1 knew that the default letter was created in order to deceive LCF's auditors about lending to a company in default.

I4.33 D1 accepted that he was involved in these documents and communications but his evidence as to why he had backdated these documents was highly unsatisfactory and offered no plausible justification for his actions. D1 said that he provided letters to D8, to be sent to LCF, "*So we had something on file*".[695] He also accepted that the default by L&TD had already occurred at this time but gave evidence that there was a verbal agreement at some point before 28.10.16.[696] waiving the default. However, D1 was unable to provide any explanation as to why, if the default had already been waived by verbal agreement, LCF would have sent a letter dated 05.12.16[697] to L&TD to notify it that it was in default.[698] This was because there is no explanation. There was no oral agreement and D1's oral evidence on this point was untruthful. He asked D8 to provide him with backdated documents in order that he could deceive LCF's auditors.

I4.34 D1 knew from his involvement with LCCL, in the Sanctuary scheme and in Paradise Beach that the assets ostensibly provided as security for LCF's lending to L&TD had negligible value but nonetheless continued to cause funds to be advanced to L&TD.

I4.35 D1 accepted that whenever money was lent by LCF to L&TD (with his authorisation and/or at his direction), he received payments into his personal bank account.[699] It is to be inferred from: (i) his knowledge of the arrangements by which he held the shares in

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692 Day 20/page 21/line 10 – page 24/line 8 **[A5/20/6]**.

693 D2D10-00023276

694 Day 20/page 34/lines 15-18 **[A5/20/9]**.

695 Day 20/page 26/lines 14-17 **[A5/20/7]**.

696 Day 20/page 27/lines 2 – page 28/line 3 **[A5/20/7]**.

697 MDR00067824

698 Day 21/page 20/line 23 – page 21/line 21 **[A5/21/5]**.

699 Day 24/page 85/line 7 – page 85/line 20 **[A5/24/10]**.

Source: Mouseinthecourt.co.uk

LCCL on trust for D4; (ii) his knowledge of the Golding-SHK Agreement; (iii) his knowledge of the Lakeview SPA; (iv) his involvement in the affairs of London Group[700]; and (v) his knowledge of the sums advanced by LCF to L&TD that he knew that whenever he received a payment from LCF (via L&TD), D2/D10, D3 and D4 would also receive a payment from LCF and that the quantum of those payments would be in accordance with either the old or the new ratios, depending upon the timing of the payment.[701] D1 ultimately admitted in his oral evidence that he was aware that D2, D3 and D4 received some monies from LCF via L&TD.[702]

I4.36 Even after extending L&TD's facility limit to £30 million, D1 approved payments by LCF that breached the new limit. So, D1 knew that L&TD owed over £34.7 million to LCF as at 03.04.17 and so was substantially in excess of its facility limit.[703], and therefore that it had borrowed in excess of any borrowing limit.

I5 D4's participation in and knowledge of the Lakeview SPA

I5.1 D4 participated in the decision to sell the shares in LCCL to London Trading.[704] As the majority beneficial owner of LCCL, D4 must have authorised the transaction.

I5.2 D4 was aware of the terms of the proposed sale of the Lakeview site and related transactions from (among other things) a meeting he had with D8 in mid-July 2015. D8 subsequently sent him a memo setting out the position.[705]

I5.3 Through his beneficial ownership of both LCCL and L&TD and his involvement in the affairs of the London Group[706], D4 knew that the Lakeview SPA did not involve a

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700 EB0005840; MDR00017023; EB0005848; MDR00017028; EB0005859; Day 24/page 96/line 22 – page 99/line 7 **[A5/24/24]**.

701 Day 24/page 60/line 11- page 65/line 4 **[A5/24/15]**; Day 24/page 89/line 20 – page 91/line 19 **[A5/24/23]**; Day 24/page 94/line 24 – page 96/line 6 **[A5/24/24]**.

702 Day 24/page 101/line 19 – page 104/line 8 **[A5/24/26]**.

703 MDR00077754

704 EB0139239

705 D8-0001326; D8-0001327

706 Day 24/page 67/line 25 – page 68/line 12 **[A5/24/17]**.

Source: Mouseinthecourt.co.uk

change in ownership. D4 intended the purchase price to be funded by LCF, as provided for in the Golding-SHK Agreement to which he was a party.

I5.4 D4 was kept informed about the preparation of drafts of the Lakeview SPA both directly[707] and via D1 and D3[708], who held his various interests on trust for him.

I5.5 D4 participated in discussions in August 2015 about increasing the purchase price under the Lakeview SPA, which resulted in a mechanism for increasing the purchase price under the Lakeview SPA in the future, based on the "Telos claim", the "Timeshare claim", and the "Megante Asset". Indeed, it is to be inferred from the central role that he played that it was D4 who ultimately took the decision that increased payments should be made.[709] From his involvement in the Sanctuary scheme and with Paradise Beach, D4 knew that the mechanisms proposed by D8 to achieve the increase in price had no basis in reality and that D8 was contemplating dishonestly backdating share transfers to justify the increased extraction of monies that D4 wanted to achieve.[710]

I5.6 D4 knew about the increased sums paid under the various revisions of the Lakeview SPA because he received payments from L&TD that equated to his agreed share of those sums.[711]

I5.7 D4 was involved in and knew about increasing the price under the Lakeview SPA beyond £3.5 million in July 2016, by putting in place a backdated document to that effect.[712]

I5.8 D4 was involved in and knew about increasing the price under the Lakeview SPA to £6 million.[713]

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707 EB0004763

708 D8-0001462; D8-0001463

709 EB0005518; EB0005581; EB0005583; Day 24/page 35/line 1 – page 37/line 5 **[A5/24/9]**; Day 24/page 43/line 21 - page 44/line 10 **[A5/24/11]**; Day 24/page 46/line 22 - page 47/line 20 **[A5/24/13]**; Day 24/page 47/line 21 - page 48/line 24 **[A5/24/12]**; Day 24/page 57/line 18 - page 60/line 11**[A5/24/15]**.

710 MDR00025728

711 EB0123430

712 D2D10-00018954; D2D10-00018955

713 MDR00050334; D2D10-00019278; MDR00050335

Source: Mouseinthecourt.co.uk

I5.9 D4 was involved in discussions to increase the price under the Lakeview SPA further in April and May 2017, when at least £13.85 million had been paid from LCF pursuant to the Lakeview SPA, by attaching values to the "Telos claim", the "Timeshare claim", and the "Megante Asset".[714] D1's evidence was that D4 was one of the key decision-makers in this respect.[715]

I5.10 D4 participated in increasing the price under the Lakeview SPA in this way despite knowing that there was nothing to justify retrospectively increasing the price under the Lakeview SPA in this way. Nothing had happened to the underlying assets to justify this. It is inferred that D4 knew this because of his involvement in LCCL (and, in particular, that D4 was involved in putting together the Lakeview roadshow[716] and was kept informed about sums due from the timeshare club[717]), the Sanctuary scheme and Paradise Beach and because he was involved in deciding what increased values to attribute to the assets for this purpose.[718]

I5.11 As is explained at Section R2 below, D4 was a shadow director and a *de facto* of LCF. D4 was also a beneficial owner of L&TD, which was ostensibly borrowing from LCF. D4 knew that he was receiving monies from LCF via L&TD in the ratios he had agreed with D2. It is to be inferred that the payments made to D1, D2, D3 and D4 were authorised and/or directed by D4 and that D4 knew that there was no proper justification for their receipt of these monies. It is further to be inferred that D4 either knew that L&TD's borrowing from LCF was effectively unsecured or simply did not care that this was the case.

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714 EB0043657; D8-0013127; D1-0003697; EB0043658; D8-0013149; EB0043659; D8-0013150; D1-0003697; D1-0003699; MDR00088015

715 Day 24/page 104/line 9 - page 105/line 22 **[A5/24/26]**; Day 24/page 116/line 5 - page 117/line 2 **[A5/24/29]**.

716 Day 21/page 71/line 6 – page 72/line 8 **[A5/24/18]**.

717 EB0005565

718 Day 24/page 119/line 12 – page 120/line 22 **[A5/24/30]**.

Source: Mouseinthecourt.co.uk

I6 D8's participation in and knowledge of the Lakeview SPA

I6.1 D8 knew that in 2012 and 2013, Buss Murton Nominees held the single share in LCCL on trust for D1 (75%) and D10 (25%).[719]

I6.2 D8 knew that Andrew Visintin had been promised 2.5% of the shares in LCCL for his work in helping to acquire the Lakeview site and that he sold his interest in LCCL on or around 07.4.14 to D4 for £11,000.[720] D8 was a party to the agreement with Andrew Visintin but was acting on behalf of D1, D2/D10 and D4. Following this, D8 knew that the beneficial ownership of LCCL was: D4 (71.25%); D2/D10 (23.75%) and D1 (5%).[721]

I6.3 On 02.01.14, D8 drafted a trust deed by which Buss Murton Nominees declared that it held the share in LCCL on trust for: the Golding family (71.25%); D10 (23.75%) and D1 (5%). D8 backdated the trust deed to 19 December 2012, to give the false impression that this had always been the beneficial ownership of LCCL.[722]

I6.4 On 18.04.14, D8 drafted an "acknowledgment" for D2 that he had always known that D1 held all but 5% of the interest in LCCL on trust for D4.[723] D8 knew D4 wished to conceal his interest in LCCL because he was subject to a bankruptcy restriction order. As at this date, the new ownership proportions as recorded in the draft trust deed had not yet been given effect.

I6.5 D8 executed the backdated trust deed giving effect to the new ownership proportions of LCCL and D1 witnessed his signature.[724]

719 MDR00010565; MDR00011009

720 MDR00014338; MDR00014723; EB0000540; EB0000539

721 EB0000596

722 MDR00014323

723 MDR00014818

724 MDR00224886

Source: Mouseinthecourt.co.uk

I6.6 D8 knew that in September 2015 the London Group was beneficially owned by D1, D2, D3 and D4.[725] D8 also knew that D3 held D4's interest in the London Group on trust for him.

I6.7 D8 arranged the allotment of shares in LCCL so that D1 would hold 7,625 shares and D10 would hold 2,375 shares.[726] D8 recorded the board decision to do this in a minute which he backdated to 15.12.14; the document was prepared on 13.02.15.[727]

I6.8 In mid-July 2015, D8 had a discussion with D4 about the Lakeview site at the Hotel du Vin in Tunbridge Wells. He then sent D4 an updated memo on the contemplated transactions involving the Lakeview site on 15.07.15.[728] D8 was therefore aware of the intended transactions involving the Lakeview site and D4's involvement in them. In particular, in his memo he suggested to D4 amending the proposed price for the sale of the shares in LCCL to reflect the cash being transferred.

I6.9 On 16.07.15, D8 prepared a note about the sale of the Lakeview site to London Trading.[729] On the same day, he sent D4 and D2 (copying D1) a draft of the Golding-SHK Agreement.[730] D8 knew that the beneficial owners of LCCL were D1, D2 and D10 and that the beneficial owners of London Trading were D1, D2, D3 and D4 and that D1, D2 and D4 were selling the Lakeview site to themselves and that the ownership ratios of assets going forward would be D4 (45%); D2 (45%); D3 (5%) and D1 (5%).[731]

I6.10 Also on 16.07.15, D8 amended the terms of the draft Lakeview SPA to reflect the revision of the sale price to £2,105,263.15. D8 knew that the purchase price would be paid to D1, D4 and D10 in the ratios 5: 23.75: 71.25.[732]

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725 MDR00017068; MDR00017070

726 D8-0062179

727 MDR00015796

728 D8-0001326; D8-0001327

729 MDR00016398

730 D8-0001352

731 MDR00016481

732 D8-0001354; D8-0001355

Source: Mouseinthecourt.co.uk

I6.11 D8 knew of the full details of the Lakeview SPA because he drafted all of the transaction documents.[733] D8 summarised the effect of the Lakeview SPA for D1 in an email dated 12.08.15.[734]

I6.12 On 04.08.15, D6 had started to sell LCF bonds with some success.[735] This led D4 to believe that more monies could have been extracted from LCF via the Lakeview SPA. D8 attended meetings with D1, D2, D3 and D4 in the week beginning 10.08.15 to discuss increasing the price to be paid under the Lakeview SPA.[736]

I6.13 On 19.08.15, D8 produced a revised Lakeview SPA including clause 3.4 which referred to the "Telos claim" and the "Timeshare claim".[737]

I6.14 D8 knew from his involvement in the acquisition of the Lakeview site that the facts giving rise to the "Telos claim" pre-dated the Lakeview SPA and therefore could not justify a retrospective increase in price. It is to be inferred from his involvement with LCCL that D8 also knew that the matters giving rise to the "Timeshare claim" pre-dated the Lakeview SPA and therefore could not justify a retrospective increase in price. From his discussions with D1, D2, D3 and D4, it is to be inferred that D8 knew that his function was to devise a fig-leaf for the extraction of more monies from LCF.

I6.15 On 06.10.15, D8 produced a further draft of the Lakeview SPA.[738] In this draft, clause 3.4 included reference to the "Megante Asset". It is to be inferred from his involvement with LCCL that D8 knew that there was no agreement by which LCCL had agreed to fund Sanctuary PCC and that therefore the "Megante Asset" would not result in any accrual of value to LCCL.

I6.16 That D8 knew that clause 3.4 was a mere contrivance to justify the further extraction of monies from LCF by D1, D2, D3 and D4 is further evidenced by the email he sent on

733 D8-0001461; D8-0001462; D8-0001463; D8-0001471; D8-0001473; D8-0001474; D8-0001472

734 MDR00016700

735 SUR00001781-0001

736 EB0005518

737 EB0005581; EB0005583

738 MDR00018231

Source: Mouseinthecourt.co.uk

03.01.16 in which he suggested backdating the transfer of shares in CV Resorts to LCCL to "*enable us to increase the purchase price further.*"[739] D8 knew from his involvement in Paradise Beach that there was no value in it as at 03.01.16 ("*This could have happened at the end of March 2015 before the contract with Paradise Beach was entered into and when the company had no value*"). He was simply trying to suggest further contrivances and was prepared to dishonestly backdate transactions to implement them.

I6.17 On 07.10.15, D8 had a further discussion with D1, D2, D3 and D4 about increasing the price paid under the Lakeview SPA. It was agreed to increase the price to £3.5 million.[740]

I6.18 D8 knew that the £3.5 million would be paid in the "old ratios" of 71.15: 23.75: 5 but that any subsequent increase under clause 3.4 would be divided in the "new ratios" of 45: 45: 5: 5.[741] This could obviously not be justified by a share sale and D8 would have known that the Lakeview SPA was simply a device to justify the extraction of monies from LCF by D1, D2, D3 and D4.

I6.19 On 14.01.16, D8 drafted a further version of the Lakeview SPA which gave effect to the agreed price increase to £3.5 million.[742] This agreement was backdated to 27.07.15 to give the false impression it had been agreed at that time. D8 knew that the agreement was backdated.

I6.20 On 13.07.16, D8 was instructed to draft a further agreement to reflect an agreement between D1, D2 and D4 that the purchase price under the Lakeview SPA would be increased to £4.5 million.[743] This agreement was quickly superseded by a further agreement to increase the price paid to £6 million, and D8 duly drafted another agreement to give effect to this.[744] D8 arranged for this agreement to be executed and backdated to give the impression that the increase in price was not retrospective.[745]

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739 MDR00025728

740 EB0006449

741 EB0011191

742 EB0012057; EB0012103

743 D2D10-00018954; D2D10-00018955

744 MDR00050334; MDR00049432

745 MDR00050415; MDR00050416

Source: Mouseinthecourt.co.uk

I6.21 On 18.04.17, D8 offered to draft another agreement to record an increase in the price paid under the Lakeview SPA to £13.85 million. He informed D2, D3 and D4 that this agreement would be backdated.[746] D8 knew that the values assigned to the "Megante Asset" the "Telos claim" and the "Timeshare claim" to justify this increase were arbitrary and that no increase in value could be justified by reference to those assets. When D8 produced the draft, it had duly been backdated to March 2017.[747]

I6.22 On 22.05.15, D8 had a conversation with D3 in which a further increase in the price paid under the Lakeview SPA was discussed. D8 drafted an agreement to reflect this increase in price, which was £14,260,361.10.[748] Once the agreement had been approved by D2 and D3, D8 sent it to D1 and D10 for signature.[749] However, D2 was concerned about the values given to the various "assets" in clause 3.4 to justify the purchase price. D8 amended these but then D2 was concerned that the values were obviously reverse-engineered.[750] The result was that the values were slightly altered to rounder figures and the purchase price was adjusted to £14,260,000.[751] D8 knew how this sum was to be divided between D1, D2, D3 and D4. A further variation agreement was then required to adjust the ratios in which the additional sums would be paid from the old ratios to the new ratios.[752] This is further evidence that D8 knew that he was not drafting documents to support a genuine transaction but was rather papering the file after the event to explain payments that had already been agreed.

I6.23 D8 received two draft facility agreements between LCF and L&TD from Alex Lee on 20.01.16.[753] D8 knew from the email from Alex Lee, if he did not already know, that sums had been drawn by L&TD from LCF without there being any facility agreement in place.

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746 EB0043657

747 D1-0003697; D1-0003699

748 EB0048525; EB0048527

749 MDR00088015; MDR00088016

750 D2D10-00028398; EB0048652; EB0048653; D2D10-00029050; MDR00090480

751 D1-0004424; D1-0004423; D1-0004430; MDR00005904

752 MDR00219483

753 MDR00028014

Source: Mouseinthecourt.co.uk

I6.24 On 04.03.16, Alex Lee sent a revised draft facility agreement between LCF and L&TD to D8 along with a draft debenture and a draft board resolution.[754]

I6.25 On 30.03.16, Alex Lee sent D8 a further draft of a £25 million facility agreement between LCF and L&TD, a draft debenture and a corporate guarantee.[755] D8 knew that D2 signed these documents without reading them and he would also have known that D2 had signed them without the approval of the board of L&TD or London Group (which was providing the guarantee).[756]

I6.26 D8 knew that the facility agreement was backdated to 27.08.15.[757] D8 knew that this had been done to conceal the fact that LCF had made payments to L&TD without any agreement being in place. D8 also knew, from his involvement in the Sanctuary scheme and in Paradise Beach, that the security purportedly provided for under the agreement was worthless and that L&TD's liabilities to LCF were effectively unsecured.

I6.27 In January 2017, D8 assisted D1 in backdating a notification by L&TD to LCF that there would be a delay in filing its accounts to 25.10.16. This was done to give the false impression that the notification had been given before L&TD's default and D8 knew this.[758] D8 also assisted D1 in January 2017 in backdating a request by L&TD to LCF for an extension to its facility limit to 20.12.16 in order to give the false impression that the request had been made before L&TD breached its facility limit. D8 added values for security to this letter that he knew were incorrect.[759]

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754 MDR00032341

755 MDR00034010

756 MDR00034014

757 **[J1/1/1]**.

758 MDR00071397; MDR00071398; MDR00071400; D8-0008772; D8-0008773; MDR00071455; MDR00071456

759 MDR00071397; D8-0008775; D8-0008776; MDR00071455

Source: Mouseinthecourt.co.uk

J. THE ELYSIAN SPA

J1 Introduction

J1.1 The Elysian transaction was the second of the major transactions that was constructed to provide ostensible justification for the continued misappropriation of funds from LCF by D1, D2, D3 and D4.

J1.2 There were three stages to the transaction:

(1) The first stage involved allocating the so-called "legacy debt" owed by L&TD to LCF to a number of new (and assetless) companies which were subsidiaries of companies owned by D4, D2, D1 and D3: the so-called "support companies". London Group LLP (which owned four of the support companies) was owned beneficially by D1, D2, D3 and D4, as was London Power Corporation plc (which owned the other support company, Atlantic Petroleum Support). The purpose of this first step was to strip the debt from London Group plc's subsidiary, L&TD, so that London Group plc and its subsidiaries could be sold on a debt-free basis.

(2) Secondly, ordinary shares in London Group plc (the name of which was changed to GRP) were sold to a company called Elysian Resorts Group Limited ("**Elysian RGL**") on terms which contemplated or required the issuance of £82 million of redeemable preference shares in GRP, which were to be registered in the name of London Group LLP. (As noted above, London Group LLP was owned beneficially by D1, D2, D3 and D4.)

(3) The third stage was the creation of new facility agreements from LCF to the subsidiaries of GRP, in order to ostensibly justify fresh borrowing from LCF with which to fund payments to D1, D2, D3, and D4 purportedly in redemption of the £82 million of redeemable preference shares.

J1.3 Elysian RGL was not an arm's length purchaser: its directors were Mark Ingham, who had worked with D1 and D3 on the Sanctuary scheme and who had helped D1 and D2 to set up SAFE in 2013, and Tom McCarthy, who was a consultant who worked for

Source: Mouseinthecourt.co.uk

London Group LLP. Mark Ingham was given a beneficial interest in GRP so that he could receive some of the subsequent payments under the Elysian SPA. Tom McCarthy was promised a commission in return for his involvement.

J1.4 The Claimants ask the Court to find the following facts in relation to the Elysian SPA:

(1) The "support companies" had no means to repay the L&TD debts re-allocated to them and there was no proper commercial rationale for this re-allocation.

(2) The security purportedly granted by the "support companies" was ineffective.

(3) The purported assignment to Atlantic Support by LOG of its interests in Atlantic Petroleum p/f was a sham.

(4) The GRP subsidiaries had no commercial activities which would enable them to repay the sums they borrowed from LCF.

(5) The security provided by the GRP subsidiaries was grossly and manifestly inadequate to support their borrowing.

(6) The consideration payable under the Elysian SPA was grossly in excess of the value of the assets transferred.

(7) Mark Ingham and Tom McCarthy of Elysian were not arm's length purchasers but were associates of D1, D2, D3 and D4 who were given a personal financial incentive (in the form of sums payable to them) for taking part in the transaction.

(8) No preference shares were ever issued by GRP so the ostensible justification for payments did not exist. In any event, the payments were made to D1, D2, D3 and D4 personally: they were not made to London Group LLP. Presumably the failure to issue the preference shares and the direct payments to D1, D2, D3 and D4 were designed to ensure that any sums paid under the Elysian SPA would side-step the security that had supposedly been created by London Group LLP in favour of LCF.

Source: Mouseinthecourt.co.uk

(9) D1, D4 and D8 knew each of the matters above.

(10) D4 and D8 also knew that in the case of Mark Ingham, the mechanism used to grant him a financial interest involved backdating trust deeds in order to defraud HMRC. D8 drafted these trust deeds and suggested this mechanism.

(11) D1 and D4 authorised and/or approved payments from LCF to GRP subsidiaries which they knew would be paid onto them and their associates.

J2 Summary of the facts

Corporate structure

J2.1 L&TD, the company which had borrowed from LCF, was owned by London Group Plc, which was the original "London Oil & Gas Limited", which had been acquired from Eric Bosshard in 2015.[760] It was later renamed Global Resort Property plc.

J2.2 Prior to the Elysian SPA, GRP was owned by London Group LLP, whose members were D2 and D3.[761] London Group LLP and its subsidiaries including GRP were ultimately beneficially owned by D4, D2, D1, and D3, in the ratios 45: 45: 5: 5.[762]

J2.3 GRP had three subsidiaries: (i) L&TD, which had borrowed substantial funds from LCF (a considerable part of which had been paid to D1, D2, D3, D4 and D10 under the Lakeview SPA); (ii) London Trading, which owned LCCL; and (iii) International Resorts Group Plc, which held the shares in Inversiones on trust for El Cupey, and which also held the shares in Tenedora, which had the right to acquire The Beach.[763]

760 **[A1/5/41]**; Day 6/page 74/line 11 – page 75/line 15 **[A5/6/19]**.

761 **[A1/5/44]**; **[A1/5/76]**.

762 MDR00081717; Day 6/page 75/line 16 – Day 6/page 77/line 13 **[A5/6/20]**.

763 MDR00081717; Day 6/page 77/lines 14 – 22 **[A5/6/20]**; Day 6/page 78/lines 12-24 **[A5/6/20]**.

Source: Mouseinthecourt.co.uk

J2.4 L&TD also had three subsidiaries: (i) CV Resorts (which held the worthless option to acquire the Paradise Beach development for EUR 57 million); (ii) CV Hotels; and (iii) Waterside Villages Plc, which owned the freehold to the Lakeview site.[764]

Stage 1: L&TD's debts to LCF are allocated to the support companies

J2.5 In February 2017, there was discussion between D1 and D8 about reallocating L&TD's debt to other companies, and of selling the shares in GRP to a new company.[765] There was further discussion about this between D1, D2, D3 and D8 in March 2017.[766]

J2.6 The proposal was that GRP would be restructured so that it had four subsidiaries that could enter into new facility agreements with LCF: CV Resorts Limited (to own the rights under the contract with Paradise Beach SA); Waterside Villages Plc (to own the Lakeview site apart from the development land); Colina Property Holdings Limited (to own the legal title in the shares in Inversiones); and Costa Property Holdings Limited (to own the shares in Tenedora).[767]

J2.7 The plan was that the existing debt owed by L&TD to LCF would be "allocated" to five newly incorporated companies, which would take over the liability to LCF. The reason for the "allocation" of debt was so that the liability to LCF could be taken away from GRP and its subsidiaries, so that they could then borrow afresh from LCF. The five companies which were to assume the legacy debt to LCF were duly incorporated on 25 and 26 April 2017. Four of them were subsidiaries of London Group LLP and corresponded to the four subsidiaries of GRP: Colina Support Limited, Costa Support Limited, Cape Verde Support Limited, and Waterside Support Limited. The fifth, Atlantic Petroleum Support, was incorporated as a subsidiary of LPC. These five companies are collectively referred to as the "support companies", because they each have "support" in their names. These new companies were all empty of any assets.[768]

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764 MDR00081717; Day 6/page 77/line 24 – page 78/line 11 **[A5/6/20]**.

765 MDR00074971; MDR00074988; MDR00075733; Day 6/page 80/line 14 – page 82/line 19 **[A5/6/20]**.

766 MDR00077656; D2D10-00025460; MDR00077690; MDR00077754; D8-0010848

767 D8-0009718; Day 6/page 83/lines 9-24 **[A5/6/21]**.

768 MDR00084180; MDR00084182; EB0044316; D2D10-00027562; EB0044381; MDR00084641; MDR00008567; EB0044835; MDR00084748; D8-0013468; D8-0013469 page 2; MDR00084663; MDR00084668; MDR00084775; Day 6/page 85/line 11 – page 94/line 22 **[A5/6/22]**.

Source: Mouseinthecourt.co.uk

J2.8 Atlantic Petroleum Support Limited was to be allocated £16.4 million of LCF's debt. The four support companies which were subsidiaries of London Group LLP were going to be allocated debt in varying sums: Waterside Support Limited would have £5 million, Cape Verde Support Limited would have £7 million, Colina Support Limited would have £5.5 million, and Costa Support Limited would have £6.5 million. The support companies entered into facility agreements in these amounts, dated 29.04.17. These were signed by D1, D2 and D8.[769]

J2.9 The newly incorporated "support" companies granted debentures in favour of LCF. However, they did not have any assets, and could not offer any adequate security for the assumption of L&TD's debt to LCF.[770]

J2.10 Atlantic Petroleum's debenture purported to grant a charge over LOG's rights against Atlantic Petroleum p/f.[771] Mr Lee had been told that such an assignment would take place.[772] However, any such assignment would not have been adequate security for the £16.4 million of debt that Atlantic Petroleum Support had assumed from L&TD. First, LOG had lent less than £1 million to Atlantic Petroleum p/f; and second, Atlantic Petroleum's market capitalisation was only £4.4 million. In addition, LOG's rights against Atlantic Petroleum could not be assigned without the consents of third parties being obtained, as the result of subordination arrangements.[773]

J2.11 In response to Alex Lee's repeated requests for a copy of the assignment, in August 2017, D2 and D3 purported to execute an assignment of LOG's rights against Atlantic Petroleum p/f to Atlantic Petroleum Support Limited. This purported assignment was

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769 MDR00084789; MDR00084804; MDR00085146; MDR00085033; MDR00085038; MDR00005265; MDR00005203; MDR00005226; MDR00005244; MDR00006056; MDR00090456; Day 6/page 94/line 23 – page 100/line 21 **[A5/6/24]**.

770 MDR00005270; MDR00005205; MDR00005227; MDR00005245; MDR00006057

771 MDR00006057

772 MDR00085784; EB0054267

773 MDR00112435; MDR00112453; MDR00112456; MDR00112457; MDR00084850; MDR00084888; Day 6/page 94/line 23 – page 98/line 7 **[A5/6/24]**.

Source: Mouseinthecourt.co.uk

backdated to 28.04.17 in order to deceive Alex Lee.[774] Despite the purported assignment, LOG's rights against Atlantic Petroleum continued to be treated by D1, D2 and D8 as remaining with LOG.[775] The purported assignment between LOG and Atlantic Petroleum Support was a sham which was put in place, and falsely backdated, in order to create the impression that there was at least some security for the debt allocated to Atlantic Petroleum Support Limited, when in reality there was none. The assignment was set aside on 07.07.22 by ICC Judge Barber: [2022] EWHC 1672 (Ch).

J2.12 The debentures granted by each "support company" which was a subsidiary of London Group LLP all refer to a debenture granted in favour of that support company by the corresponding subsidiary of GRP (for example, a debenture granted by Costa Property Holdings Limited in favour of Costa Support Limited). In each case, the debenture is referred to as a "Specific Contract", which is not something subject to the charging clauses in the debenture, and so on its face, no security was ever created. In any event, the debenture did not secure anything, because no facility was entered into between the relevant GRP subsidiary and the corresponding "support company" and there is no record of the "support company" making any payments to the relevant GRP subsidiary. The position is the same for all of the GRP subsidiaries.[776]

J2.13 The liabilities owed by the "support companies" were also purportedly secured by London Group LLP, the parent company. This appears to have followed discussions in which Alex Lee (acting for LCF) raised queries about security. D8 explained to Alex Lee that London Group LLP, the parent company, would hold GRP's redeemable preference shares, and that the proceeds of those shares would be used to pay the

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774 MDR00096349; MDR00096350; MDR00096696; MDR00005409; D8-0019456; D8-0019457. A draft had been provided by D8 to Alex Lee on 28.04.17 but it was not executed until August 2017: D2D10-00027969; Day 7/page 1/line 10 – page 2/line 2 **[A5/7/1]**.

775 MDR00098713; MDR00126474; MDR00097899; MDR00098405; MDR00098412; MDR00098413; MDR00098677; MDR00098678; MDR00098679; MDR00104499; MDR00104613; MDR00104614; MDR00104615; MDR00104616; MDR00104617; MDR00117215; MDR00117216; MDR00117218; MDR00117323; MDR00117324; MDR00118501; MDR00119414; MDR00119417; MDR00119455; MDR00119459; MDR00119460; MDR00120069; MDR00128266; MDR00128267; MDR00128268; MDR00153591; MDR00141257; MDR00141258; MDR00141261; MDR00141262; MDR00141263; MDR00165751; MDR00141251; MDR00141252; Day 6/page 101/line 13 – page 111/line 11 **[A5/6/26]**.

776 Day 7/page 8/line 6 – page 17/line 18 **[A5/7/2]**; MDR00005245 pp 5, 6-7, 8, 10, 27; D8-0014729 pp 3, 4, 6, 23-24; MDR00005227 p.27; D8-0014277; MDR00005205 p.27; D8-0014285; MDR00005270 p.27; D8-0014247

Source: Mouseinthecourt.co.uk

liabilities of the "support companies".[777] London Group LLP granted a guarantee, and a debenture purporting to secure the redeemable preference shares in GRP.[778] However, this arrangement did not result in good security being granted in favour of LCF: (i) it is common ground that the redeemable preference shares in GRP were never issued; (ii) the Elysian SPA envisaged that the redeemable preference shares in GRP would be issued to the relevant individuals and not to London Group LLP; and (iii) the monies in fact paid to D1, D2, D3, D4 and Mark Ingham under the Elysian SPA were not used to repay or reduce any of the liabilities of the support companies: the legacy liabilities remained up to the FCA raid in December 2018 and LCF's collapse.[779] If there had been any genuine intention to use the sums paid under the Elysian SPA (purportedly in redemption of the preference shares) to pay down the legacy debt owing to LCF then no doubt this would have happened. The fact that D1, D2, D3, D4 and Mark Ingham never contemplated actually using the monies in that way exposes the reality of the position: the idea of using the monies to pay down the legacy debt owing to LCF was never seriously in contemplation; and the documentation put in place purportedly by way of security in favour of LCF was never intended to have any practical effect.

Stage 2: the sale of shares in GRP to Elysian

J2.14 Once L&TD's debt to LCF had been cleared away, the second stage of the Elysian transaction involved the sale of shares in GRP to Elysian RDL. This company was newly incorporated on 28.04.17, which is the day before the date of the Elysian SPA on 29.04.17. Elysian RGL was owned by Mark Ingham, and its directors were Mark Ingham and Tom McCarthy.[780]

J2.15 It had originally been intended that a company called Global Resort Development Limited, a company connected to Terry Mitchell, would be used as this purchaser but this entity was apparently deployed for some other purpose ("*Terry advised the team that unexpectedly he had deployed GRD for other purposes so they have decided to use*

[777] MDR00084857; MDR00085249; Day 3/page 17/line 19 – page 19/line 25 **[A5/3/5]**.

[778] MDR00005228 pp 1, 3, 15; MDR00007514 p.25; Day 7/page 20/line 1 – page 21/line 22 **[A5/7/5]**.

[779] MDR00005460 page 22; MDR00195308; MDR00195610; Day 7/page 20/line 23 – page 24/line 1 **[A5/7/5]**; Day 6/page 111/line 23 – page 113/line 14 **[A5/6/28]**.

[780] **[A1/5/105]**; EB0044955; Day 6/page 115/lines 2-13 **[A5/6/29]**.

Source: Mouseinthecourt.co.uk

an alternative unconnected clean purchasing vehicle").[781] One day after the signature of the Elysian SPA, Terry Mitchell said to D2, "*Mark used a company he had available to sign. Presumably we acquire from that entity?*" [782] Thus it seems that (i) D2 and D4 always intended to enter into a transaction with Terry Mitchell, (ii) Terry Mitchell's intended purchaser, GRD, was used for something else at the last minute, (iii) they needed to go ahead with a new transaction to maintain the flow of funds from LCF, so (iv) Mark Ingham incorporated a new company to act as the purchaser in the interim, pending a subsequent sale to Terry Mitchell, so that the flow of funds from LCF to the individuals in question could continue without interruption.

J2.16 The Elysian SPA[783] provided for the sale of 100 ordinary shares in GRP to Elysian RGL on terms which envisaged the issue of £82,125,000 redeemable preference shares to D1, D2 and D3 (which were to be beneficially held between D4, D2, D1 and D3 in the ratio 45:45:5:5). Clause 5.3 of the Elysian SPA provided that 50% of any monies left after general and administrative expenses would be applied in repayment of the redeemable preference shares (i.e. that 50% of such monies would be paid to D1, D2, D3, D4 and Mark Ingham). However, as is common ground, no redeemable preference shares were ever issued[784] and no preference shares in GRP could lawfully have been issued in the circumstances envisaged by the Elysian SPA.[785]

J2.17 The £82,125,000 figure is based on adding together various grossly inflated values of assets said to belong ultimately to London Group LLP. These include £28.28 million for El Cupey or The Hill, £32.1 million for The Beach, £18.74 million for Lakeview, and £3 million in relation to CV Resorts or Paradise Beach. The prices are obviously absurd given the actual values of those assets, as described above.[786] Further, it is absurdly uncommercial to think that – just a few years after handing over Inversiones and Tenedora for no consideration – Mark Ingham would be genuinely keen to buy them back for a total of £60.3 million. Mark Ingham used to run Sanctuary and he will

781 MDR00085581

782 MDR00085610 in particular pages 1, 4, 5, 6, 7, 9, 22

783 MDR00005460

784 Day 6/page 116/line 5 – page 119/line 9 **[A5/6/29]**.

785 **[A4/3/1]**.

786 MDR00007516; Day 6/page 119/line 10 – page 120/line 13 **[A5/6/30]**.

Source: Mouseinthecourt.co.uk

therefore have been fully aware that (i) The Hill had been acquired for £780,000; (ii) the shares in Inversiones were held on trust for the Sanctuary investors; (iii) the contract price for The Beach was £3.5 million; and (iv) Tenedora had not actually acquired any of the parcels of land on The Beach yet. Yet Mark Ingham was supposedly keen for his new company to borrow from LCF to pay a total of £60.3 million for those so-called assets and yet further substantial sums for Lakeview and Paradise Beach. The true reason why Mark Ingham would be prepared to go along with such a deal (namely, the payment to him of 5% of all monies to be distributed under it) is set out below.

Individuals behind Elysian RGL were not third-party purchasers

J2.18 The agreement of Elysian RGL to purchase GRP was never a genuine commercial transaction. Elysian RGL was a newly incorporated company, controlled by Mark Ingham and Tom McCarthy who worked with D1, D2, D3 and D4, and who stood to benefit from the misappropriation of LCF's monies.

J2.19 Mark Ingham, an owner and a director of Elysian RGL, was previously involved in the Sanctuary scheme and would therefore have known that the valuations of the Dominican Republic assets were grossly overstated.[787] He had also helped D1 and D2 set up SAFE in 2013. D2 and D4 had agreed that Mark Ingham would receive 5% of the sums paid under the Elysian SPA (purportedly in redemption of 5% redeemable preference shares), by reducing each of D2 and D4's shares by 2.5%. Mark Ingham did not hold 5% of any shares in GRP. D8 dealt with this by producing a backdated trust deed that purported to have effect from 30.09.15.[788]

J2.20 The other director of Elysian RGL was Tom McCarthy. Tom McCarthy worked for London Group Plc in the same offices as Mark Ingham, Michael Peacock, Clint Redman, D2, D3, D8 and (it appears) D4.[789] Tom McCarthy continued to work for London Group

787 Day 7/page 120/line 14 – page 121/line 1 **[A5/7/30]**.

788 D8-0010480; D8-0011801; EB0040733; D8-0011923; MDR00081545; MDR00081548; MDR00081549; MDR00081547; MDR00081546; MDR00081788; D8-0011999; EB0041687; EB0041688; EB0078251; EB0078866; EB0078867; Day 7/page 121/line 1 – page 126/line 19 **[A5/7/31]**; Day 7/page 127/line 14 – page 134/line 17 **[A5/7/32]**.

789 D8-0016320; D8-0016323

Source: Mouseinthecourt.co.uk

LLP and associated companies until August 2018.[790] He was promised a commission in return for his involvement in this transaction as well as the Prime SPA.[791]

J2.21 These individuals knew that the transaction was not a genuine one. For example, Tom McCarthy was concerned about the proposed appointment of Paul Sayers as a director of Elysian RGL, because it would undermine the impression that it was a third-party purchaser ("*Nothing personal towards Paul, but his links to Lakeview/Telos/LC+F both previously and present … would make me uncomfortable … **Cross-contamination is key in my eyes in this transaction** and all the above are public knowledge and easily found on the net*"; emphasis added).[792]

Stage 3: new lending from LCF to GRP's subsidiaries

J2.22 The third stage was of the Elysian transaction was for LCF to grant new facilities to GRP's subsidiaries. This would provide an ostensible basis. for fresh drawdowns from LCF, which could then be paid on to D1, D2, D3 and D4 (as well as Mark Ingham and Tom McCarthy). The facility agreements were prepared and executed in May 2017. It was envisaged that each subsidiary would borrow £20 million.[793]

J2.23 The GRP subsidiaries also granted debentures, which supposedly secured the new facilities given by LCF.[794] In reality, the new lending was unsecured, as is clear from the history of the same assets discussed above: (i) CV Resorts Limited still did not own any property, and when the Elysian SPA was executed, it is doubtful whether it even held a worthless option to incur an instant loss by purchasing Paradise Beach for EUR 57 million; (ii) Costa Property Holdings Limited had not acquired The Beach, and merely held rights under a contested purchase agreement; (iii) Colina Property Holdings

790 EB0098556; EB0098558

791 Day 2/page 134/line 18 – page 138/line 13 **[A5/2/34]**.

792 D8-0014230; Day 7/page 138/line 14 – page 139/line 22 **[A5/7/35]**.

793 MDR00080183; MDR00084180; MDR00084182; MDR00084663; EB0044316; D2D10-00027562; EB0044381; MDR00084233; MDR00084234; MDR00084238; MDR00084281; MDR00084386; MDR00084318; MDR00084499; MDR00086312; MDR00086648; MDR00086822; MDR00005204; MDR00226341; MDR00005229; MDR00005247; MDR00005264; Day 7/page 139/line 23 – page 142/line 6 **[A5/7/35]**.

794 MDR00005207; MDR00005230; MDR00005248; MDR00005415; MDR00005425; Day 7/page 142/line 7 – page 143/line 9 **[A5/7/36]**.

Source: Mouseinthecourt.co.uk

Limited owned shares in Inversiones, but these were already held on trust for El Cupey, and Inversiones was insolvent in any event[795]; (iv) Waterside Villages Plc did hold some property which it could charge by way of security (a freehold interest in the Lakeview site) but it was worth nowhere near £20 million.

Payments under the Elysian transaction

J2.24 "Drawdowns" then began to be made under the Elysian SPA from around mid-May 2017 onwards. There was no basis for paying these sums in redemption of preference shares, because no preference shares had been issued. These sums were paid by LCF to GRP (rather than to the subsidiaries who had entered into the new facilities). The liability incurred under each drawdown was allocated to one of the GRP subsidiaries.[796] The drawdowns funded payments by GRP to Sands Equity, which was owned by London Group LLP, and of which D2 was the sole director. D8, D2 and D3 arranged for a backdated agency agreement to be put in place, in order to explain why the funds were being paid to Sands Equity (a subsidiary of L&TD formerly known as CV Hotels).[797] Sands Equity in turn paid these monies to D1, D2, D3, D4, and Mark Ingham. It is evident from the underlying communications and documents that D1 approved the drawdowns and encouraged the drawing of the maximum amount available in LCF's bank account.[798]

J2.25 One of the oddities of the Elysian transaction is that the Elysian SPA itself contemplates the sale of shares by D1, D2 and D3. At the same time, the shares in GRP were never held by those individuals, but by London Group LLP. The Claimants submit that this feature of the transaction becomes clearer once it is appreciated that D2, D3 and D8 were seeking to do two inconsistent things in furtherance of the fraud: on the one hand, the Elysian SPA referred to D1, D2 and D3 personally, in order to provide an ostensible justification for payments to them; but on the other hand, the Defendants were seeking

795 MDR00175174

796 MDR00087277; MDR00087278; MDR00087306; MDR00005512; MDR00087910; MDR00087911; MDR00087916; EB0050196; EB0050197

797 EB0038677; EB0038657; MDR00116145; MDR00116146; MDR00005871; **[A1/5/99]**; EB0053474; EB0053475; D2D10-00035447

798 MDR00096925; MDR00096930; MDR00096964; Day 8/page 25/line 6 – page 38/line 10 **[A5/8/7]**.

Source: Mouseinthecourt.co.uk

to maintain that London Group LLP would hold shares in GRP so that it would be able to grant security to the "support" companies, and London Group LLP executed a guarantee and debenture to this end.

J2.26 A total of £11,745,000 of LCF's monies were paid out under the cover of the Elysian SPA, of which D1 received £522,250 and D4 received £4,406,625.[799]

J3 D1's participation in and knowledge of the Elysian SPA

J3.1 D1 participated in the allocation of L&TD's debt to LCF to the "support companies" and permitted this to take place. D1 gave instructions to Alex Lee to proceed with preparing the documents that formed part of the Elysian transaction, including the allocation of debt to the "support companies".[800] D1 knew that the purpose of this was to allow GRP to be sold to Elysian without debt so that it could then borrow further sums from LCF.[801]

J3.2 D1 knew that the £16.4 million of the debt owed by L&TD was proposed to be allocated to Atlantic Petroleum Support Limited.[802] D1 also knew that Atlantic Petroleum Support would become liable for (in total) a £25 million commitment because he executed the each of the facility agreements with the support companies on behalf of LCF.[803]

J3.3 D1 knew that LCF lent a further £20 million to each subsidiary of GRP and he executed the relevant facility agreements on behalf of LCF.[804]

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799 EB0123428

800 MDR00074971; MDR00074988; MDR00075733; MDR00077754; D8-0010848; MDR00084663; Day 24/page 150/line 12 – page 160/line 14 **[A5/24/38]**; Day 24/page 167/line 18 – page 168/line 6 **[A5/24/42]**.

801 MDR00084663; Day 24/page 161/lines 3-9 **[A5/24/41]**.

802 MDR00006056; Day 24/page 89/line 20 – page 90/line 10 **[A5/24/23]**.

803 MDR00005265; MDR00005203; MDR00005226; MDR00005244; MDR00006056MDR00006056; Day 24/page 103/line 12 **[A5/24/26]**.

804 MDR00005204; MDR00226341; MDR00005229; MDR00005247; MDR00005264; Day 25/page 137/line 16 – page 138/line 5 **[A5/25/35]**.

Source: Mouseinthecourt.co.uk

J3.4 D1 knew that the "support companies" had no assets[805]; he implicitly accepted this in his oral evidence when he suggested that the "asset owning companies" would provide security to the "novating companies" and therefore accepted that he knew that the support companies themselves had no assets.[806] D1 knew that the purpose of the re-allocation of debt was to leave the GRP subsidiaries debt free and also that the GRP subsidiaries would be borrowing further sums from LCF, for which security would be required. [807] The explanation that he gave in oral evidence therefore makes no sense as it would have required the so-called "assets" of GRP's subsidiaries to be charged twice, in favour of both the support companies (in respect of the legacy debt) and LCF (in respect of the new debt). In any event, D1 must have known at the time that the GRP's subsidiaries had not incurred any liability to pay anything to the support companies, because, as explained above, although those subsidiaries executed debentures in favour of the support companies, there were no facility agreements between the subsidiaries of GRP and the support companies to which the debentures could relate.

J3.5 D1 knew that there would be no adequate security in favour of LCF for the liability owed by Atlantic Petroleum Support. D1 knew of a proposal for LOG's right against Atlantic Petroleum p/f to be used as security for this purpose but he was aware that the total value of these interests was very significantly below £16.4 million.[808] D1 knew that Alex Lee had explained in April 2017 his concerns why he thought this was would be "some way off" being sufficient, including because the market capitalisation of Atlantic Petroleum p/f was only £4.4 million. D1 accepted in his oral evidence that he knew that this was inadequate by itself.

J3.6 D1's oral evidence on this point was highly unsatisfactory and should be rejected: D1 continued to assert that he acted on the basis of discussions and various pieces of information but could not explain how the security was sufficient or that the security was independently valued. D1 was receiving 5% of whatever monies were paid under

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805 MDR00084775; MDR00084823

806 Day 24/page 168/line 16 – page 170/line 8 **[A5/24/42]**.

807 MDR00084663

808 MDR00084850; MDR00084888; Day 25/page 90/line 11 – page 94/line 16 **[A5/25/23]**.

Source: Mouseinthecourt.co.uk

the Elysian SPA and proceeded with these transactions without adequate security because he wished to ensure that he obtained his personal gains.[809]

J3.7 In any event, D1 knew that the loan to Atlantic Petroleum p/f had never been assigned by LOG to Atlantic Petroleum Support to be used as security. D1 was informed in August 2017 that LOG held the benefit of the Atlantic Petroleum p/f loan.[810] He was also aware in January 2018 that LOG continued to be treated as holding the benefit of the loan.[811] D1 did not express any surprise at this or seek additional or other security for the lending. D1 asserted in his oral evidence that he believed that the loan had been assigned to Atlantic Petroleum Support Limited and/or that he relied on others.[812] There is nothing to corroborate this assertion; the documents clearly show that D1 knew that there had been no real assignment by LOG to Atlantic Petroleum Support.

J3.8 D1 sought to give the explanation in oral evidence that the payments in respect of the preference shares under the Elysian SPA would be used to "pay down" the liabilities of the "support companies". However, this was inconsistent with the use of funds set out in the Elysian SPA; in particular, the recipients of "redemption" monies were not under an obligation to pay the liabilities of the "support companies". Moreover, as noted above, none of those liabilities was ever paid down or reduced by D1, D2, D3 or D4 – a fact which confirms the absence of any genuine intention to do so at the time. D1 knew that there was never any realistic prospect that the liabilities of the "support companies" to LCF would be repaid and that the reallocation of debt to the support companies was a device to clear away the indebtedness incurred during the period of the Lakeview SPAs in order to permit fresh borrowing from LCF by GRP's subsidiaries.[813]

J3.9 D1 was a "Seller" under the Elysian SPA (although it was signed on his behalf by D2) and he knew of its terms.[814] D1 therefore knew that the key method by which he would receive consideration was through redeemable preference shares. D1 would have known

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809 Day 25/page 103/line 13 – page 112/line 14 **[A5/25/26]**.

810 MDR00097899; MDR00098405

811 MDR00120069; MDR00118776; MDR00118777

812 Day 25/page 103/line 13 – page 112/line 14 **[A5/25/26]**.

813 Day 25/page 129/line 5 – page 131/line 22 **[A5/25/33]**.

814 Day 24/page 161/lines 10-20 **[A5/24/41]**.

Source: Mouseinthecourt.co.uk

at the time that no redeemable preference shares had ever been issued to him. D1 gave contradictory evidence on whether he knew at the time that the redeemable preference shares had never been issued. He first explained that he knew that they had not been issued (but proceeded with the transaction anyway), before then asserting that he did not know whether they had been issued.[815] D1 adapted his explanation to better suit what he perceived to be his advantage: but the reality is that he must have known at the time that he had never been issued with any redeemable preference shares.

J3.10 As D1 knew the redeemable preference shares had not been issued he would have known that the debenture granted by London Group LLP did not bite on any asset. D1 was also unable to explain why he would have been satisfied with this security given that under the Elysian SPA, the redeemable preference shares were held by individuals.[816]

J3.11 D1 knew that any payments made in relation to the redeemable preference shares that were supposed to be issued under the Elysian SPA would be made with monies lent by LCF to the GRP subsidiaries.[817]

J3.12 However, because D1 knew that no redeemable preference shares had ever been issued, and he also knew that there was no proper basis on which payments to D1, D2, D3 and D4 could be justified under the Elysian SPA.

J3.13 D1 knew that Mark Ingham had transferred his interest in Sanctuary for no consideration. D1's evidence was that he knew (but did not query) why Mark Ingham was prepared to borrow more than £60 million in order to acquire two "assets" which he had previous given away for free.[818] As is described above, D1 also knew that there was no conceivable basis on which the assets being sold under the Elysian SPA were worth anything approach £82 million, especially if, as he suggested, those assets would be used to secure lending made by LCF to the "support companies".

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815 Day 25/page 123/line 20 – page 128/line 12 **[A5/25/31]**.

816 Day 25/page 131/line 25 – page 134/line 5 **[A5/25/33]**.

817 Day 25/page 116/line 12 – page 120/line 3 **[A5/25/29]**.

818 Day 25/page 135/line 15 – page 138/line 23 **[A5/25/34]**.

Source: Mouseinthecourt.co.uk

J3.14 D1 did not genuinely believe that Mark Ingham was in a position to generate funds to repay the lending from LCF. In his oral evidence, D1 suggested that Mark Ingham would continue to develop the site, but this could not explain how any funds would be generated to enable the debt to be repaid.[819]

J3.15 D1 knew that whenever funds were drawn down from LCF to a borrowing company, he would receive monies in his personal bank account. D1 sought to deny in his oral evidence that he knew that approving drawdowns would result in payments to him. However, this was self-serving and highly improbable, given that drawdowns by GRP subsidiaries were ordinarily closely followed by payments into D1's personal bank account. D1 accepted that at some of the payments to him were linked to drawdowns from connected borrowers and that "*there is a correlation here*".[820]

J3.16 D1 received many of his 5% payments from Sands Equity. D1 knew that Sands Equity was a company ultimately controlled by D2 and D4.[821]

J3.17 D1 approved the drawdowns by the GRP subsidiaries and encouraged the drawing of the maximum amount available in LCF's bank account.[822] D1 was in fact the only director of LCF who did approve drawdowns. D1 sought to deny this in his oral evidence and explained that there were hundreds of drawdowns, but the assertion that other directors were involved should not be accepted and has never been corroborated by any documents and is in fact inconsistent with the disclosed documents.[823]

J3.18 D1 knew that the remaining 95% of monies paid under the Elysian SPA transaction would be paid to D2, D3 and D4 (among others). D1 knew that some of the consideration paid under the Elysian SPA had been made to D2, D3 and D4.[824]

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819 Day 25/page 138/lines 6-23 **[A5/25/35]**.

820 MDR00087910; MDR00220286; Day 25/page 138/line 24 – page 146/line 10 **[A5/25/35]**.

821 Day 25/page 142/liens 10-12 **[A5/25/36]**.

822 MDR00096925; MDR00096930; MDR00096964; Day 8/page 25/line 6 – page 38/line 10 **[A5/8/7]**.

823 Day 25/page 142/line 19 – page 144/line 22 **[A5/25/36]**.

824 Day 25/page 146/line 11- page 147/line 15 **[A5/25/37]**.

Source: Mouseinthecourt.co.uk

J4 D4's participation in and knowledge of the Elysian SPA

J4.1 D4 knew that the Elysian transaction would involve the sale of GRP on a "debt-free" basis. On 25.04.17, Mark Ingham explained to D4 (among others) that, "*Seller will retain all Legacy Group and subsidiary company debts; none are to be passed to the Buyer*".[825]

J4.2 D4 was one of the ultimate beneficial owners of L&TD, whose debts to LCF were being reallocated. D4 was also one of the beneficial owners of GRP, which is the company whose shares were sold under the terms of the Elysian SPA. D4 was a 45% beneficial owner of GRP, with his interest being held for him by D3.[826] It is therefore to be inferred that D4 knew of the reallocation of L&TD's liability to the "support companies" so that GRP could be sold to Elysian RGL on a debt-free basis.

J4.3 D4 knew from his involvement in the Sanctuary scheme, Paradise Beach and the Lakeview site that there was no adequate security for the existing lending from LCF to L&TD, or for any further lending by LCF to GRP's subsidiaries. He also knew that the consideration payable under the Elysian SPA was far in excess of the actual value of the assets being transferred.

J4.4 D4 knew of the terms of the Elysian SPA, which purported to deal with his interest as shareholder in GRP (held for him by D3). D4 was provided with draft versions of the Elysian SPA on 27.04.17, shortly before the Elysian SPA was executed.[827]

J4.5 D4 knew that he would benefit from the monies paid under the Elysian SPA, purportedly in redemption of preference shares. D4 was referred to in the Elysian SPA as one of the holders of redeemable preference shares in GRP. In terms, the Elysian SPA refers to D3 twice,[828] but one of those references is in fact a coded reference to D4 (with D3 holding

825 D8-0013468; D8-0013469 page 2

826 Day 6/page 74/line 11 – page 77/line 5 **[A5/6/19]**.

827 MDR00085090; MDR00085091; Day 7/page 58/line 10 – Day 7/page 59/line 2 **[A5/7/15]**.

828 MDR00005460

Source: Mouseinthecourt.co.uk

as nominee).[829] D1 explained in his oral evidence that D4 was to receive 'consideration' under the Elysian transaction.[830]

J4.6 It is to be inferred that, as one of the major beneficiaries of the Elysian SPA, D4 was involved in discussions about the design and operation of the Elysian SPA. The documentary record is admittedly scanty in circumstances where D4 has not given disclosure. However, there is some email correspondence to show that D4 was closely involved with the proposed sale of GRP.[831] Further, the scanty nature of the available documentary evidence should not be allowed to obscure the overwhelming likelihood of D4's close involvement in light of the matters set out above. Notably, on other occasions, D4 was involved in discussions regarding transactions used to conceal the misappropriation of monies at the time when the Elysian transaction was being prepared, even where this is not reflected visibly in the surviving email record. For example, on 22.05.17, D8 emailed D1, D2, D3 and D10 in relation to increasing consideration for the Lakeview SPA. D4 was not copied into the email but in his oral evidence, D1 explained that whilst D4 had not been copied into the email, he would nevertheless have been involved in the discussions.[832] The Claimants therefore infer that D4 had greater involvement in the transaction than might appear from the documents.

J4.7 D4 knew about the connection between Mark Ingham and Tom McCarthy (who controlled Elysian RGL) and the "London Group". D4 knew that Elysian RGL was not a third-party purchaser. D4 knew Mark Ingham from the latter's involvement in the Sanctuary scheme and in setting up SAFE. D4 knew that Tom McCarthy worked for the London Group.[833] D4 knew that Mark Ingham was receiving 5% of the consideration under the Elysian SPA because the mechanism used to give Mark Ingham an interest in the transaction required that D4 give up part of his interest.

J4.8 D4 received substantial payments in connection with the Elysian SPA. As a shadow and/or *de facto* director of LCF, it is to be inferred that D4 knew that these payments

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829 Day 6/page 115/line 10 – page 116/line 20 **[A5/6/29]**.

830 Day 25/page 146/line 15 – page 147/line 10 **[A5/25/37]**.

831 EB0044884; MDR00085090

832 Day 24/page 116/line 5 – page 117/line 2 **[A5/24/29]**.

833 EB0025614; EB0025615

Source: Mouseinthecourt.co.uk

originated with LCF and that he authorised and/or directed the making of these payments. D4 knew that there was no way which the GRP subsidiaries would be able to repay to LCF the monies they paid out in relation to the Elysian SPA.

J4.9 Through his control of Sands Equity, D4 knew that Sands Equity was used as a conduit for payments by the GRP subsidiaries of monies they had borrowed from LCF to D1, D2, D3 and himself. D3 knew, and it is to be inferred from their relationship that D4 also knew, that the sole purpose of Sands Equity was to act as a payment intermediary.[834]

J5 D8's participation in and knowledge of the Elysian SPA

J5.1 D8 was involved in discussions with D1, D2, D3 and Alex Lee in February and March 2017 concerning the re-allocation of L&TD's debts to new companies.[835]

J5.2 On 20.04.17, D8 received an email from Alex Lee which set out his understanding of the re-allocation of debt. D8 forwarded this email to D2 and D3.[836] D8 knew that the purpose of these discussions was to allow GRP to be sold on a debt-free basis.

J5.3 On 21.04.17, Alex Lee sent D8 a draft debenture for CV Resorts.[837] D8 knew from his involvement with Paradise Beach, described above, that CV Resorts did not own any property in Cape Verde and he informed Alex Lee of this.[838]

J5.4 D8 incorporated the "support company" subsidiaries of London Group LLP in April 2017. He knew that these companies had no assets and no business.[839] D8 also incorporated Atlantic Petroleum Support.[840] D8 was company secretary of each of the support companies.[841]

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834 D2D10-00035447

835 MDR00074971; MDR00074988; MDR00075733; MDR00077656; D2D10-00025460; MDR00077690; MDR00077754; D8-0010848

836 MDR00084180; EB0044316; D2D10-00027562

837 MDR00084233; MDR00084238; MDR00084234

838 MDR00084281; MDR00084318

839 EB0044835; MDR00084823

840 MDR00084663; MDR00084668

841 **[A1/5/8]**; **[A1/5/12]**; **[A1/5/16]**; **[A1/5/89]**; **[A1/5/109]**.

Source: Mouseinthecourt.co.uk

J5.5 D8 knew how L&TD's debt was to be allocated between the "support companies".[842] Along with D1 and D2, he signed each of the facility agreements entered into between the "support companies" and LCF.[843]

J5.6 D8 knew that each of the "support companies" granted debentures in favour of LCF and he signed each of those debentures together with D2.[844] D8 knew that no meaningful security was granted by these debentures.

J5.7 D8 drafted the purported assignment of LOG's interest in Atlantic Petroleum p/f and backdated it to 28.04.17, despite witnessing D2 and D3 sign it in August 2017.[845] D8 knew that: (i) that this assignment had not been authorised by LOG's board[846]; (ii) that the rights purportedly assigned continued to be treated as an asset of LOG[847]; and (iii) that the rights were insufficient to secure the sums lent by LCF to Atlantic Petroleum Support.[848] D8 therefore knew that the purported assignment was a sham which was intended to deceive Alex Lee and LCF's auditors.

J5.8 D8 drafted the Elysian SPA and was therefore familiar with its terms.[849] In particular, he knew that 50% of GRP's new borrowings after running costs and interest were to be paid to D4, D2, D3 and D1 in the ratio 45:45:5:5.

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842 MDR00085033

843 MDR00005265; MDR00005203; MDR00005226; MDR00005244; MDR00006056

844 MDR00005270; MDR00005205; MDR00005227; MDR00005245; MDR00006057

845 MDR00096349; MDR00096350; MDR00096696; MDR00005409; D8-0019456; D8-0019457

846 MDR00212113 page 10

847 MDR00097899; MDR00098405; MDR00098412; MDR00098413; MDR00098677; MDR00098678; MDR00098679; MDR00104499; MDR00104613; MDR00104614; MDR00104615; MDR00104616; MDR00104617; MDR00117215; MDR00117216; MDR00117218; MDR00117323; MDR00117324; MDR00118501; MDR00119414; MDR00119417; MDR00119455; MDR00119459; MDR00119460; MDR00120069; MDR00128266; MDR00128267; MDR00128268; MDR00153591; MDR00141257; MDR00141258; MDR00141261; MDR00141262; MDR00141263; MDR00165751; MDR00141251; MDR00141252

848 MDR00084850

849 D2D10-00028001; D2D10-00028002; D2D10-00028003; D2D10-00028004; D2D10-00028005; D2D10-00028006; D2D10-00028007

Source: Mouseinthecourt.co.uk

J5.9 D8 knew that the debenture granted by London Group LLP to LCF over the redeemable preference shares did not bite on any asset because: (i) the Elysian SPA provided that the redeemable preference shares would be issued to individuals; and (ii) in any event, no redeemable preference shares were issued.

J5.10 D8 knew from this involvement in Paradise Beach, the Lakeview site and the Sanctuary scheme that the consideration payable under the Elysian SPA was grossly in excess of what the assets were actually worth.

J5.11 In February 2017, D8 was involved in discussions about how Mark Ingham was to be given a 5% interest in the sale proceeds.[850] In the course of discussions with D2, D3 and Mark Ingham, D8 proposed that a trust deed by which D2 and D3 (acting on behalf of D4) would hold 5% of the shares in GRP on trust for Mark Ingham be backdated to avoid Mark Ingham incurring any tax liability.[851] D8 then drafted four trust deeds which were backdated to give the false impression that Mark Ingham had held an interest in the relevant shares at a time he had no such interest for the purpose of lowering or eliminating any tax liability he might otherwise incur in relation to those shares. In order to lend verisimilitude to the backdated trust deeds, D8 was careful to use the names that the relevant companies had had as at 30.09.15.[852] D8 witnessed D3's execution of these trust deeds.[853]

J5.12 D8 knew of Mark Ingham's and Tom McCarthy's financial interest in the Elysian SPA and also that Tom McCarthy worked for London Group. He therefore knew that the Elysian SPA was not an arm's length transaction. D8 also knew that the linkage between GRP, LCCL and LCF had to be concealed.[854]

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850 D8-0010480

851 D8-0011801

852 EB0040733; MDR00081545; MDR00081548; MDR00081549

853 EB0041687; EB0041688

854 D8-0014230

Source: Mouseinthecourt.co.uk

K. THE PRIME SPA

K1 Introduction

K1.1 The Prime transaction was the third major transaction used to conceal the misappropriation of funds from LCF. It was premised on the sale of worthless shares (initially in IRG, then LV Resorts, and then both Elysian RGL and certain subsidiaries of GRP) to a connected purchaser, Prime RDL. The intention of the participants was that Prime RDL would borrow monies from LCF in order to fund the "purchase" of these interests, whilst the funds from LCF would be diverted to companies controlled by D2 and D3, which would make payments to D1, D2, D3, D4 and others. An important feature of the Prime transaction was the involvement of additional individuals, who were paid "fees" or "commissions" for their participation in the transaction.

K1.2 The first Prime SPA was executed on 13.09.17 and provided for GRP, Elysian RGL and London Group LLP to sell LV Resorts (which itself owned Costa Property and Colina Property) to Prime RDL.[855] The consideration consisted of loan notes in the sum of £11,255,000, which were to be issued by Prime RDL to London Group LLP.

K1.3 The second Prime SPA was executed on 07.11.17.[856] It provided for Mark Ingham, Tom McCarthy and London Group LLP to sell Elysian RGL to Prime RDL for £12 million of redeemable preference shares in Prime RDL. £10 million of these redeemable preference shares were to be issued to London Group LLP and the remainder to Mark Ingham and Tom McCarthy.

K1.4 The first Prime SPA and the second Prime SPA were subsequently combined in an agreement signed on 21.11.17.[857] This combined Prime SPA provided for the cancellation of the first Prime SPA and the second Prime SPA and the sale of Elysian RGL to Prime RDL for total consideration of: (i) £10.3 million of loan notes to be issued

[855] D2D10-00033605; D2D10-00033606; D2D10-00033635; D2D10-00033636; D2D10-00033637; MDR00102724

[856] MDR00007440; MDR00009226; D1-0005184; D1-0012088; EB0064185; D2D10-00037030

[857] EB0066391; EB0066393; MDR00005659; MDR00225049; MDR00112920; MDR00112922; D2D10-00038164

Source: Mouseinthecourt.co.uk

by Prime RDL to London Group LLP; and (ii) the issue by Prime RDL of £12 million in preference shares (£9.5 million to London Group LLP and £2.5 million to Mark Ingham and Tom McCarthy).

K1.5 The combined Prime SPA completed on 06.12.17.[858] The loan notes were issued by Prime RDL on completion. However, Prime RDL never issued the preference shares.

K1.6 The Claimants ask the Court to find the following facts in relation to the Prime SPA:

(1) The Prime SPAs were not genuine commercial transactions but were put in place to justify the continued extraction of monies from LCF by D1, D2, D3 and D4.

(2) Mark Ingham, Tom McCarthy and Terry Mitchell were paid substantial fees for their assistance in the transaction.

(3) There was no adequate security for the borrowing by Prime RDL (through its subsidiaries) and no realistic prospect that the borrowed monies could be repaid.

(4) Sums borrowed by Prime RDL from LCF (through its subsidiaries) were paid to GAD (which was controlled by D8) or London Power Consulting (which was controlled by D3) before being distributed to D1, D2, D3 and D4 via Sands Equity.

(5) Some of the monies paid to GAD by LCF were repaid to LCF to enable it to meet liabilities to its bondholders.

(6) D1 and D4 authorised and/or approved drawdown requests from Prime subsidiaries which they knew would be paid onto them and their associates.

[858] MDR00224976 to MDR00225048; MDR00225068; MDR00225069 to MDR00225074; EB0072612 to EB0072928; EB0072937 to EB0072980; EB0113774; D2D10-00000254

Source: Mouseinthecourt.co.uk

K2 Summary of the facts

Prime RDL

K2.1 Prime Resort Development Limited ("**Prime RDL**") was owned beneficially by Terry Mitchell. He was convicted at Southwark Crown Court for participating in running an investment scheme (Anglo Wealth Ltd) described by the judge as an "*elegantly packaged scam*".[859] The scheme accepted deposits from individuals but failed to make property investments. He received a two-year custodial sentence which was suspended. He was convicted alongside his associate, Andrew Meikle. Terry Mitchell and Andrew Meikle were involved with D2 from at least 2015.[860] Terry Mitchell was involved in formulating the Elysian transaction, although his purchasing vehicle (Global Resort Development Limited) was replaced at the last minute with Elysian RGL.[861]

K2.2 Prime RDL was incorporated at the instigation of Terry Mitchell who was the ultimate beneficial owner of Prime RDL.[862] Terry Mitchell engaged a man called Angel Rodriguez to be involved in the management of the company. He also arranged for three individuals (Pippa Isbell, Robert Woodward and Ian Sands) to act as its nominee directors, which he had previously agreed with D2. Pippa Isbell had no involvement in the formulation of the Prime transaction, and Robert Woodward had agreed to work with D2 for a fee. Ian Sands held the shares of Prime RDL on trust for Terry Mitchell.[863]

K2.3 Paul Seakens was an associate of Terry Mitchell. He was disqualified as a director in 2018 for 12 years, and was sentenced to 13 years in prison, based on his involvement in a fraudulent scheme involving the sale of worthless carbon credits. On 17.09.18, Prime RDL's bank accounts were frozen due to Paul Seakens' disqualification.[864]

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859 MDR00226935

860 Day 7/page 41/line 7 – page 47/line 19 **[A5/7/11]**.

861 MDR00079699; MDR00085581; Day 7/page 57/line 7 – page 61/line 16 **[A5/7/15]**.

862 MDR00107524

863 MDR00107521; MDR00107524; Day 7/page 64/line 3 – page 69/line 20 **[A5/7/16]**.

864 MDR00172428; MDR00172498; Day 7/page 53/line 1 – page 57/line 6 **[A5/7/14]**.

Source: Mouseinthecourt.co.uk

The first Prime SPA

K2.4 The initial idea of a transaction involving Prime RDL was the sale of shares in International Resorts Group Plc ("**IRG**") to Prime RDL. IRG owned the subsidiaries of GRP which held the two so-called "assets" in the Dominican Republic. The payments would be funded by LCF under facility agreements. D2, D3, D4 and D8 were involved in designing this transaction from mid-2017 onwards. They envisaged that Prime RDL would be under an obligation to raise money from LCF, that the money would be paid to a paying agent, and that it would result in payments under a cash waterfall.[865]

K2.5 However, there were apparently some problems with the idea of selling IRG relating to complications with its accounts. A substitute company needed to be found and the decision was taken to sell Prime RDL the shares in LV Resorts. LV Resorts held the shares in Costa Property Holdings Limited and Colina Property Holdings Limited, which held the two "assets" in the Dominican Republic.[866]

K2.6 The first Prime SPA duly involved the sale of the shares in LV Resorts to Prime RDL. In return, Prime RDL would issue loan notes in the sum of £11,255,000 to London Group LLP. The agreement was signed on 13.09.17. Clause 6.3 of the first Prime SPA required Prime RDL to "*fully utilise*" the facilities available to it from LCF and that such borrowings would be paid to a "*Security Trustee*", which was defined to mean a company appointed by London Group LLP. This "*Security Trustee*" would then use 50% of the monies remaining after payment of costs up to £100,000 per month and interest to repay the loan notes.[867]

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865 EB0055866; MDR00099176; EB0056294; MDR00099177; EB0056292; MDR00099193; MDR00101213; MDR00099289; MDR00101213; MDR00101214; EB0056557; EB0056571; Day 7/page 64/line 3 – page 69/line 20 **[A5/7/16]**.

866 D2D10-00032914; EB0056240; EB0056242; MDR00101368; MDR00102548; MDR00102549; Day 7/page 70/line 13 – page 73/line 1 **[A5/7/18]**.

867 D2D10-00033605; D2D10-00033606; D2D10-00033635; D2D10-00033636; D2D10-00033637; MDR00102724; Day 7/page 75/line 17 – page 80/line 12 **[A5/7/19]**.

Source: Mouseinthecourt.co.uk

The second Prime SPA

K2.7 It was then decided in October 2017 that Elysian RGL (which, following the first Prime SPA, held the shares in Waterside Village plc and CV Resorts) would be sold to Prime RDL.[868] On 01.11.17, D8 circulated an agreement to Mark Ingham and Tom McCarthy, D2 and D3.[869] The second Prime SPA was signed on 07.11.17.[870]

K2.8 The second Prime SPA provided for Mark Ingham and Tom McCarthy to sell Elysian RGL to Prime RDL in return for 12 million redeemable preference shares in Prime RDL. £10 million of these shares would be issued to London Group LLP and the remainder to Mark Ingham and Tom McCarthy. Clause 6.2 of the second Prime SPA required Prime RDL to redeem at least £1 million of the preference shares per month. As with the first Prime SPA, under the second Prime SPA, Prime RDL was obliged to "*fully utilise the financial facilities available to them from London Capital & Finance plc*", with such borrowings to be paid "*directly to the Security Trustee*" (now defined as "*a company to be appointed by the Sellers*") who would use 50% of the monies remaining after payment of running costs and interest to redeem the preference shares.[871]

The combined Prime SPA

K2.9 On 19.11.17, D8 suggested combining the first Prime SPA and the second Prime SPA in a single agreement.[872] D8 circulated a draft on 20.11.17 to D2, D3, Terry Mitchell, Ian Sands and Paul Seakens.[873] The combined Prime SPA agreement was signed the next day on 21.11.17.[874] It provided for the cancellation of the first Prime SPA and the second Prime SPA. Mark Ingham and Tom McCarthy therefore re-acquired Elysian RGL and Elysian RGL re-acquired LV Resorts.

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868 D2D10-00036427; D2D10-00036429; MDR00107786

869 D2D10-00036596; D2D10-00036597

870 MDR00007440; MDR00009226; D1-0005184; D1-0012088; EB0064185; D2D10-00037030; Day 7/page 85/line 19 – page 90/line 1 **[A5/7/22]**.

871 Day 7/page 90/line 2 – page 92/line 19 **[A5/7/23]**; Day 7/page 108/lines 1-21 **[A5/7/27]**.

872 EB0065824

873 MDR00112712; MDR00112744; MDR00112778; MDR00112809; MDR00112810; D2D10-00037769

874 EB0066391; EB0066393; MDR00005659; MDR00225049; MDR00112920; MDR00112922; D2D10-00038164; Day 7/page 92/line 20 – page 94/line 24 **[A5/7/23]**.

Source: Mouseinthecourt.co.uk

K2.10 The combined Prime SPA then provided for Mark Ingham, Tom McCarthy and London Group LLP to sell Elysian RGL to Prime RDL for a total consideration of loan notes in the sum of £10.3 million, which were to be issued by Prime RDL to London Group LLP, and redeemable preference shares in Prime RDL in the sum of £12 million, which were to be issued to London Group LLP (in the total sum of £9.5 million) and Mark Ingham and Tom McCarthy (in the total sum of £2.5 million). Clause 6.4 of the combined Prime SPA obliged Prime RDL to repay £1 million of the loan notes per month and to redeem £1 million of the preference shares per month. Clause 6.5 of the combined Prime SPA obliged Prime RDL to "*fully utilise the financial facilities available to them from London Capital & Finance plc*" (i.e., it required Prime RDL to borrow as much as possible from LCF) with such borrowings to be paid "*directly to the Security Trustee*" who would then use 50% of the monies remaining after payment of running costs and interest in order to repay the loan notes and redeem the preference shares. The term "*Security Trustee*" was defined by the combined Prime SPA to mean GAD, a company under the control of D8.[875]

K2.11 The combined Prime SPA completed on 06.12.17.[876] On the same date, and perhaps pursuant to the combined Prime SPA, LV Resorts acquired from London Group LLP the four "support companies" which were the latter's subsidiaries: Costa Support, Colina Support, Cape Verde Support and Waterside Support.[877]

K2.12 The net effect of the combined Prime SPA was that Prime RDL acquired Waterside Villages plc, Colina Property Holdings, and Costa Property Holdings and CV Resorts for £22.3 million which it was going to borrow from LCF. At the same time, Prime RDL acquired the "support companies" to which L&TD's debt to LCF had been allocated. This meant that the total debt to LCF which is transferred to Prime RDL's group was around £38.2 million. When the liability to the Sanctuary investors is accounted for, the total liability owed by Prime RDL's group amounted to £65.2 million. This implies a

875 **[A1/5/34]**; Day 7/page 94/line 18 – page 97/page 100/line 4 **[A5/7/24]**.

876 MDR00224976 to MDR00225048; MDR00225068; MDR00225069 to MDR00225074; EB0072612 to EB0072928; EB0072937 to EB0072980; EB0113774; D2D10-00000254

877 MDR00225000; MDR00225001; MDR00225002; Day 9/page 4/line 8 – page 5/line 7 **[A5/9/1]**.

Source: Mouseinthecourt.co.uk

valuation of the underlying assets transferred under the combined Prime SPA of £87.5 million.[878]

K2.13 There was no basis for such a valuation or price. The only real asset was the Lakeview resort, which had been valued at between £4 million and £4.55 million at the outset of the lodge acquisition programme, and which would later be sold by the Prime Administrators for around £10 million. As has been set out above, there was no value in Colina Property Holdings (which owned the shares in Inversiones, the company that owned The Hill, on trust for El Cupey for the benefit of the Sanctuary investors) or Costa Property Holdings (which held shares in Tenedora, the company with the contested purchase agreement to acquire The Beach but which had not yet actually acquired any land). The combined Prime SPA was a commercially nonsensical transaction. The only purpose that it can have had was to serve as a vehicle for the further extraction of monies from LCF.[879]

Commissions to the participants in the Prime transaction

K2.14 As stated above, the Prime transaction was never intended to be a genuine commercial transaction. Its true *raison d'etre* was the extraction of monies from LCF. Significantly, the first Prime SPA envisaged that a "*fee*" would be paid to Mark Ingham and Tom McCarthy of £2 million between them. D8 drafted documents which provided for this to be paid by giving them an interest in the shares of LV Resorts that would result in them being paid £2 million from the sale proceeds.[880]

K2.15 The commission for Mark Ingham and Tom McCarthy was increased £2.5 million under the combined Prime SPA.[881]

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878 Day7/page 100/line 8 – page 104/line 12 **[A5/7/25]**.

879 Day 7/page 104/line 12 – page 106/line 1 **[A5/7/26]**.

880 EB0056241; D2D10-00033287; D2D10-00033291; D8-0021470; D8-0021471; D8-0021472; D2D10-00033420; D2D10-00033421; D2D10-00033425; D2D10-00033426; EB0057846; D2D10-00035362; D2D10-00035365; D2D10-00035366; EB0060588; D2D10-00035394; EB0060590; EB0060637; EB0060639; EB0060719; Day 7/page 75/line 17 – page 80/line 12 **[A5/7/19]**.

881 D2D10-00039440; EB0108317

Source: Mouseinthecourt.co.uk

K2.16 It was also agreed that Terry Mitchell would be paid a fee of £1 million for his involvement. Initially, Terry seems to have envisaged that his fee would be the same as the fee payable to Mark and Tom,[882] and D2 did sign an agreement in those terms, [883] but subsequently there seems to have been a renegotiation, with the result that Terry would receive a fee of £1 million instead.[884] This equates to 4.484% of the total consideration of £22.3 million payable under the combined Prime SPA. Sure enough, the spreadsheet which was prepared calculate the division of the payments under the Prime SPA provides for Terry Mitchell to be paid 4.484% of drawdowns from LCF.[885]

K2.17 The commission for Terry Mitchell was paid via his company Zectrade, which is incorporated in the UAE. Zectrade issued invoices which were initially paid by Sands Equity (controlled by D2 and D4) and later paid by London Power Consultants Limited (controlled by D3).[886] The invoices refer to an "*agreement dated 13 September*". However, there was no express provision in any of the Prime SPAs for Zectrade to be paid £1 million. The reference in the invoices must be a reference to a side agreement.

K2.18 The payments to Zectrade are clearly illegitimate payments; and they reveal the truth about the Prime SPA: Terry Mitchell was the 100% beneficial owner of Prime RDL, the purchaser under the Prime SPA, but he was being paid £1 million of the purchase monies which were being borrowed from LCF as a reward for facilitating the transaction.

K2.19 A "*management fee*" of £200,000 per month was also payable from LCF monies to Prime RDL in return for its participation in the transaction.[887]

K2.20 The fees paid to Terry Mitchell, Mark Ingham and Tom McCarthy and the substantial monthly "*management fee*" for Prime RDL were sums paid for their participation in the

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882 MDR00104906; MDR00105142; MDR00105143; MDR00105158

883 MDR00227258

884 EB0061279; EB0061314; EB0061350

885 D2D10-00033605; D2D10-00033606; D2D10-00033635; D2D10-00033636; MDR00102724; Day 7/page 80/line 23 – page 85/line 19 **[A5/7/20]**; Day 7/page 97/lines 5-19 **[A5/7/25]**; Day 7/page 147/line 13 – page 151/line 10 **[A5/7/37]**.

886 EB0061279; EB0061314; EB0061350; MDR00106236; MDR00106237; EB0089938; EB0089939; MDR00168767 page 8; MDR00224026 page 9; MDR00182385; MDR00224256; MDR00224261

887 MDR00114707; MDR00114750; MDR00114776; MDR00123830; MDR00123835; MDR00123837; MDR00123839; MDR00123840; EB0066647

Source: Mouseinthecourt.co.uk

Prime transaction. Revealingly, D8 sought to characterise these payments for tax purposes as deductible expenses in realising a gain for D1, D2, D3, D4 and Mark Ingham, which draws back the veil and helps to reveal the intended purpose of the Prime transaction.[888] The commissions do not make sense on their own terms: for example, Terry Mitchell's commission was described as commission that was payable to Zectrade for "*introducing Prime*" when any such introduction can only have involved Terry Mitchell introducing himself (as the person who owned Prime RDL) for a fee of £1 million. In fact, these individuals were actors who were paid very substantial sums for their assistance to D1, D2, D3 and D4 in extracting money from LCF.[889]

Payments under the Prime SPA

K2.21 Prime RDL made drawdown requests from LCF, which then paid the requested monies to GAD (previously IRG plc), which was re-registered as a private limited company. It was controlled by D8.[890] GAD paid the monies to Sands Equity, which in turn made payments to D1, D2, D3, and D4. As part of LCF's Ponzi scheme, GAD also paid some of the money from LCF straight back to LCF upon receipt so that LCF could use those funds to discharge interest liabilities to LCF's bondholders. As under the Elysian SPA, D1 approved the drawdowns and provided information as to the amount available in LCF's bank account to facilitate the extraction of the maximum sum possible.[891]

K2.22 D1 became concerned about the lack of materials on file to justify the borrowing from LCF. In late January 2018, payments under the Prime SPA were paused in what was described as a "*payment holiday*" in view of limited "*headroom*".[892] During this time, D1, D2, D3 and D4 formulated a new device for extracting monies from LCF, which

888 MDR00195174

889 Day 7/page 111/line 21 – page 119/line 25 **[A5/7/28]**.

890 MDR00109299; MDR00109324; MDR00109325; MDR00109338; MDR00110517; MDR00129954; MDR00129955; MDR00129956; D2D10-00040186; D2D10-00040254; D2D10-00040407; D2D10-00040554

891 MDR00109340; MDR00109404; MDR00007070 page 7; MDR00113545; MDR00118895; MDR00215795; MDR00112346; MDR00112347; MDR00112357; MDR00112358; MDR00112369; MDR00112370; MDR00112383; MDR00112445; MDR00112446; MDR00007073 page 11; MDR00142762 tab 4; MDR00220286 page 322; MDR00215795 page 3; MDR00217301 page 24; MDR00218647 page 25; MDR00220325 page 17; D2D10-00037660 tab 2; Day 7/page 120/line 5 – page 7/page 129/line 1 **[A5/7/30]**; Day 7/page 133/line 21 – page 135/line 19 **[A5/7/34]**; Day 9/page 1/line 19 – page 3/line 11 **[A5/9/1]**.

892 MDR00138755; D2D10-00043102

Source: Mouseinthecourt.co.uk

became the LPE SPA. In the same period, D2 appeared to scrutinise more carefully and to limit the monies which Terry Mitchell and Paul Seakens (in particular) sought to have paid under the Prime SPA. This impasse was resolved by D1 requesting letters containing asserted values of the underlying assets, so that there were documents on file which could justify the recommencement of substantial drawdowns by Prime RDL from 15 May 2018 onwards.[893] The renewed drawdowns under the Prime SPA resulted in payments from LCF to London Power Consultants Limited which made payments to D1, D2, D3 and D4 in the total sum of £1.5 million on this occasion.[894]

K2.23 A total of £9,200,000 of LCF's monies were paid out under the cover of the Prime SPA, of which D1 received £413,000 and D4 received £2,840,300.[895]

K3 D1's participation in and knowledge of the Prime SPA

K3.1 D1's evidence was that "*Prime took over the responsibility from Elysian for paying* [the] *deferred consideration under the Elysian sale and purchase*."[896] D1 therefore also knew that Prime had taken over responsibility for paying the sums purportedly due to him under the Elysian SPA. As D1 knew that the Elysian transaction involved the misappropriation of LCF's monies by D1, D2, D3 and D4 he therefore also knew that the Prime transaction involved the misappropriation of monies.

K3.2 D1 informed Mark Ingham of the procedure for making draw downs in relation to the Prime SPA and approved payments by LCF pursuant to such draw downs.[897]

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893 MDR00145328; MDR00146131; MDR00146132; MDR00147399; MDR00147405; MDR00147410; MDR00147420; MDR00147428; MDR00147429; MDR00147483; MDR00147513; MDR00147514; MDR00147570; MDR00147564

894 MDR00148053; MDR00148056; MDR00148058; MDR00148061; MDR00148093; MDR00148096; MDR00007015 pages 5-7; EB0097828 page 4; MDR00173805 page 12; MDR00203955 page 38; MDR00220286 page 353; MDR00217305 page 11; Day 7/page 129/line 2 – page 147/line 12 **[A5/7/33]**.

895 EB0123428. The first payments under the Prime SPA were made on 06.11.17.

896 Thomson ¶126 **[C2/1/44]**.

897 MDR00112357

Source: Mouseinthecourt.co.uk

K3.3 D1 kept D3 and D4 informed of the relevant balances held by LCF available for drawing.[898] It is clear that D1 was facilitating the drawing down of the maximum sum possible from LCF on the occasion of each drawdown.

K3.4 D1 was aware of the terms of the Prime SPAs.[899]

K3.5 D1 knew that under the Prime SPA, the funds paid from LCF would not be paid to Prime RDL, but to a company appointed by the sellers under the Prime SPAs.[900] As under the Elysian SPA, D1 knew that whenever he approved a drawdown, money arrived in his personal bank account.[901] So, for example, he was aware that drawdowns requests made by Prime RDL's subsidiaries would direct the funds to be paid to companies such as London Power Consultants[902] and that he received payments from London Power Consultants shortly after such payments from LCF were approved.[903]

K3.6 D1 also knew that the sums received by him were a fixed percentage of the total sums paid to London Power Consultants by LCF because they were referable to the ratios agreed in the Golding-SHK Agreement (as subsequently modified).[904]

K3.7 D1 knew that there was nothing on file at LCF to justify the increasing borrowing by Prime RDL's subsidiaries so he agreed with D2 that there would have to be a "*payment holiday*". The ostensible justification that he gave to Alex Lee for this was that this would allow time for further security to be put in place. However, D1 knew that there was no such further security available.[905]

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898 EB0065391; EB0066657

899 Day 25/page 150/lines 3-9 **[A5/25/38]**.

900 Day 25/page 149/lines 12-23 **[A5/25/38]**.

901 Day 25/page 150/lines 18-25 **[A5/25/38]**.

902 E.g. MDR00148061; Day 25/page 157/line 23 – page 158/line 20 **[A5/25/40]**.

903 MDR00173805; Day 25/page 158/line 14 – page 161/line 23 **[A5/25/40]**.

904 Day 25/page 162/lines 15-23 **[A5/25/41]**.

905 MDR00138755

Source: Mouseinthecourt.co.uk

K3.8 D1 asked Terry Mitchell to send him a letter setting out the position with each "*project*" that would enable D1 to permit drawdowns to continue.[906] A letter was duly drafted by Angel Rodriguez which stated that The Hill and The Beach were worth US$50 million each and that the Lakeview site was worth £30 million.[907] This was provided to D1 who knew that these values were grossly in excess of the true worth of these assets, which was negligible. However, D1 was not concerned with the true position but simply with being able to justify further lending. He therefore asked the letter to be amended to refer to "*additional land at Magante*".[908] The letter was amended accordingly and signed by Angel Rodriguez and Terry Mitchell.[909] D2 then informed Ian Sands that drawdowns by Prime RDL could resume.[910] In his oral evidence, D1 was unable to give any explanation for his involvement in the production of this letter.[911]

K4 D4's participation in and knowledge of the Prime SPA

K4.1 On 29.08.17, D4 received an email from D8 containing the heads of terms for the first Prime SPA.[912] It is to be inferred from this that D4 was involved in designing the first Prime SPA and had knowledge of the proposed terms of the Prime SPA.

K4.2 D4 knew that under the first Prime SPA it was intended that "*all corporate finance arranged is paid to an agent appointed by the Seller who then distributes it in accordance with the cash waterfall*" because D8 copied him into an email on 09.09.17 in which he stated that this would be the case.[913] D4 therefore knew that monies purportedly borrowed by the Prime group of companies from LCF would be diverted to D1, D2, D3 and D4.

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906 MDR00145328

907 MDR00146131

908 MDR00147399; MDR00147405

909 MDR00147410

910 MDR00147564

911 Day 25/page 151/line 1 – page 156/line 21 **[A5/25/38]**.

912 MDR00099176; EB0055866; D8-0020436; Day 7/page 64/line 12 – Day 7/page 66/line 14 **[A5/7/16]**.

913 EB0056571; Day 7/page 74/line 9 – Day 7/page 75/line 9 **[A5/7/19]**.

Source: Mouseinthecourt.co.uk

K4.3 D4 agreed the fees to be paid to Mark Ingham and Tom McCarthy in connection with the Prime SPAs and it is to be inferred that he was involved with the agreement of (or, at the very least, had knowledge of) the fees paid to Terry Mitchell.[914]

K4.4 D4 knew that monies originating from LCF were used to fund share payments under the Prime SPA. As above, D4 knew that monies to be borrowed from LCF would be paid to an agent of the sellers (i.e. of D2 and D3), that the Prime SPA was not a genuine transaction, that side commissions and fees were being paid for the participation of individuals linked to Prime RDL. That D4 agreed these fees without reference to D2 demonstrates that he was the principal architect of the Prime SPA.

K4.5 D4 authorised and/or directed payments from LCF and was concerned to ensure that the maximum amounts were extracted from LCF. So, when Ian Sands made a draw down request for £100,00 on 17.11.17[915], D4 sent a message to D3 saying "*Should be £900k in LCAF this morning … Should be able to split £500k as a share payment. I've told SHK you are planning on coming in later*".[916] A revised draw down request was duly submitted (signed by Ian Sands) in the sum of £700,000 (payable to GAD).[917] Later that day, LCF paid £700,350 and £100,678.56 to GAD.[918] Then on 20.11.17, GAD paid £700,000 to Sands Equity with the reference "Share Purchase".[919] Sands Equity then paid £212,500 to D1, £212,500 to D2, and £25,000 each to D1, D3 and Mark Ingham.[920] This demonstrates not only D4's control over the Prime SPA but also that he knew of LCF's balances and draw down requests made and that LCF, D1, D3 and Prime RDL acted in accordance with his instructions.

K4.6 D4 received the single largest share of monies misappropriated from LCF by reference to the Prime SPA. It is to be inferred that D4 knew why he was receiving these monies.

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914 D2D10-00033291; D8-0021470; D8-0021471; D8-0021472; D2D10-00033421; D2D10-00033425; D2D10-00033426

915 MDR00112369; MDR00112370

916 EB0065391

917 MDR00112383; MDR00112445; MDR00112446

918 MDR00007073 page 11

919 MDR00113545; MDR00118895; MDR00215795 page 3

920 MDR00142762 tab 4; MDR00220286 page 322; MDR00215795 page 3; MDR00217301 page 24; MDR00218647 page 25; MDR00220325 page 17; D2D10-00037660 tab 2

Source: Mouseinthecourt.co.uk

K5 D8's participation in and knowledge of the Prime SPA

K5.1 D8 knew of Terry Mitchell's intended involvement in the Elysian SPA and had kept him informed about the incorporation of the GRP subsidiaries in April 2017.[921] On 27.04.17, D8 sent an email relating to the intended SPA to Terry Mitchell.[922]

K5.2 On 29.08.17, D8 sent an email to D2 and D3 in which he suggested a structure for the transaction.[923] D8 proposed that the deal with Terry Mitchell should be considered as a variation of the Elysian SPA. On the same day, D8 sent draft heads of terms to D2, D3 and D4, which provided for a price of £11,255,000 to be paid to London Group LLP.[924]

K5.3 D8 knew that the transaction was being negotiated between D2 and Terry Mitchell on the other with no involvement of Mark Ingham and Tom McCarthy, despite their purported ownership of the assets being sold.[925]

K5.4 In September 2017, D8 was involved in separate discussions with D2 and Terry Mitchell about the assets which would be the subject of the transaction.[926] It was D8's suggestion that IRG should not be the company sold due to "*complications with its accounts*" and that the debts of the subsidiary companies to LCF should become the responsibility of Terry Mitchell's purchasing vehicle.

K5.5 D8 knew that it was an important feature of the plan that LCF would provide monies to Prime RDL and that these monies would be used to pay the purchase price to London Group LLP.[927]

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921 MDR00083379; MDR00083390; MDR00084603

922 MDR00085090; MDR00085091

923 EB0055866

924 D8-0020436

925 MDR00099289; MDR00099290; MDR00099491

926 MDR00099754; D2D10-00032914

927 MDR00099176; MDR00099177; EB0056292; MDR00099193; MDR00101213; MDR00099289; MDR00101213

Source: Mouseinthecourt.co.uk

K5.6 D8 knew that D2 was adamant that the new borrowings from LCF would not be paid to Prime RDL but would be paid to a company appointed by London Group LLP.[928] D8 explained to him how the first Prime SPA achieved this objective.

K5.7 Even before the first Prime SPA had been signed, D8 was involved in discussions about the sale of Elysian RGL to Prime RDL through the second Prime SPA.[929] D8 drafted the second Prime SPA.[930]

K5.8 D8 proposed combining the first Prime SPA and the second Prime SPA into the combined Prime SPA, which he drafted.[931]

K5.9 D8 was therefore aware of the terms of each of the first Prime SPA, the second Prime SPA and the third Prime SPA.

K5.10 D8 knew that Mark Ingham and Tom McCarthy had been promised a fee of £2 million in relation to the Prime SPA.[932] He knew that this fee had been agreed by Mark Ingham and Tom McCarthy with D4.[933] D8 was aware of the arrangement and explained it to D2.[934] D8 devised a mechanism for the payment of the fee to Mark Ingham and Tom McCarthy.[935]. D8 knew that the fee was subsequently increased to £2.5 million.[936]

K5.11 D8 also knew that a fee of £1 million had been paid to Zectrade for "*the introduction of Prime*".[937] It is to be inferred from his involvement in every aspect of the transaction, that D8 knew that Zectrade was Terry Mitchell's company. It is also clear, from the fact that D8 considered that the fees payable to Mark Ingham, Tom McCarthy and Zectrade

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928 EB0056571

929 D2D10-00036422; D2D10-00036427

930 D2D10-00036596; D2D10-00036597

931 EB0065824; MDR00112712; MDR00112744; MDR00112778; MDR00112809; MDR00112810; D2D10-00037769

932 D2D10-00033421

933 D2D10-00033426

934 D2D10-00033425

935 EB0057846; D2D10-00035362; D2D10-00035365; D2D10-00035366

936 EB0108317

937 EB0108317

Source: Mouseinthecourt.co.uk

should be treated for tax purposes as deductible expenses, that he knew that the Prime SPA was not a genuine transaction and that these fees were the cost to D1, D2, D3 and D4 of having a fig-leaf for their further extraction of monies from LCF.

K5.12 D8 knew that D4, D2, D3, D1 and Mark Ingham received monies from LCF ostensibly under the Prime SPA in the ratio 42.5: 42.5: 5: 5: 5.[938]

K5.13 D8 explained the payment mechanism under the Prime SPA to Terry Mitchell, including that Prime RDL should ask that funds drawn down from LCF should be paid to GAD, which was then owned and controlled by D8.[939] D8 therefore knew that GAD was being used to launder monies paid by LCF.

K5.14 D8 arranged for some of the monies received by GAD in relation to the Prime SPAs to be paid back to LCF to enable it to meet its obligations to bondholders. D8 also arranged for GAD to make payments to Sands Equity with the reference "Share Purchase". D8 knew that the monies paid to Sands Equity would be paid out, *inter alia*, for the benefit of D1, D2, D3 and D4.[940]

K5.15 D8 knew that payments under the Prime SPA had been paused in around March 2018.[941] D8 sought to justify the pause to Paul Seakens and Terry Mitchell by claiming that further information was needed from Prime RDL to justify the drawdowns.[942] However, even when this information was provided and D8 considered it sufficient, D8 did not release funds from GAD because he was told not to by D2 or D3.[943] This further demonstrates D8's knowledge that the Prime SPA was not a legitimate commercial

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938 EB0108317

939 D2D10-00033605; D2D10-00033606; D2D10-00033635; D2D10-00033636; MDR00102724; EB0108317; MDR00195174; MDR00114707; MDR00114750; MDR00114776; MDR00123830; MDR00123835; MDR00123837; MDR00123839; MDR00123840; EB0066647; MDR00109299; MDR00109324; MDR00109325; MDR00109338; MDR00110517; MDR00129954; MDR00129955; MDR00129956; D2D10-00040186; D2D10-00040254; D2D10-00040407; D2D10-00040554

940 See, for example, MDR00109340; MDR00109404; MDR00007070 page 7; MDR00113545; MDR00118895; MDR00215795 page 6

941 D2D10-00043102

942 MDR00135832

943 MDR00137569; MDR00137572; MDR00137573; MDR00137581; MDR00137603; EB0085810; MDR00137727

Source: Mouseinthecourt.co.uk

agreement but was a tool to justify the extraction of funds from LCF by D1, D2, D3 and D4 who wanted to maximise the funds they received.

Source: Mouseinthecourt.co.uk

L. THE LPE SPA

L1 Introduction

L1.1 The LPE SPA was the fourth of the major transactions designed to provide an ostensible justification for the misappropriation of monies from LCF by D1, D2, D3 and D4.

L1.2 In or around May 2018, D1, D2, D3 and D4 devised a new mechanism for extracting monies from LCF. It involved drawdowns by LOG under its facility agreement with LCF to fund payments to D1, D2, D3 and D4.

L1.3 Initially there seems to have been some uncertainty about the ostensible justification for these payments. At the outset, it was said that they related to preference shares in LPC. Later, these payments were retrospectively recharacterised when it was said that they had been made under the LPE SPA, which was signed on 03.07.18 but backdated to 21.06.18.[944]

L1.4 The LPE SPA provided that D2 and D3 would sell their shares in Intelligent Technology Investments ("**ITI**") and London Artificial Intelligence ("**LAI**") to LPE Enterprises Ltd for £20 million. ITI owned 50% of a company called Asset Mapping and 14% of a company called Reserec.

L1.5 In fact, by the time that the LPE SPA was executed, D1, D2, D3 and D4 had already received £20 million which was drawn against LOG's facility with LCF. The transaction was therefore put in place to justify monies which had already been paid out.

L1.6 The LPE SPA was not a genuine commercial transaction but was instead created to justify the continued extraction of monies from LCF for the benefit of D1, D2, D3 and D4. Among other things: (i) the LPE SPA did not change the beneficial ownership of the shares in ITI and LAI[945]; (ii) the value of the shares sold was negligible; and (iii) the use of LOG's funds for this purpose had not been authorised by LOG's board.

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944 MDR00160092

945 **[A1/5/87]**; **[A1/5/102]**.

Source: Mouseinthecourt.co.uk

L1.7 The Court is asked to find the following facts in relation to the LPE SPA and the facility in favour of LOG which was used to make payments later justified by the LPE SPA:

(1) LCF paid out £2.9 million to LOG before there was a written agreement in place.

(2) The first written facility agreement between LCF and LOG was signed on 20.06.16 but backdated to 15.03.16 to disguise the fact that LCF had made payments to LOG without any written facility agreement.

(3) D1 and D2 signed a backdated letter extending LOG's facility to £50 million in order to deceive LOG's auditors into believing that LOG had never breached its facility limit.

(4) £20 million was ostensibly drawn by LOG from LCF and paid to D1, D2, D3 and D4 via London Group LLP, London Power Consultants and GCEN without any proper justification.

(5) The LPE SPA was produced and backdated to provide ostensible justification for these payments. It was not a genuine transaction. There was no change in the beneficial ownership of the assets purportedly sold under the LPE SPA and the value of those asset, the shares in certain "technology companies", was negligible.

(6) D1, D2, D3 and D4 misappropriated the £20 million which was sought to be justified by the creation of the LPE SPA.

(7) D1 and D8 knew all of the matters set out above. D4 knew at least the matters at (4), (5) and (6).

Source: Mouseinthecourt.co.uk

L2 Summary of the facts

The LOG facility with LCF

L2.1 LOG's first drawdown from LCF took place on 21.03.16. Initially, the payments were made to London Trading, but the drawing was recorded as a liability owed by LOG.[946] Drawdowns continue in the period to 17.06.16, in the sum of just over £2.9 million, despite no written facility agreement being in place between LCF and LOG.[947] A facility agreement was prepared in the course of April 2016 and was eventually signed on or around 20.06.16 and backdated to 15.03.16 in order to give the false impression that the drawdowns only occurred after the facility agreement was put in place.[948] A debenture was also executed by LOG in favour of LCF on or around 20.06.16, which provided security over LOG's interests in IOG.[949]

L2.2 The terms of the LOG facility provided for LOG's liability to be "grossed-up", so that it also became liable for the 25% sum of each bondholder investment which was paid to D6. The commitment period was 3 years. The interest rate was 1.75% plus the interest payable by LCF to its bondholders. The facility limit was £20 million.[950]

L2.3 Drawdowns by LOG from LCF then continued throughout the second half of 2016 and during 2017, with LOG on-lending much of the money drawn to IOG. By 12.10.17, LOG was over the facility limit by £2,869,837.58.[951] At this stage, there was some discussion of a new facility agreement for LOG with an increased limit of £40 million,

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946 MDR00007235 page 2; MDR00034152 page 2; MDR00043998 row 4; D2D10-00041161; D2D10-00041167; MDR00033543

947 MDR00044016; MDR00044017; MDR00044018; MDR00044019; MDR00045648; MDR00045654

948 MDR00035715; MDR00035747; MDR00037784; MDR00037785; MDR00037937; MDR00037955; MDR00037956; D8-0004174; D8-0004174; D8-0004175; D2D10-00016049; D8-0004258; EB0020236; EB0020237; MDR00040609; MDR00040610; MDR00040611; MDR00041147; MDR00041570; MDR00041571; MDR00041572; MDR00041573; MDR00041931; MDR00041933; MDR00041935; MDR00041942; MDR00041944; MDR00041945; MDR00043715; MDR00043717; MDR00043718; MDR00043720; MDR00044016; MDR00044017; MDR00044018; MDR00044019; MDR00006103; MDR00046296; MDR00100801; Day 8/page 1/line 13 – page 7/line 14 **[A5/8/1]**; Day 8/page 8/lines 11-24 **[A5/8/2]**.

949 MDR00002278; Day 8/page 12/lines 2-17 **[A5/8/3]**.

950 MDR00100801; Day 8/page 8/line 25 – page 12/line 1 **[A5/8/2]**.

951 MDR00106611

Source: Mouseinthecourt.co.uk

but this proved to be difficult due to a debate about the wording of a so-called "G&T clause" by which LOG's obligations to pay interest and repay principal would be suspended if LCF collapsed.[952] By 06.03.18, LOG owed £38.4 million to LCF.[953]

L2.4 The fact that LOG had exceeded its facility limit and had been unable to agree a revised facility created a problem because LOG was being audited by BDO. BDO was told that the facility limit was £50 million.[954] In March 2018, D1, D2, D8, Michael Peacock, and Alex Lee liaised to prepare a letter agreement extending the LOG facility to £50 million. The extension letter, which was signed by D1 and D2, was backdated to 01.12.17 to mislead BDO into believing that LOG had at all times stayed within the facility limit.[955]

Funds drawn under the LOG facility are paid to D1, D2, D3 and D4

L2.5 As explained above, there was what Alex Lee described as a "*payment holiday*"[956] under the Prime SPA after 29.01.18.[957] D1, D2, D3 and D4 were keen that the flow of monies from LCF to their personal bank accounts should not be interrupted. Therefore, they sought to find a new way to justify the extraction of monies from LCF. The solution on which they alighted was to draw monies under LOG's facility for payment to D1, D2, D3 and D4.

L2.6 From 02.02.18, monies were then transferred: (i) from LCF to LOG; (ii) from LOG to London Group LLP; and (iii) from London Group LLP to D1, D2, D3 and D4. These transfers all had payment reference "*Pref Share Adv*". 25 million redeemable preference shares had been issued by LPC (the parent company of LOG) to London Group LLP and it is plain that it was anticipated that the payments would be characterised as having something to do with preference shares in LPC. As with previous transactions, D1

952 D2D10-00002667; D2D10-00029860; D2D10-00031179; D2D10-00035799; D2D10-00055802; D2D10-00040783; MDR00133474; MDR00133475; MDR00145848; D2D10-00055802

953 Day 8/page 14/line 8 – page 18/line 13 **[A5/8/4]**.

954 MDR00133709; MDR00133822; MDR00133821; MDR00133911

955 MDR00134357; MDR00134358; MDR00134414; MDR00134415; MDR00134416; MDR00134419; MDR00134435; MDR00134436; MDR00169410; MDR00169411

956 MDR00138755

957 MDR00213460 rows 35-38; EB0123428 rows 35-38

Source: Mouseinthecourt.co.uk

approved the drawdowns from LCF, and encouraged the drawing of whatever was available in LCF's bank account.[958] On occasion, the "entitlements" of each Defendant were not paid into their personal bank accounts, but to a different bank account at their election.[959] These payments continued into May 2018.[960]

Closure of the London Group LLP bank account

L2.7 A problem arose in making the above payments through London Group LLP. Metro Bank Plc explained in a letter dated 29.03.18 that it was going to cease operating London Group LLP's bank account from 28.05.18.[961] Following this, further drawdowns from LCF by LOG were paid to D3's company London Power Consultants, which in turn made payments to D1, D2, D3, and D4.[962]

L2.8 The closure of the London Group LLP bank account appears to be what prompted D1 to make alternative arrangements with LCF's payment processor, GCEN. On 14.05.18, D1 called Luke Tofts of GCEN to ask him to set up a new payment facility. In a follow-up email, D1 told Luke Tofts that the facility was to make payments on behalf of Prime RDL and that the authorised signatories would be D1, and three employees of LCF. None of the other directors of LCF were authorised to use the facility.[963] On 15.06.18 Luke Tofts informed D1 that he had set up an email instruction process for payments and that D1 would be called personally to confirm the payments instructions.[964]

Payments via GCEN to D1, D2, D3 and D4

L2.9 On 16.05.18, D3 sent D1 the personal bank account details of D2, D3 and D4 and on the next day he sent with the percentage shares in which payments should be made to them:

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958 MDR00126617; MDR00126666; MDR00129939; MDR00129930; MDR00129931; MDR00135097; MDR00135248; MDR00134249; D2D10-00043138; D2D10-00043139; EB0083707; EB0083707

959 See, for example, MDR00220332 page 4, which shows London Group LLP making a payment of £60,000 to D2's company LV Management.

960 Day 8/page 18/line 14 – page 30/line 13 **[A5/8/5]**.

961 D2D10-00044289

962 Day 8/page 30/line 12 – page 33/line 13 **[A5/8/8]**.

963 MDR00147837

964 MDR00154580; MDR00154620

Source: Mouseinthecourt.co.uk

42.5% (D4), 42.5% (D2), 7.5% (D3) and 7.5% (D1).[965] The shares of D1 and D3 had been increased from 5% each to 7.5% each.[966]

L2.10 Once the GCEN payment facility was in place, the "drawdowns" by LOG continued. D3 submitted drawdown requests on behalf of LOG to LCF and D1 instructed LCF's employees to make payments to LCF's GCEN account, which were treated as a drawdown on LOG's facility with LCF.[967] D1 then instructed GCEN to distribute the funds to the personal bank accounts of D1, D2, D3, and D4 in the proportions 7.5: 42.5: 7.5: 42.5.[968] The first group of payments to these individuals was made on 22.06.18.[969] By 03.07.18, the payments drawn from LCF by LOG and paid to D1, D2, D3, D4 via London Group LLP, London Power Consultants and GCEN totalled £20 million.[970]

L2.11 D1 had told GCEN that the payments were made on behalf of LPC, one of LCF's borrowers, and that LPC was purchasing a company owned by D1, D2, D3 and D4, which explained the payments to personal bank accounts.[971] This was a false explanation. D1 assured Luke Tofts that he would provide supporting documentation but did not do so.[972] GCEN nevertheless continued to process the payments to D1, D2, D3 and D4.[973] As is explained below, GCEN was subsequently provided with a different explanation.

Retrospective recharacterisation of the payments as made under the LPE SPA

L2.12 The payments from LCF which were treated as drawings under the LOG facility were initially going to be justified as having something to do with LPC (whether the 25 million preference shares in LPC, as appeared to be the case initially, or the acquisition

965 D1-0007292; D1-0007316; D1-0007361; MDR00220173

966 Day 8/page 35/line 25 – page 38/line 20 **[A5/8/9]**.

967 MDR00156012; MDR00156011; MDR00156043; MDR00156042

968 MDR00156052

969 MDR00220172 page 1; MDR00173805 page 18; MDR00220286 page 358; MDR00203955 page 22; MDR00217305 page 23; Day 8/page 39/line 7 – page 42/line 14

970 EB0123432; Day 8/page 45/line 24 – page 47/line 4 **[A5/8/12]**.

971 MDR00156052

972 MDR00156072

973 Day 8/page 42/line 15 – page 45/line 10 **[A5/8/11]**.

Source: Mouseinthecourt.co.uk

of a company by LPC from D1, D2, D3 and D4, as D1 told GCEN). These payments were retrospectively recharacterised as having been made for the sale by D2 and D3 of the so-called "technology companies" (i.e. their interests in Asset Mapping Limited, LAI and Reserec) to a newly incorporated purchaser, LPE.[974]

L2.13 On 20.06.18, D8 circulated a draft share purchase agreement under which the sellers of shares in ITI and LAI are D2 and D3.[975] Initially, the purchaser was to be London Power & Technology Limited (company number 1124900), a newly incorporated company, of which D2 was the sole shareholder, and of which D2 and D8 were the directors.[976] The shares to be sold were 90% of the shares in ITI, and 80% of those in LAI. The purchase price was £20 million, and the draft agreement stated that £12.9 million of this sum had already been received.[977]

L2.14 On 03.07.18, which was the same day on which the sums paid to D1, D2, D3 and D4 ostensibly under LOG's facility with LCF reached £20 million, D8 circulated a further draft.[978] The purchaser had been changed to LPE Enterprises and the amount stated as having been already received has been amended to £18.7 million. In his covering email, D8 wrote that this agreement was "*signed by Elten last week*." However, there is nothing in D3's disclosure to suggest that he had signed it "*last week*" and the version attached to D8's email was still an unsigned Word version. In any event, "*last week*" would have been the week commencing 25.06.18.[979]

L2.15 Also on 03.07.18, Nicola Wiseman sent a signed copy of the LPE SPA to D1.[980] The final version of the agreement reverted to stating that the figure of £12.9 million had already been advanced and had been backdated to 21.06.18. The choice of this date, and the reversion to the figure of £12.9 million, was for the purpose of making the LPE SPA appear as though the payments to D1, D2, D3, D4 through GCEN had not yet taken

974 Day 8/page 45/line 19 – page 46/line 22 **[A5/8/12]**.

975 D2D10-00046940; D2D10-00046941

976 **[R1/12/1]**; **[R1/13/1]**; **[R1/14/1]**.

977 Day 8/page 47/line 5 – page 49/line 14 **[A5/8/12]**; Day 9/page 3/line 12 – page 4/line 7 **[A5/9/1]**.

978 EB0093298; EB0093299

979 Day 8/page 49/line 14 – page 50/line 18 **[A5/8/13]**.

980 MDR00157768; MDR00157770

Source: Mouseinthecourt.co.uk

place: the first of these payments was made on 22.06.18. D1 sent this document to Luke Tofts on 17.07.18.[981]

L2.16 Luke Tofts had a number of further questions, including requests for further detail about the companies involved and whether an independent valuation had been carried out.[982] D1 replied that "*the companies are all of a technological nature based around artificial intelligence*" but refused to provide further detail on the basis that he was under an NDA and was in possession of "*market sensitive insider information*" which he could not share.[983] D1 was trying to bring an end to questioning by referring to the presence of an NDA and the risk of providing insider information. No NDA has been located in disclosure, and it is unclear what information D1 held that would constitute market sensitive insider information. Luke Tofts asked to be provided with whatever information could be shared but D1 did not provide any further information.[984]

Sale by D2 and D3 to themselves

L2.17 The terms of the LPE SPA involved a sale by D2 and D3 to themselves. The purchaser under the LPE SPA, LPE Enterprises, was owned by TW Private LLP, whose members were D2 and D3.[985]

L2.18 There is a document which purports to show a sale of the shares by LPE Enterprises Limited to London Power & Technology (2018) Limited ("**LPT**") for £1, which bears the date 27.07.18 on its face.[986] This does not appear to be a genuine document: it is signed by D2 for both parties, and both predates and is inconsistent with the documents referred to above. In any event, given that LPT was beneficially owned by London

981 MDR00160089; MDR00160092; Day 8/page 49/line 14; page 53/line 12 **[A5/8/13]**.

982 MDR00161123

983 MDR00161195

984 MDR00161432; Day 8/page 118/line 10 – page 121 /line 18 **[A5/8/30]**.

985 **[A1/5/87]**; **[A1/5/102]**; EB0105453; EB0109758; EB0112890; EB0106831; D2D10-00003545; MDR00210617; MDR00164464; MDR00186553; Day 8/page 53/line 13 – page 55/line 11 **[A5/8/14]**.

986 D2D10-00055044

Source: Mouseinthecourt.co.uk

Group LLP, whose members were D2 and D3, this does not alter the fact that the LPE SPA effected no change in the beneficial ownership of ITI and LAI.[987]

Unauthorised use of LOG's funds

L2.19 The "price" of the shares in the "technology companies" purportedly sold under the LPE SPA was funded by monies drawn by LOG under its facility with LCF. The use of funds in this manner was never authorised by the board of LOG.

L2.20 There is a board minute dated 14.06.18, which appears to show approval by LOG's board of bringing the technology companies into the LPC group, on which some reliance was placed by D2.[988] However, (i) this document is not the original version of the board minute (which was dated 16.06.18)[989] but has been edited on 27.06.18 to refer to a price of £20 million[990]; (ii) what appears to have been decided at the meeting was that the prospect of acquiring the AI business in the future would be investigated.[991] Further, the cost to LOG of providing these funds was £27 million rather than £20 million, in view of the grossing-up of funds borrowed by LOG from LCF. [992] The use of funds by LOG in this way was therefore not approved.

L2.21 After LCF's collapse, David Elliott (the company secretary of LOG) prepared a note in which he recorded that neither the accounts team nor LOG's in-house solicitor, Jo Marshall were aware at the time of the payments purportedly made pursuant to the LPE SPA.[993]

L2.22 In January 2019, D8 prepared a loan agreement between LOG and LPE Enterprises and a call option agreement which entitled LOG to buy the shares in LPE Enterprises for £1.

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987 MDR00197584; Day 8/page 55/line 12 – page 58/line 8 **[A5/8/14]**.

988 D2D10-00047036

989 EB0092498

990 D2D10-00047035; D2D10-00047036

991 D2D10-00047494; MDR00162086; MDR00172668

992 Day 8/page 58/line 9 – page 63/line 8 **[A5/8/15]**.

993 MDR00220555

Source: Mouseinthecourt.co.uk

These documents were signed by D2 and D3 and backdated to 21.06.18.[994] This was done to mislead the board into believing that these documents had been in place at the relevant time and that the transaction was for the benefit of LOG.

L2.23 A meeting of LOG's board was scheduled for 12.02.19 to discuss the "*existing undocumented and unapproved loans by LOG*".[995] At that meeting, David Elliott reiterated his view that LOG's board had not authorised the use of LOG's monies in this way:[996] "*The board could not have ratified the loans as they did not know the money had been borrowed*".

L2.24 During the meeting, D2 called D8 on a speaker phone. D8 told the meeting that there was a loan facility agreement dated June 2018 and a call option agreement entitling LOG to buy the shares in LPE for £1. This prompted David Elliott to say that he was resigning as company secretary: "*I need a solid base from which to operate and I feel like I am on shifting sand.* ***I do not agree that those documents were produced by RS back in June and I believe that RS produced the Loan Agreements recently***" (emphasis added). D2 then said, "***I think that's unfair about RS, why would he back date them?***" (emphasis added). However, D2 knew that David Elliott's comment about D8 was true and not unfair.

No justification for the price

L2.25 Under the LPE SPA, the purchase price for the sale of shares in the "technology companies" was £20 million. This comprised 90% of the shares in ITI (which owned 50% of Asset Mapping Limited and 14% of Reserec) and 80% of the shares in LAI. The price under the LPE SPA for these shares was fanciful.

994 MDR00214273; MDR00214272; D8-0049073; D8-0049074

995 MDR00220834

996 MDR00212113

Source: Mouseinthecourt.co.uk

Asset Mapping Limited

L2.26 Asset Mapping Limited was a small and loss-making company.[997] Asset Mapping's accounts for the year ended 30.06.15 disclosed a loss of £45,215 for the financial year and net assets of £12,605 at the year end.[998] Asset Mapping's accounts for the year ended 30.06.16 disclosed a loss of £98,880 for the financial year and a deficiency of £86,187 at the year end.[999] As explained below, Asset Mapping's deficiency only worsened with time.[1000]

L2.27 In a valuation dated 03.02.17, John Stuckey assessed the value of Asset Mapping to be £450,000 "*based on the hope of future sales and the hard work put into the source code to make it a viable product*."[1001]

L2.28 D2, D3, D4, D8 and Mark Ingham were involved in acquiring the shares in Asset Mapping through Intelligent Technology Investments Limited for a total price of £450,000, less loans from ITI (ultimately funded by LCF) to keep Asset Mapping trading.[1002]

L2.29 The shares in ITI were held by Mark Ingham on trust for D4 (40%), D2 (40%), D3 (10%) and himself (10%).[1003] ITI acquired the shares in Asset Mapping by a share purchase agreement dated 23.06.17 but initially only acquired 38% of those shares beneficially, with the remainder held on trust for Asset Mapping's founder, Bill Clee.[1004] This was

997 MDR00186553

998 MDR00006373; MDR00006461

999 MDR00006374

1000 Day 8/page 65/line 14 – page 66/line 6 **[A5/8/17]**.

1001 MDR00006557; Day 8/page 67/line 8 – page 69/line 2 **[A5/8/17]**.

1002 D2D10-00025335; D2D10-00025337; EB0038782; EB0038784

1003 MDR00006377; D2D10-00022449; D2D10-00022467; MDR00006653; EB0053713; EB0053714; MDR00006537; MDR00095145; EB0065153; EB0085422

1004 MDR00006542; MDR00006533; MDR00006534; MDR00006535; MDR00006536; MDR00006538; MDR00006539; MDR00006540; MDR00006541; MDR00006570; MDR00006575; MDR00006744; MDR00006656; MDR00006393; MDR00006394; MDR00006469; Day 8/page 69/line 3 – page 78/line 19 **[A5/8/18]**.

Source: Mouseinthecourt.co.uk

later renegotiated, in view of Asset Mapping's continuing financial difficulties, so that ITI became beneficial owner of 50% of the shares in Asset Mapping.[1005]

L2.30 Asset Mapping continued to lose money and was only able to continue trading as the result of loans to it from ITI (ultimately funded by LCF).[1006] As at 31.01.19, Asset Mapping's deficiency was over £2.1 million.[1007] When its shares were valued by Mazars as at 28.02.19, Mazars concluded that the shares in Asset Mapping had zero equity value.[1008] The assets of Asset Mapping (as opposed to the shares in the company) were considered by a proposed administrator to have a value of around £350,000[1009] and they were realised for £175,649.61 after it went into liquidation.[1010]

L2.31 A valuation of Asset Mapping dated 30.05.18 was produced by Clive Adkins of Kilby Fox. The valuation was prepared on the instructions of the shareholders of ITI.[1011] It projected a value of Asset Mapping of £91.28 million for the year ended 31.03.19, rising to over £2.15 billion for the year ended 31.03.23. The valuation is absurd and no weight at all can be placed upon it: (i) the valuation was instructed to be prepared on the basis of a business plan, the numbers and forecasts in which had been significantly increased at the request of D2, D3 and D4; (ii) the valuer was instructed to take the already unrealistic business plan and predict turnover by adopting an unjustifiably high multiplier of between 16 and 70; and (iii) the valuer explained that he was not auditing the figures or expressing an opinion with regard to their accuracy or achievability, and explained that he was unable to provide a current valuation as he had no details for the

[1005] EB0093140; EB0093146; EB0093150; MDR00006393; MDR00006394; MDR00006655; EB0095035

[1006] EB0093593; EB0093589; EB0046571; EB0046577; EB0046611; EB0046642; MDR00086012; MDR00007312 pages 7-9; MDR00005564; MDR00005563; MDR00006446; MDR00006469; MDR00006470; MDR00150675; MDR00006487; MDR00005564; MDR00005563; MDR00006446; MDR00006469; MDR00006470; MDR00150675; MDR00006486; MDR00007318 page 7; MDR00094508 page 29; MDR00104843 page 12; MDR00005564; MDR00005563; MDR00006446; MDR00006469; MDR00006470; MDR00150675; MDR00156751; MDR00156756; MDR00156757; MDR00007013 page 13; MDR00006472

[1007] MDR00005706; MDR00215922

[1008] MDR00213396; MDR00215921

[1009] MDR00005799

[1010] MDR00226936; Day 8/page 78/line 20 – page 95/line 18 **[A5/8/20]**.

[1011] MDR00006659; MDR00006382; D2D10-00066357

Source: Mouseinthecourt.co.uk

revenues for the year ended 31.03.18. The reality is that the shares in Asset Mapping had no value and could not justify a purchase price of £20 million.[1012]

LAI and Reserec

L2.32 LAI was incorporated on 30.06.17.[1013] The shares in LAI were held by GST on trust for D2 and D3.[1014] At this point, LAI did not trade and had no assets.[1015] A proposal was made for LAI to invest in the development by Jagadeesh "Jaggu" Gorla, a computer programmer, of artificial intelligence software for commodities trading. For this purpose, LAI entered into a consultancy agreement with Jaggu Gorla and his company, Reserec, under which Reserec would be paid a fee of £11,000 per month for developing the software for LAI.[1016] However, this arrangement could not justify payments of £20 million to D1, D2, D3 and D4 between 02.02.18 and 03.07.18. At the start of this period, LAI had merely paid some of the monthly invoices to Reserec. At the end of the period, all that had been produced was a study on the possible applications of artificial intelligence, which, when trialled, resulted in a loss.[1017] There was no professional valuation until after the start of LOG's administration in 2019, when the valuers (Hilco) valued LAI at between £5,000 and £20,000 as at 24.04.19.[1018]

L2.33 A second aspect of the arrangement with Jaggu Gorla was that ITI entered into an investment agreement with Reserec and Jaggu Gorla dated 21.03.18.[1019] ITI agreed to acquire up to 20% of the shares in Reserec (which would include the allotment of some new shares) for £1.5 million, to be paid in a number of tranches over 12 months. The acquisition would be staged; ITI would acquire a percentage of the shares upon paying each instalment. As at 02.02.18, ITI did not own any shares in Reserec. As at 03.07.18,

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[1012] Day 8/page 95/line 19 – page 102/line 24 **[A5/8/24]**.

[1013] **[A1/5/69]**; MDR00002038

[1014] EB0054241; EB0054247; EB0054249

[1015] MDR00095512

[1016] EB0061434

[1017] MDR00128829; MDR00128830; MDR00126339; MDR00126340; MDR00000371; MDR00000405; MDR00000371; MDR00000868; MDR00000868

[1018] MDR_POST_00000378; Day 9/page 103/line 17 – page 113/line 19 **[A/9/26]**.

[1019] EB0085959; D2D10-00043495; D2D10-00043496; D2D10-00043497; D2D10-00043498; D2D10-00043497; D2D10-00043498; D2D10-00043499; D2D10-00043500

Source: Mouseinthecourt.co.uk

ITI owned 10.7% of Reserec Limited, for which it had paid £721,000 (money borrowed from LOG and ultimately originating with LCF).[1020] This could not justify payments to D1, D2, D3 and D4 of £20 million either.[1021]

L3 D1's participation in and knowledge of the LPE SPA

L3.1 D1 authorised payments from LCF to LOG before any facility agreement had been agreed.[1022]

L3.2 D1 was involved in backdating LOG's facility agreement with LCF, which he signed, in order to give the false impression that there had never been any lending to LOG without a facility agreement in place.[1023]

L3.3 D1 approved payments to LOG that breached the facility limit under its agreement.[1024]

L3.4 In or around March 2018, D1 knew that LOG was being audited by BDO.[1025] On 09.03.18, D1 signed a letter extending LOG's facility limit to £50 million. D1 knew that the letter was backdated to 01.12.17 to give the false impression to LOG's auditors that LOG had never breached its facility limit.[1026]

[1020] MDR00150675; MDR00005563; MDR00005564; MDR00005563; MDR00005564; MDR00150308 page 3; MDR00150675; MDR00220967 page 20; MDR00154428; MDR00154430; MDR00154431; MDR00154438; MDR00007009 page 13; MDR00159338; MDR00159340; MDR00159341; MDR00006991 page 9; MDR00164767; MDR00164768; MDR00164775; MDR00164778; MDR00007091 page 3

[1021] Day 8/page 113/line 20 – page 118/line 9 **[A5/8/29]**.

[1022] MDR00044016; MDR00044017; MDR00044018; MDR00044019; MDR00045648; MDR00045654; Day 25/page 164/line 4 – page 167/line 9 **[A5/25/41]**.

[1023] MDR00035715; MDR00035747; MDR00037784; MDR00037785; MDR00037937; MDR00037955; MDR00037956; D8-0004174; D8-0004174; D8-0004175; D2D10-00016049; D8-0004258; EB0020236; EB0020237; MDR00040609; MDR00040610; MDR00040611; MDR00041147; MDR00041570; MDR00041571; MDR00041572; MDR00041573; MDR00041931; MDR00041933; MDR00041935; MDR00041942; MDR00041944; MDR00041945; MDR00043715; MDR00043717; MDR00043718; MDR00043720; MDR00044016; MDR00044017; MDR00044018; MDR00044019; MDR00006103; MDR00046296; MDR00100801

[1024] MDR00106611; Day 25/page 170/line 13 – page 171/line 13 **[A5/25/43]**.

[1025] Day 20/page 48/line 12 – page 49/line 5**[A5/20/12]**.

[1026] MDR00134357; MDR00134358; MDR00134414; MDR00134415; MDR00134416; MDR00134419; MDR00134435; MDR00134436; MDR00169410; MDR00169411

Source: Mouseinthecourt.co.uk

L3.5 When presented with documents showing that he was involved in backdating this document, D1 suggested that it reflected an earlier oral agreement but his evidence was initially equivocal: "*the conversation could have happened and may very well have happened, and I think would have happened as the facility increased. So the conversations around this, I believe, would pre-date this.*"[1027] D1 was unable to give any plausible explanation as to why the specific date of 01.12.17 had been chosen or to explain why Mr Peacock was informing BDO on 07.03.18 that the facility extension letter already existed.[1028]

L3.6 As the questioning progressed, D1 began to embellish his evidence asserting that the letter "*reflected the conversations we regularly had with LOG. We monitored their facility agreement, we were in discussions with them quite regularly and meetings. So it would have been agreed and this date on the letter reflects this agreement*".[1029] D1 said that "*we spoke with LOG and met them on a regular basis, both myself and the other directors, and I believe the increase in facility would have probably been discussed on a number of occasions through November. An agreement was reached and the letter, again, reflects the day that agreement was reached.*"[1030] A problem for D1 was that he had stated in his witness statement that the supposed oral agreement to increase the facility agreement had been made in August 2017.[1031] To explain this, he was forced to change his answer about when the discussions, which he had just decided had taken place in November 2017, to stating that they had in fact occurred in "*summer into autumn into winter time*".[1032]

L3.7 That D1 recognised that his evidence was unsatisfactory on this point could be seen from the fact that, at times, he fell back on his prepared line that LCF had "*a continuing security from LOG, we were more than comfortable with the value of the assets that it held*".[1033] This was a reason that D1 fell back on several times whilst giving his oral

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1027 Day 20/page 51/line 1 – page 52/line 4 **[A5/20/13]**.

1028 MDR00133748

1029 Day 20/page 55/line 20 – page 56/line 3 **[A5/20/14]**.

1030 Day 20/page 60/lines 15-25 **[A5/20/15]**.

1031 Thomson ¶118 **[C2/1/42]**.

1032 Day 20/page 61/lines 11-61 **[A5/20/16]**.

1033 Day 20/page 62/lines 1-3 **[A5/20/16]**.

Source: Mouseinthecourt.co.uk

evidence but the mere fact that LOG had granted security is irrelevant to the question that D1 should have had uppermost in his mind, which was whether LOG would enable it to generate sufficient income to be able to make payments of interest and repayments of capital to LCF.

L3.8 D1's evidence was unsupported by any corroborating material, was highly imprecise, and should be rejected. It was an obvious and implausible attempt to refuse to accept an allegation to which in reality he had no answer. D1 refused to accept even basic propositions where they harmed his defence. He would not accept that a letter created in March 2018, but dated December 2017, was a backdated document, and refused to accept that it would matter to BDO whether an agreement to increase the facility limit had been documented.[1034]

L3.9 On the contrary, the documents show that Alex Lee sent an undated draft letter to D1 on 09.03.18, that a call took place between D1 and Alex Lee that day, and that the date of 01.12.17 was inserted to the document on the instruction of D1.[1035] It is more likely than not that the date of 01.12.17 was chosen as a date before LOG exceeded its facility limit, in order to give the impression to BDO that LOG had not exceeded its facility limit.

L3.10 D1 kept D2, D3 and D4 informed of the amounts available to draw under the LOG facility which could then be paid onto D1, D2, D3 and D4.[1036] He knew that when there were free funds available, drawdown requests would be made by LOG.[1037] In his oral evidence, D1 accepted that he did this.[1038]

L3.11 D1 discussed the sums available with D4 and kept him informed of the sums in LCF's accounts.[1039]

[1034] Day 20/page 56/line 20 – page 59/line 16 **[A5/20/14]**.

[1035] MDR00134332; MDR00134334; MDR00134357; Day 8/page 33/line 6 – page 35/line 24 **[A5/8/9]**.

[1036] MDR00126617; MDR00126666; MDR00129939; MDR00129930; MDR00129931; MDR00135097; MDR00135248; MDR00134249; D2D10-00043138; D2D10-00043139; EB0083707; EB0083707

[1037] MDR00135097; MDR00135248; MDR00134249; D2D10-00043138; D2D10-00043139; MDR00007106 page 9

[1038] Day 26/page 10/line 15 – page 12/line 20 **[A5/26/3]**.

[1039] EB0083707

Source: Mouseinthecourt.co.uk

L3.12 D1 knew that when he approved a drawdown request from LOG he would receive "*pref share adv*" payments to his personal bank account. D1 also knew at the time that the remaining part of each drawdown would be used to fund "*pref share adv*" payments to D2, D3 and D4, being payments for their own benefit. Indeed, the "*pref share adv*" payments made to D2 were recorded in a spreadsheet created by D1's assistant and, it is to be inferred, at his direction;[1040] although D1 denied this.[1041]

L3.13 D1 denied that there was necessarily a link[1042] but this is implausible given the circumstances in which the payments were made. Even on his own evidence, D1 appeared to accept that he was aware that payments were being made to these individuals for their benefit but he was unaware of the "*volume*" or "*extent*" of them.[1043] Given the volume of payments and his receipt of a fixed percentage of them, this evidence was not credible. D1's explanation was destroyed by the fact that payments were subsequently routed via GCEN when D1 instructed GCEN to make the payments in the fixed percentages.

L3.14 D1 set up a payment facility for LOG with GCEN[1044]; although he told GCEN that it was for Prime RDL, which he knew was incorrect; D1 could not explain this, saying only, "*You have me at a loss*".[1045] D1 gave GCEN a false explanation for the payments, namely that the payments were being made on behalf of LPC which was purchasing a company owned by D1, D2, D3 and D4.[1046] On 22.06.18, D1 promised that he would send GCEN supporting documents when he was "*back in the office*"[1047]; however, he could not have done so because at that time no such supporting documents existed.

1040 MDR00147028

1041 Day 26/page 8/line 13 – page 9/line 9 **[A5/26/2]**.

1042 Day 26/page 1/line 13 – page 2/line 15 **[A5/26/1]**.

1043 Day 26/page 9/line 10 – page 10/line 14 **[A5/26/3]**.

1044 MDR00147837

1045 Day 26/page 13/line 24 – page 15/line 7 **[A5/26/4]**.

1046 MDR00156052; Day 26/page 31/line 16 – page 33/line 14 **[A5/26/8]**.

1047 MDR00156072

Source: Mouseinthecourt.co.uk

L3.15 D1 subsequently provided GCEN with the LPE SPA, which contained a different explanation for the payments.[1048] The LPE SPA had been signed by D2 and D3 on or around 03.07.18 and sent to D1 on that day but backdated to 21.06.18.[1049] The LPE SPA also understated the amounts already paid out to D1, D2, D3 and D4 that it purportedly sought to justify, putting it at £12.9 million; whereas, in fact by 03.07.18, £20 million had been paid to D1, D2, D3 and D4 ostensibly under LOG's facility.[1050] D1 knew that the LPE SPA had been backdated and understated the amounts paid out in order to mislead GCEN into believing that it had been put in place before the first payments made via GCEN. D1 then gave Mr Tofts false information, claiming that he had seen independent valuations of the "technology companies" when there were no such valuations which supported the price given. He also fabricated a story about an NDA and market-sensitive inside information in order to fob off Luke Tofts. Certainly, D1 was unable to give any plausible explanation in his oral evidence as to why he could not have provided the information sought by Mr Tofts.[1051] It is to be inferred that he did not provide this information because he knew it would not justify the payments he had directed GCEN to make to himself and D2, D3 and D4.

L3.16 D1 knew that payments of LCF's monies were being paid from GCEN to be shared by D1, D2, D3 and D4 personally.[1052] D1 knew that he was being paid 7.5% of the LCF monies he instructed GCEN to pay to D1, D2, D3 and D4. In cross-examination, D1 could not offer any explanation of why he might be paid 7.5% rather than the figure of 5% contained in the "buyout" agreement on which he relies.[1053] This is further evidence that the "buyout" agreement is a fabrication. (This is addressed further below.)

L3.17 D1 approved payments from LCF to GCEN to be divided between D1, D2, D3 and D4 according to percentages provided to D1 from D3.[1054] D1 was "*fully aware*" of the

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[1048] MDR00160089; MDR00160092

[1049] EB0093298; EB0093299; MDR00157768; MDR00157770

[1050] EB0123432

[1051] Day 26/page 34/line 11 – page 44/line 3 **[A5/26/9]**; Day 26/page 46/line 15 – page 48/line 10 **[A5/26/12]**.

[1052] D1-0007316; Day 26/page 18/line 19 – page 19/line 9 **[A5/26/5]**.

[1053] Day 26/page 53/line 17 – page 54/line 12 **[A5/26/14]**.

[1054] MDR00220173; MDR00156052; Day 26/page 28/line 20 – page 31/line 15**[A5/26/7]**.

Source: Mouseinthecourt.co.uk

amounts that D1, D2, D3 and D4 were receiving.[1055] D1 was "*absolutely aware*" that the payments from GCEN were being made to D1, D2, D3 and D4 in the agreed ratios.[1056]

L3.18 D1 knew that whenever a drawdown request for funds from LCF was made by LOG for funds to be distributed via GCEN, he should pay those funds to D1, D2, D3 and D4 in the agreed ratios. Indeed, on at least one occasion, D1 *jumped the gun* and on receipt of a drawdown request directed GCEN to make payments in the usual ratios before he had heard from D3.[1057] D1 accepted in oral evidence that he had done this but he sought to defend his conduct by referring to conversations he "*would have had*": this evidence is unreliable and self-serving, and it is apparent from the documents that D1 knew that a drawdown request meant that the monies should be divided between D1, D2, D3 and D4 personally in the agreed ratios.

L4 D4's participation in and knowledge of the LPE SPA

L4.1 D4 authorised and/or directed the payments of monies by LCF to D1, D2, D3 and D4 via LOG. For example, on 16.03.18, D4 sent a text message to D3 stating, "*Morning, should be about £1m available today. From Andy*".[1058] This was followed by a drawdown request from LOG to LCF in the sum of £1.1 million, signed by D3.[1059] D4 then sent a further text message to D3 stating, "*Just had the actual available figs £1.87m*".[1060] LOG then sent a revised drawdown request "*as requested*" in the sum of £1.8 million, signed by D3.[1061] LCF then paid £1,800,018.83 to LOG.[1062] LOG used the money to pay £1.3 million to London Group LLP with the reference PREF SHARE ADV.[1063] London Group LLP then paid £568,750 to D4 and £65,000 to D1, each with

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1055 MDR00157732; Day 26/page 33/line 15 – page 34/line 10 **[A5/26/9]**.

1056 MDR00160997; MDR00161073; Day 26/page 49/line 4 – page 51/line 3 **[A5/26/13]**.

1057 MDR00166028; MDR00165978; MDR00166021; Day 26/page 54/line 13 – page 57/line 8 **[A5/26/14]**.

1058 EB0083707

1059 MDR00135953; MDR00135954

1060 EB0083707

1061 MDR00135966; MDR00135968

1062 MDR00007110 page 15

1063 MDR00220330 page 21

Source: Mouseinthecourt.co.uk

the reference PREF SHARE ADV.[1064] It is to be inferred from his relationship with D3 that D4 was aware of the fact that the monies he and the others received were sums borrowed by LOG from LCF.

L4.2 D4 participated in the acquisition of Asset Mapping.[1065] D4 knew that acquiring 38% of Asset Mapping for £1 million would involve a substantial overpayment. D4 was updated on 02.03.17 about revised heads of terms for the acquisition of 100% of Asset Mapping, for a revised price of £450,000, less the loans of £198,000 that had previously been advanced by ITI.[1066] D4 was aware on 17.03.17 that the net purchase price under the heads of terms was to be £177,000.[1067] D4 was kept updated about completion of the transaction.[1068] The SPA for the acquisition of Asset Mapping was signed at a meeting between D4 and Bill Clee on or around 19.05.17.[1069] D4 therefore knew the true value of Asset Mapping.

L4.3 D4 participated in procuring an inflated valuation of Asset Mapping. D4 was involved in preparing a "business plan", and in requesting that the numbers be increased, as part of procuring an inflated valuation of Asset Mapping by Kilby Fox which contained implausibly high figures.[1070]

L4.4 By 03.07.18, D4 had received £8,500,000 from LCF via LOG.[1071] The payments made via London Group LLP all had the reference PREF SHARE ADV. It is to be inferred that D4 knew that there was no justification for his receipt of these monies and that the receipts had nothing to do with preference shares.

[1064] MDR00220330 pages 21-22; MDR00008467; MDR00196021; MDR00220286 page 344
D2D10-00025335; D8-0014918; EB0048489; MDR00006542; Day 8/page 69/line 3 – Day 8/page 72/line 25 **[A5/8/18]**.

[1066] D2D10-00025335; D2D10-00025337; EB0038784

[1067] EB0040732

[1068] D8-0013402

[1069] D8-0014918; MDR00006585; D8-0016402; D8-0016421

[1070] D2D10-00066357; MDR00006659; Day 8/page 95/line 19 - Day 8/page 97/line 11**[A5/8/24]**.

[1071] EB0123432

Source: Mouseinthecourt.co.uk

L5 D8's participation in and knowledge of the LPE SPA

L5.1 D8 was involved in the preparation of LOG's first facility with LCF in April 2016.[1072] Although an execution version was sent to D8 by Alex Lee on 28.04.16[1073], the agreement had still not been signed by 20.05.16.[1074] On 09.06.16, D8 left printed copies of the facility agreement on D2's desk for signing.[1075] The facility agreement was finally signed on 20.06.16 and backdated to 15.03.16.[1076] It is to be inferred from his involvement in the process that either D8 was the person who backdated the agreement or, at the least, he knew that it had been backdated.

L5.2 On 20.06.18, D8 sent an email attaching a draft of the LPE SPA to D2 and D3. He was aware that as at this date that £12.9 million had already been paid to D1, D2, D3 and D4 purportedly pursuant to the transaction contained in the LPE SPA.[1077] The purchasing entity in this draft was London Power & Technology Limited.

L5.3 On 03.07.18, D8 circulated a further draft of the LPE SPA. The purchasing entity had changed to LPE Enterprises and the amount already drawn had increased to £18,740,750.[1078] D8 knew that the document was executed on or around 03.07.18 but the final version was backdated to 21.06.18 and the amount stated to be drawn was changed back to £12.9 million.[1079]

L5.4 D8 knew that the beneficial owners of LPE Enterprises, via TW Private LLP, were D2 and D3 and that the transaction contained in the LPE SPA involved no change in the beneficial ownership of the shares in ITI and LAI.[1080] Indeed, on 08.08.18, D8 sent an email to Graham Reid of Lewis Silkin in which he wrote "... *Intelligent Technology*

[1072] MDR00035715; MDR00035747; MDR00037955; MDR00037956

[1073] D8-0004174; D8-0004174; D8-0004175; D2D10-00016049

[1074] MDR00041570; MDR00041571; MDR00041572; MDR00041573

[1075] MDR00044016; MDR00044017; MDR00044018; MDR00044019

[1076] MDR00100801

[1077] D2D10-00046940; D2D10-00046941

[1078] EB0093297; EB0093299; MDR00147847; MDR00147909; MDR00154580; MDR00154620

[1079] MDR00157768; MDR00157770

[1080] MDR00186553; EB00105453; EB0109758; MDR00210617

Source: Mouseinthecourt.co.uk

Investments which is now owned as to 90% by LPE Enterprises which in turn is owned by Simon and Elten as members TW Private LLP [sic]. Intelligent Technology Investments is the shareholder of Asset Mapping."[1081]

L5.5 D8 was involved in the acquisition of Asset Mapping. In November 2016, he assisted in preparing heads of terms for a convertible loan of £1 million to Asset Mapping which could be converted into a shareholding of 38%.[1082] ITI was incorporated as the vehicle for this investment. D8 knew that it was intended that the shares in ITI would be held by Mark Ingham on trust for D2, D3 and D4 or their vehicle London Group LLP.[1083] D8 also knew that a trust had eventually been executed.[1084] It is to be inferred from his involvement in producing new heads of terms following the valuation by John Stuckey that D8 was aware of that valuation and that it rendered the prospect of paying £1 million for 38% of Asset Mapping untenable.[1085] D8 produced the draft SPA for the acquisition of Asset Mapping which provided for a new lower sale price of £450,000, less Asset Mapping's debt to ITI.[1086] D8 knew that the ultimate purchase price was £177,000.[1087]

L5.6 D8 was involved in the increase of ITI's share in Asset Mapping from 38% to 50% which occurred as a result of ITI's continued financial support of Asset Mapping.[1088] He therefore knew that the value of Asset Mapping could not possibly justify a purchase price of £20 million or anything close to it in mid-2018.

L5.7 D8 knew that LAI was dormant in July 2017.[1089] D8 was involved in the discussions with Jaggu concerning his development of an AI commodities trading system and the

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[1081] MDR00164464

[1082] D2D10-00022092; D2D10-00022093; D2D10-00022112; D2D10-00022113; D2D10-00022421; D2D10-00022423

[1083] D2D10-00022449; D2D10-00022467

[1084] EB0085422

[1085] D2D10-00025335; D2D10-00025337; EB0038782; EB0038784; EB0038788

[1086] D2D10-00026362; D2D10-00026368; EB0040270; EB0040271

[1087] EB0048489; D2D10-00028352

[1088] EB0085422; EB0089479; EB0089480; EB0091806; EB0095035

[1089] MDR00095512

Source: Mouseinthecourt.co.uk

investment agreement and he drafted the relevant documents.[1090] D8 therefore knew the value of these businesses and that they could not possibly justify a purchase price of £20 million or anything close to it in mid-2018.

L5.8 D8 knew that the board of LOG had not authorised the expenditure of £20 million on the "technology companies" which is why he prepared backdated documents to try and justify the transaction. The details of his involvement in the preparation of these documents is set out at Sections O5 and O6 below.

[1090] EB0061434; D2D10-00035616; D2D10-00035617; EB0061434; EB0061444; D2D10-00036556; D2D10-00036557; EB0061642

Source: Mouseinthecourt.co.uk

M. THE LPT SPA

M1 Introduction

M1.1 The LPT SPA was the fifth of the major transactions designed to conceal the misappropriation of funds from LCF.

M1.2 Under the LPT SPA, LPT was to purchase the preference shares in LPC from D2 and D3. There were 25 million such preference shares, with a nominal value of £0.01 each. They were registered in the name of London Group LLP. The price payable was £32,225,096; although there was provision in the LPT SPA for this sum to be amended to 30% of the net asset value of LPC as at 31.05.18 as provided for in LPC's audited accounts.

M1.3 The LPT SPA was backdated, in order to provide an ostensible justification for the payment of £4.5 million to D1, D2, D3 and D4 which had already been made from funds originating with LCF. It was an obviously uncommercial transaction, by which worthless preference shares in LPC were vested in D2 and D3, and then sold to a new company owned by London Group LLP (which was in turn owned by D2, D4, D3 and D1) for a vastly inflated price. The price under the LPT SPA could not be justified on its own terms, because no valuation had been conducted by LPC's auditors, but in any event was absurd and dependent on artificially inflating the apparent value of LPC.

M1.4 The Court is asked to find the following facts in relation to the LPT SPA and the facility in favour of LOG which was used to make payments under the LPT SPA:

(1) LOG breached its facility limit to continue to fund payments to D1, D2, D3 and D4.

(2) A facility agreement dated 04.12.17 had not actually been signed until late 2018 and was dishonestly backdated to mislead LOG's auditors into believing that LOG had never breached its facility limit with LCF.

(3) By July 2017, the value of LOG's borrowing exceeded the value of its assets.

Source: Mouseinthecourt.co.uk

(4) The true value of the preference shares that were the subject of the LPT SPA was negligible.

(5) The LPT SPA effected no change in the beneficial ownership of the preference shares, because they moved from being in the ownership of London Group LLP to being in the ownership of a new company owned beneficially by London Group LLP. Since London Group LLP itself was owned by D1, D2, D3 and D4, there was no change in the ultimate beneficial ownership of the preference shares.

(6) £16.7 million was paid to D1, D2, D3 and D4 by LCF and drawn against LOG's facility. D1 and D4 authorised and/or directed these payments to be made.

(7) D1 and D4 knew each of the matters set out above. D8 knew that the LPT SPA was not a proper commercial arrangement and was simply a fig-leaf to allow further extraction of funds from LCF by D1, D2, D3 and D4.

M2 Summary of the facts

Payments from LCF via GCEN to D1, D2, D3 and D4

M2.1 D1 directed further substantial payments from LCF via GCEN to D1, D2, D3 and D4, totalling £4.5 million. The payments were made on 23.07.18. The payments were divided between them according to the same ratios as the previous payments from GCEN to those Defendants (42.5%, 42.5%, 7.5% and 7.5%).[1091]

Preparation of the LPT SPA

M2.2 The mechanism decided upon to justify these further payments was the sale of the LPC preference shares. This idea had previously been considered to justify the earlier payments before it was superseded by the LPE SPA. It was now pressed into service.

[1091] MDR00160997; MDR00006994 page 5; MDR00161073; MDR00161081; MDR00161188; MDR00161190; MDR00161191; MDR00161196; MDR00173805 page 23; MDR00220286 page 362; MDR00220172 pp 2-3; Day 8/page 123/line 15 – page 125/line 11 **[A5/8/31]**.

Source: Mouseinthecourt.co.uk

M2.3 The preference shares were held by London Group LLP but it was intended that they would be sold by D2 and D3 personally. The first step was therefore for the preference shares to be distributed in specie by London Group LLP to D2 and D3.[1092] This was approved by D2 at a meeting of London Group LLP on 19.07.18.[1093] The next step was for a new company to be incorporated, which would purchase the preference shares in LPC from D2 and D3.

M2.4 On 20.07.18 LPT (company number 11475996) was incorporated.[1094] D2 was the sole director and shareholder of LPT. LPT was to purchase the preferences shares in LPC from D2 and D3. On or around 27.07.18, D2 signed an LPT board resolution for the purchase by LPT of the preference shares of LPC for a price of £32,225,096 payable in instalments.[1095]

M2.5 Also on or around 27.07.18, D2 and D3 signed the LPT SPA as sellers and D2 also signed the LPT SPA on behalf of LPT.[1096] The LPT SPA provided for LPT to purchase 25 million redeemable preference shares in LPC, of 1p each, from D2 and D3 for a purchase price of £32,225,096. The agreement post-dated the payments made via GCEN on 23.07.18, which were supposedly made under it.[1097]

Continued payments from LCF via GCEN to D1, D2, D3 and D4

M2.6 With the LPT SPA in place, D1 approved further payments from LCF via GCEN to the personal bank accounts of D1, D2, D3, and D4.[1098] In summary of the pattern (described above in relation to the LPE SPA), LOG would submit a drawdown request to LCF signed by D3 and D3 would subsequently email D1 with details of how the funds should

[1092] EB0094842; EB0094843; Day 8/page 123/line 15 – page 125/line 11 **[A5/8/31]**.

[1093] MDR00219659

[1094] **[A1/5/84]**.

[1095] MDR00163493 page 49; Day 8/page 125/line 12 – page 126/line 20 **[A5/8/32]**.

[1096] MDR00163962

[1097] Day 8/page 126/line 21 – page 128/line 10 **[A5/8/32]**.

[1098] See, for example, MDR00007003 page 11; MDR00220172 page 3; MDR00163911; MDR00164078; MDR00161073; MDR00164098; MDR00164099; MDR00164116; MDR00217308 page 4; MDR00220172 page 3

Source: Mouseinthecourt.co.uk

be divided among D1, D2, D3 and D4. D1 would then instruct GCEN to make payments in those amounts. Each payment had the reference "*Pref Share Advance*".[1099] As with the previous major transactions, it is evident that D1 provided information to D3 as to the maximum amount available in LCF's bank account to be "drawn" for the purpose of these payments.[1100] These payments continued throughout August 2018 with the final round of payments being made on 26.11.18.[1101] By that point, £16.7 million had been paid to D1, D2, D3 and D4, purportedly pursuant to the LPT SPA.[1102]

Exceeding the limit of LOG's facility

M2.7 The payments under the LPT SPA were funded by drawing on LOG's facility with LCF, despite LOG being in breach of its facility limit.

M2.8 As at 15.06.18, LOG owed £76.7 million to LCF. LOG's facility limit was £50 million, as a result of the backdated letter agreement dated 01.12.17, which was designed to deceive BDO LLP.[1103]

M2.9 By September 2018, LOG owed LCF £104.9 million against a facility limit of £50 million.[1104] Still no facility agreement had been put in place. A new facility was discussed and prepared in the course of September and October 2018, which would increase the facility limit to £120 million.[1105] It was signed by D1, D2, and D3 between 15.10.18 and 02.11.18 but backdated to 04.12.17 in order to make it appear as though

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[1099] EB0096381; MDR00164218; MDR00164222; MDR00164227; MDR00164228; MDR00164253; MDR00164261

[1100] MDR00171024; MDR00171028; MDR00171029; D2D10-00049529; D2D10-00049530

[1101] MDR00191052; MDR00191512; MDR00191513; MDR00191523; MDR00191604; MDR00191598; MDR00007023 page 9; MDR00220172 pages 4-5; MDR00191630; MDR00191671; MDR00220172 page 4; MDR00217307 page 14; MDR00220286 page 386; MDR00191680; MDR00191684; MDR00191687; MDR00191694

[1102] EB0123429; Day 8/page 128/line 11 – page 136/line 11 **[A5/8/32]**.

[1103] MDR00159345; MDR00134357; MDR00134358; MDR00134414; MDR00134415; MDR00134416; MDR00134419; MDR00134435; MDR00134436

[1104] MDR00171190

[1105] MDR00177013; MDR00177925; MDR00001027; MDR00001028; MDR00001030; MDR00001031; MDR00001036; MDR00001037; MDR00001038; MDR00001039; MDR00001041; MDR00001042; MDR00001046; MDR00001047; MDR00001049; MDR00001050; MDR00121858; MDR00175031; MDR00175032; MDR00175109; MDR00175147; MDR00175153; MDR00175154; MDR00175157

Source: Mouseinthecourt.co.uk

LOG never exceeded the facility limit.[1106] D1 then told BDO (LOG's auditors) falsely, that the facility limit was £120 million as at 30.09.18.[1107]

Beneficial ownership of the preference shares did not change

M2.10 The beneficial ownership of the preference shares in LPC did not change by the LPT SPA. The shares (having been distributed by London Group LLP to D2 and D3) were sold by D2 and D3 to LPT. The shares in LPT were registered in the name of D2. However, by a trust deed executed on 30.11.18 (which stated that D2 had at all times held the share in LPT on trust for London Group LLP), D2 held the shares in LPT on trust for London Group LLP, whose members were D2 and D3.[1108] London Group itself was owned beneficially by D2, D3, D4 and D1.[1109]

Unauthorised use of LOG's funds

M2.11 The use of LOG's funds for the purpose of making payments ostensibly under the LPT SPA had not been authorised by LOG's board. As explained above at L2.21 and L2.23 to L2.24 in connection with the LPE SPA, this became clear in early 2019, when David Elliott become aware of unauthorised loans where the drawdowns had not been paid into LOG's bank account.[1110]

No justification for the price

M2.12 The price under the LPT SPA was £32,225,096. The LPT SPA explained (at clause 3.1) that the price was based on a draft balance sheet for LPC as at 31 May 2018, was subject to variation in the event that there was a change in its audited accounts, and was intended to be based on 30% of the net asset value of LPC.[1111]

[1106] MDR00128563; MDR00128564; MDR00134608; MDR00134611; MDR00134613; MDR00185682; MDR00185683; MDR00185684; D2D10-00051395; MDR00195052; MDR00006101; MDR00178709; MDR00178710 pages 1 and 3; MDR00183473; MDR00183474; MDR00183469; MDR00183470

[1107] MDR00001534

[1108] MDR00197584; MDR00220937; MDR00163093; EB0138489; EB0138490

[1109] D2D10-00055574 page 2 left column and table in right column

[1110] MDR00220555; MDR00220553; MDR00212113

[1111] MDR00163962; Day 9/page 7/line 24 – page 8/line 10 **[A5/9/2]**.

Source: Mouseinthecourt.co.uk

M2.13 The price of £32,225,096 in the LPT SPA had been calculated on the basis of the following reasoning: (i) Under the addendum to LPC's articles, LPC was entitled to redeem the preference shares;[1112] (ii) The sum payable by LPC on the redemption of each preference share would be "*a sum equivalent to 0.0000012% of the Net Asset Value of* [LPC]". Since there were 25 million preference shares in existence, the total amount payable by LPC on redemption would be a sum equivalent to 30% of the Net Asset Value of LPC: (iii) The term "*Net Asset Value*" was defined in the addendum to LCF's articles to mean "*the net asset value of* [LPC] *as assessed by the auditors of* [LPC] *from time to time acting as experts on the assumption that* [LPC] *is being sold as a going concern by a willing seller to a willing buyer*"; (iv) The estimated balance sheet for LOG as at 31.07.18 stated that LOG had net assets of £107,416,985;[1113] (v) Since LPC owned LOG, LPC could be treated as having net assets of £107,416,985; (vi) If LPC decided to redeem the preference shares, then the auditors "*acting as experts on the assumption that* [LPC] *is being sold as a going concern by a willing seller to a willing buyer*" would conclude that LPC had net assets of £107,416,985; (vii) Therefore, on the redemption of the LPC preference shares, LPC would pay £32,225,095.50 to the holders of the LPC preference shares; and (viii) On this basis, the LPC preference shares were worth £32,225,096 and LPT could properly agree to buy them from D2 and D3 at that price.[1114]

M2.14 This reasoning was obviously artificial and wrong. LPC's auditors had not concluded (whether "*acting as experts on the assumption that* [LPC] *is being sold as a going concern by a willing seller to a willing buyer*" or otherwise) that LPC had a net asset value of £107,416,985. There was also no realistic prospect of them doing so.

M2.15 The reality was that LPC's shares in LOG had no value. LOG's most valuable asset was its investment in IOG. The Claimants' expert, Mr Osborne, considers that this was worth between £26.4 million and £53.6 million on 27.07.18.[1115] LOG had also made an investment in Atlantic Petroleum p/f. As at 27.07.18, LOG had loaned a principal sum

[1112] D2D10-00044901

[1113] MDR00163956

[1114] Day 9/page 8/line 11 – page 10/line 22 **[A5/9/2]**.

[1115] Osborne 1 ¶5.46 **[D2/1/53]**.

Source: Mouseinthecourt.co.uk

of £1.88 million to Atlantic Petroleum p/f, with accrued interest of £324,625.[1116] On any view, this was not a significant asset.[1117] Against these assets, LOG had substantial indebtedness to LCF, which amounted to £88.9 million as at 27.07.18.[1118] It is clear that the estimated balance sheet used for the purpose of the LPT SPA significantly understated LOG's liabilities: it incorrectly stated that the value of LOG's assets was £162.4 million and the value of LOG's debt to LCF was only £47.5 million. In fact, LOG's liabilities significantly exceeded its assets. The value of LPC's shares in LOG was therefore nil. At the time that the LPT SPA was prepared and executed, this would have been known to individuals at LOG and LCF.[1119]

M2.16 The inflated value afforded to LOG's assets of £162,446,721 was the result of a contrived valuation involving an average of two valuation methodologies.[1120]

M2.17 The first valuation methodology used was a Black-Scholes calculation. This is the same methodology as that adopted by the valuation experts in the present case. But the estimated balance sheet increased the "volatility" metric to 100%. Even then, the resulting figure was a valuation of just under £71.2 million, which was still less than LOG's liabilities. This clearly could not be used as an ostensible basis for justifying payments under the LPT SPA.[1121]

M2.18 The second valuation methodology was based on an estimate of the net present value of IOG. The calculation involved adopting a risk factor of zero. The net present value of IOG's assets (not shares) was then said to be £390.1 million. It was then said that the value of LOG's rights was £245.5 million, on the basis that LOG could exercise an option to acquire 62% of the shares in IOG.[1122] The figure used in the estimated balance sheet then adopted an average of these two exercises, resulting in a value of £157.536

[1116] MDR00002063

[1117] Day 9/page 11/line 6 – page 16/line 4 **[A5/9/3]**.

[1118] MDR00171190

[1119] Day 9/page 16/line 5 – page 19/line 6 **[A5/9/4]**.

[1120] EB0094738; Day 9/page 19/lines 7-21 **[A5/9/5]**.

[1121] Day 9/page 19/line 22 – page 20/line 20 **[A5/9/5]**.

[1122] Day 9/page 20/line 2 – page 21/line 11 **[A5/9/5]**.

Source: Mouseinthecourt.co.uk

million. A figure of over £5 million was added in respect of LOG's loan to Atlantic Petroleum, resulting in the total of £162,446,721.[1123]

M2.19 This "valuation" exercise was nonsensical. There was no basis for taking an average of the two figures set out above, which is not based on the market value of LOG (or the shares in LPC) and involves two completely different methodologies. It is a merely mathematical calculation, performed in order to result in a high figure that inflated the asset value of LOG well beyond what was reasonable and justifiable. The value of LPC arrived at was self-evidently not the value as determined by the company's auditors, on the basis of a sale as a going concern by a willing seller to a willing buyer.[1124]

M2.20 Some reliance has been placed by certain of the Defendants on an "offer" addressed to D4 to acquire the preference shares in LPC in the sum of £70 million in October 2017. However, this "offer" does not provide any insight into the real value of LPC: (i) the so-called "offer" was set out in a letter from a company called Blueprint Capital[1125]; (ii) the person responsible for the offer was Clint Redman, who at the time worked for London Group LLP and was involved in plans by D1, D2 and D4 (among others) to issue an "oil bond"[1126]; Clint Redman had also had numerous other dealings with D1, D2, D3 and D4 over the years; (iii) the proposal in the "offer" letter appears to have been a mechanism for paying the proceeds of a proposed "oil bond" to D4; (iv) on the same date of this "offer", an invoice was issued by Blueprint Limited to London Group LLP in the sum £250,000, which was payable to Clint Redman's bank account.[1127] The invoice purported to be in relation to the Paradise Beach project, which by that time had terminated; and (v) the Blueprint Limited "offer" appears to have been mechanism to pay £70 million of the proceeds of the proposed oil bond to D4.[1128] In these circumstances, no weight can be put on the Blueprint Limited "offer".

[1123] Day 9/page 21/line 12 – page 23/line 1 **[A5/9/6]**.

[1124] Day 9/page 21/line 20 – page 24/line 23 **[A5/9/6]**.

[1125] MDR00104305

[1126] MDR00077223; SUR00072835-0001; SUR00077229-0001; MDR00093095; MDR00096516; MDR00104304

[1127] MDR00100103

[1128] Day 9/page 24/line 24 – page 39/line 22 **[A5/9/6]**.

Source: Mouseinthecourt.co.uk

M3 D1's participation in and knowledge of the LPT SPA

M3.1 D1 authorised payments from LCF to LOG that he knew were paid to D4, D2, D3 and D1 in the proportions 42.5: 42.5: 7.5: 7.5, notwithstanding that LOG had exceeded its credit limit.[1129]

M3.2 D1 was involved in backdating a second LOG facility agreement on behalf of LCF, in order to deceive BDO (which was auditing LOG) into believing that LCF had not lent funds to LOG in excess of the facility limit.[1130] While D1's witness statement asserted that the second facility agreement was a more "*robust*" document which was designed to "*replace*" the side letter backdated to 01.12.17, which had increased the LOG facility limit to £50 million[1131], this is inconsistent with the contemporaneous documents. These show that D1 knew that the second LOG facility agreement was prepared and executed in October 2018, contained a facility limit of £120 million, and was dated 04.12.17 (only 3 days after the date of the side letter which increased the limit to £50 million).[1132]

M3.3 In his oral evidence, D1 accepted that the commitment limit of £120 million had not been agreed in December 2017.[1133] D1 also accepted that he must have signed the second LOG facility between 15 October 2018 and 2 November 2018, and that it was in different terms to the side letter with a limit of £50 million.[1134] However, D1 stubbornly refused to accept that the second LOG facility was not a truthful document because it had been backdated to 04.12.17. He sought to justify his answer by saying variously that LOG's

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[1129] See, for example, MDR00007003 page 11; MDR00220172 page 3; MDR00163911; MDR00164078; MDR00161073; MDR00164098; MDR00164099; MDR00164116; MDR00217308 page 4; MDR00220172 page 3; EB0096381; MDR00164218; MDR00164222; MDR00164227; MDR00164228; MDR00164253; MDR00164261; MDR00171024; MDR00171028; MDR00171029; D2D10-00049529; D2D10-00049530; MDR00191052; MDR00191512; MDR00191513; MDR00191523; MDR00191604; MDR00191598; MDR00007023 page 9; MDR00220172 pages 4-5; MDR00191630; MDR00191671; MDR00220172 page 4; MDR00217307 page 14; MDR00220286 page 386; MDR00191680; MDR00191684; MDR00191687; MDR00191694

[1130] MDR00128563; MDR00128564; MDR00134608; MDR00134611; MDR00134613; MDR00185682; MDR00185683; MDR00185684; D2D10-00051395; MDR00195052; MDR00006101; MDR00178709; MDR00178710 pages 1 and 3; MDR00183473; MDR00183474; MDR00183469; MDR00183470; MDR00001534

[1131] Thomson ¶118 **[C2/1/42]**; Day 20/page 64/line 7 – page 69/line 6 **[A5/20/16]**.

[1132] MDR00178709; MDR00178710; MDR00183474; MDR00183469; MDR00183470

[1133] Day 20/page 69/lines 7-13 **[A5/20/18]**; Day 20/page 70/lines 7-12 **[A5/20/18]**.

[1134] Day 20/page 71/line 23 – page 72/line 8 **[A5/20/18]**; Day 20/page 68/line 18 – page 69/line 1 **[A5/20/17]**.

Source: Mouseinthecourt.co.uk

borrowing requirements "*had evolved*" and "*considerably moved on*", that the facility was merely "*a working document*", and that the new facility was "*not a new limit*". This was implausible in the extreme. D1 could not explain why the side letter dated 01.12.17 to increase the facility limit to £50 million would be followed almost immediately by an agreement on 04.12.17 to increase the limit to £120 million.[1135] D1 knew that the document was untruthful and designed to mislead BDO. D1 offered no plausible explanation for his actions, and his evidence was contradictory.

M3.4 D1 knew of the terms of the LPT SPA.[1136] D1 knew that the payments he approved from LCF ostensibly to fund the purchase of LPC preference shares had no proper commercial purpose. In his oral evidence, D1 claimed that he was happy to accept the assurances of LOG's board because he was content with the value of LOG's security.[1137] He did not explain what steps were taken to confirm that LOG's security was adequate – in fact, as is clear from Mr Osborne's report, in July 2018 LOG's assets were insufficient to secure its borrowing from LCF. D1 took no steps to satisfy himself that LOG would be able to repay these monies, together with interest or otherwise to satisfy himself that advancing the funds was in LCF's interest.

M3.5 D1's evidence was that he would be entitled to a 5% share of monies paid pursuant to the transaction, regardless of whether he owned any preference shares. This explanation was incoherent and provided no justification for D1's receipt of 7.5% of monies paid purportedly pursuant to the LPT SPA. D1 again sought to rely on his "buyout" agreement, but as above, this was a fabrication created in February 2019, as is explained at Section O2 below.[1138]

M4 D4's participation in and knowledge of the LPT SPA

M4.1 It is to be inferred that D4 played the same role in relation to the LPT SPA as he played in relation to the LPE SPA and therefore that he had authorised and/or directed the payment of monies from LCF for the benefit of D1, D2, D3 and D4 and that he was

[1135] Day 20/page 72/line 12 – page 75/line 8 **[A5/20/18]**; Day 20/page 76/line 5 – page 77/line 9 **[A5/20/19]**.

[1136] MDR00163961; MDR00163962

[1137] Day 26/page 66/line 11 – page 68/line 15 **[A5/26/17]**.

[1138] Day 26/page 63/line 22 – page 65/line 20 **[A5/26/16]**.

Source: Mouseinthecourt.co.uk

aware that the monies paid out were nominally drawn on LOG's facility with LCF. Certainly, D1 accepted that LOG meant D2, D3 and D4.[1139]

M4.2 D4 was at all times an ultimate beneficial owner of the redeemable preference shares in LPC, through his beneficial ownership of London Group LLP.[1140] In light of D4's interest in the preference shares, it is to be inferred that he was aware of the terms of the LPT SPA through one or all of D1, D2, D3 and D8. In particular, D3, who acted as D4's proxy, was heavily involved in the process of preparing the LPT SPA: D2 and D3 were responsible for putting the LPC preference shares into the names of D2 and D3,[1141] resolving that LPT should purchase the LPC preference shares from D2 and D3 for the total sum of £32,225,096,[1142] and in signing the LPT SPA itself.[1143]

M4.3 D4 continued to receive payments of monies originating from LCF, in circumstances where those payments continued to be divided between D1, D2, D3 and D4 in agreed ratios (42.5%. 42.5%, 7.5% and 7.5%).

M4.4 D4 received the single largest share of monies misappropriated from LCF which were ostensibly justified as made under the LPT SPA. It is not plausible to suggest that D4 was unaware of the fact that he was being paid monies ostensibly justified by the LPT SPA. D4 knew that there was no proper justification for those payments.

M5 D8's participation in and knowledge of the LPT SPA

M5.1 D8 was involved in mid-2018 in discussions with D2 about the proposed new facility agreement between LCF and LOG.[1144]

1139 Day 26/page 70/lines 20-22 **[A5/26/18]**.

1140 Day 9/page 26/lines 4-11 **[A5/9/7]**.

1141 EB0094842; EB0094843; MDR00219659

1142 MDR00163493 page 49

1143 MDR00163961; MDR00163962

1144 MDR00140663; MDR00140690; MDR00000559; MDR00000560

Source: Mouseinthecourt.co.uk

M5.2 D8 drafted the London Group LLP minute which approved the distribution of preference shares in LPC from London Group LLP to D2 and D3 and arranged for D2 to sign it.[1145]

M5.3 D8 attended the board meeting of LPT at which the purchase of the preference shares was approved.[1146]

M5.4 It is to be inferred from the usual practice in relation to transaction documents that D8 drafted the LPT SPA. He was certainly aware of its terms and he sent a signed copy to D1 on 06.08.18.[1147]

M5.5 D8 knew that LPT was owned beneficially by London Group LLP, having witnessed D2's signature on a trust deed dated 30.11.18 by which D2 declared that he had always held the shares in LPT on trust for London Group LLP.[1148] D8 therefore knew that the LPT SPA did not effect any change in the beneficial ownership of the preference shares.

[1145] EB0094841; EB0094843; MDR00163493

[1146] D2D10-00003269

[1147] MDR00163961; MDR00163962

[1148] MDR00197584; EB0138489; EB0138490

Source: Mouseinthecourt.co.uk

N. OTHER MISAPPROPRIATIONS BY D1, D2, D3 AND D4

N1 Introduction

N1.1 The principal means by which D1, D2, D3 and D4 extracted monies from LCF are the five major "SPA" transactions set out in detail above. In addition to these transactions, monies were extracted from LCF in a variety of other ways on an *ad hoc* basis.

N1.2 The Court is asked to find the following facts in relation to the other misappropriations:

(1) The payments set out below were received by the relevant Defendants.

(2) The payments were made with monies originating with LCF.

(3) The payments were authorised and/or directed by D1 and D4. (For this reason, payments to D2 and D3 continue to be relevant, notwithstanding the settlements with those parties: D1 and D4 authorised or directed the payments to D2 and D3 and are therefore liable in respect of those payments.)

(4) There was no justification for the payments described below and both D1 and D4 knew that this was the case.

N2 Payments to D1, D2, D3 and D4

N2.1 D4 took additional monies from LCF in numerous other ways.

N2.2 Sometimes, LCF paid monies to D4 directly. For example, on 27.04.16, D3 provided Katie Maddock of LCF with an invoice from D4 headed "*SG Golding Consulting*" in the sum of £32,700 for "*professional services*".[1149] On 29.04.16, LCF paid £32,700 to D4 with reference SG CONSULTANT.[1150]

[1149] MDR00037759; MDR00037761

[1150] MDR00007347 page 3; Day 13/page 8/line 7 – page 12/line 7 **[A5/13/2]**.

Source: Mouseinthecourt.co.uk

N2.3 LCF's accountants queried this payment. D1 told them that it was for "*financial services consultancy relating to all bonds*".[1151]

N2.4 LCF made a further payment to D4 in the sum of £10,000 with the reference SG CONSULTANT on 25.07.16.[1152]

N2.5 On both of those occasions, LCF made matching payments to D1,[1153] so that they were both receiving precisely the same amounts on the same days.

N2.6 On another occasion, D1, D3 and D4 took £30,000 each via London Capital Marketing Limited ("**LCM**"), another company controlled by D1, who was the sole director and shareholder. On 07.04.17, LCF paid £90,000 to LCM.[1154] D1 emailed D3 to say that the invoices should be addressed to LCM.[1155] D3 then emailed D1 attaching two invoices for "*fundraising consultancy*" and "*professional services*".[1156] LCM then paid £30,000 to D1, £30,000 to D3 and £30,000 to D4.[1157]

N2.7 Often, D4 received payments of money from LCF via LOG. For example, on 12.06.17, LCF paid £601,750 to LOG;[1158] and, on 13.06.17, LOG paid £200,000 to D4 and £25,000 to D3 (each with the reference LOG SHARE PAYMENTS).[1159] There does not seem to have been any attempt to explain or justify these payments.

N2.8 LOG also made substantial monthly payments to D4, often accompanied by payments to D2's company LV Management and D3's company Wealden Consultants Limited ("**Wealden Consultants**") (later known as London Power Consultants).[1160]

1151 MDR00050344; MDR00050383; MDR00050385 page 3

1152 MDR00007356 page 3

1153 MDR00007347 pages 3-5; MDR00220286 page 212; MDR00007356 page 3; MDR00220286 page 229

1154 MDR00111033; MDR00190145; D1-0000086; D1-0003733 page 1

1155 EB0042639

1156 MDR00083133; MDR00083136; MDR00083137

1157 D1-0003733 pages 1-3; MDR00220286 page 280; MDR00224827 page 71

1158 MDR00007319 page 13

1159 MDR00006015 page 2

1160 Day 13/page 12/line 8 – page 13/line 8 **[A5/13/3]**.

Source: Mouseinthecourt.co.uk

N2.9 For example, on 01.06.17, LOG paid £20,000 to D4, £20,000 to LV Management and £15,900 to Wealden Consultants.[1161]

N2.10 Similarly, on 29.06.17, LOG paid £20,000 to D4, £20,000 to LV Management and £15,900 to Wealden Consultants.[1162]

N2.11 Again, on 31.07.17, LOG paid £20,000 to D4, £20,000 to LV Management and £15,900 to Wealden Consultants.[1163] Spreadsheets indicate that these payments were to be made at the beginning of each month in priority to any other payments.[1164]

N2.12 D4 also received payments of money from LCF via London Group LLP. As explained above, LCF was routinely paying money to Sands Equity for a considerable period. During that period, Sands Equity made substantial payments to London Group LLP, which in turn paid some of the monies to D4. (London Group LLP often made payments to D2 and D3 at the same time.)

N2.13 For example, on 01.12.17, Sands Equity paid £70,000 to London Group LLP, which paid £24,000 to D4, £24,000 to D2's company, LV Management, and £15,900 to D3's company Wealden Consultants.[1165]

N2.14 Similarly, on 03.01.18, London Group LLP paid 24,000 to D4, £24,000 to LV Management and £15,900 to Wealden Consultants.[1166] Indeed, these payments were often repeated by London Group LLP at the beginning of every month.

N2.15 D4 also received substantial payments from LCF via D6, as explained at P3.244 to P3.303 below.

[1161] D2D10-00034396 page 13

[1162] D2D10-00034396 pages 7-8

[1163] D2D10-00034396 page 2

[1164] D2D10-00034707; D2D10-00034462; D2D10-00035062; D2D10-00039082

[1165] MDR00220330 page 3

[1166] MDR00220330 page 6

Source: Mouseinthecourt.co.uk

N2.16 D1 and D4 authorised and/or directed the making of these payments, none of which were justified.

N3 Other Payments to D1

N3.1 D1 also received monies from LCF in numerous other ways. As mentioned above, he received payments from LCF and LCM to match those paid to D4.[1167]

N3.2 D1 also took other sums from LCF: £10,000 on 04.09.15,[1168] £10,000 on 19.11.15,[1169] £9,733.19 on 04.02.16,[1170] £20,000 on 01.03.16,[1171] £20,000 on 04.04.16,[1172] £52,700 on 29.04.16,[1173] £20,000 on 01.06.16[1174] and £20,000 on 01.07.16.[1175]

N3.3 D1 told LCF's accountants, Oliver Clive & Co, that these sums had been paid to a marketing company called Media GPS, which he said had provided marketing and PR services. D1 provided invoices in the name of Media GPS to support this assertion: "*As discussed please find attached the invoices from Media GPS that cover the marketing and PR work for our bonds. The work this company has done to date cover all our bonds and we will be using them for the same work on our next series of bonds*".[1176]

N3.4 However, Steven Davidson of Oliver Clive & Co knew that D1 had filed dormant accounts for Media GPS. He replied, "*Sorry canyt* [sic] *use these as you have submitted dormat* [sic] *accounts for media gps*. *Must have been a mistake*".[1177]

1167 MDR00007347 pages 3-5; MDR00220286 page 212; MDR00007356 page 3; MDR00220286 page 229; MDR00111033; MDR00190145; D1-0000086; MDR00220286 page 280; MDR00224827 page 71; D1-0003733 pages 1-3

1168 MDR00027104 row 171; MDR00195284 page 2; MDR00220286 page 167

1169 MDR00051820; MDR00051822; MDR00220286 page 180

1170 MDR00051820; MDR00051822

1171 MDR00007344 page 3; MDR00220286 page 198

1172 MDR00007346 page 3; MDR00220286 page 206

1173 MDR00007347 pages 3-7; MDR00220286 page 212

1174 MDR00007349 page 3; MDR00007352 page 3; MDR00220286 page 220

1175 MDR00007355 page 1; MDR00220286 page 224

1176 MDR00050909; MDR00050910; MDR00050912; MDR00050913; MDR00050914; MDR00050915; MDR00050916; MDR00050917; MDR00050918

1177 MDR00051126

Source: Mouseinthecourt.co.uk

N3.5 Accordingly, D1's attempt to disguise the payments with false invoices was a failure. The payments were instead classified by Oliver Clive & Co as drawings on D1's director's loan account and repaid by him to LCF using monies from L&TD (which in turn had received monies originating from LCF).[1178] The episode remains relevant because it demonstrates a clear propensity by D1 to take monies from LCF without any proper basis and then to lie about it.

N3.6 In his oral evidence D1 said that these payments were monthly drawings that were booked as a director's loan.[1179] D1 said that he created Media GPS with his father "*that was due to be life after LCF, because my plan was to sell it eventually, and, you know, create a job for my father.*"[1180] It is clear from this that Media GPS was controlled by D1. D1 went on to suggest that these payments, which totalled £162,433.19 had been paid for his father to do "*proofreading and other work for the company*".[1181] It is simply unbelievable that Mr Thomson's father was required to carry out proofreading of LCF's professionally produced materials and that any such work could justify such large payments even if it was, as D1 claimed "*quite a bit of work*"[1182]. D1's explanation in his oral evidence was untruthful; although, he did admit that it was "*very easy*" for him to take money out of LCF:[1183]

25 Q. You were coming up with a false story to try to explain
these payments to your accountant so that they didn't
2 put them into your directors' loan account?
3 A. No, I could have just -- I could have very easy have
4 just taken these as directed to me. I'm trying to
5 create another company here, and this was the start of
6 it.
7 Q. Is this a white lie or is this another example of you
8 being prepared to make false representations for
9 financial gain?
10 A. No. LCF is my company. If I wanted to take more money
11 out of it, I could have very easily done. I'm trying to

1178 MDR00051820; MDR00051822; MDR00051978; MDR00052024; MDR00052027; MDR00060535; MDR00060536; MDR00007357 page 3; MDR00220286 pages 229-230; MDR00220284 page 9; MDR00220286 pages 227-228

1179 Day 26/page 146/lines 3-14 **[A5/26/37]**.

1180 Day 26/page 147/lines 1-6 **[A5/26/37]**.

1181 Day 26/page 147/lines 6-21 **[A5/26/37]**.

1182 Day 26/page 151/lines 6-21 **[A5/26/38]**.

1183 Day 26/page 147/line 25 – page 149/line 1 **[A5/26/37]**.

Source: Mouseinthecourt.co.uk

12 create something with my father and build a different
13 company. This is part of that. If I'd just wanted to
14 take extra money out of LCF, I could have done. No-one
15 would have stopped me doing that. I didn't do that.
16 I'm trying to build a company with my dad. Yes,
17 I appreciate it is being paid directly to my bank
18 account. Possibly -- I don't know whether Media GPS had
19 a bank account at that time. But that's what I was
20 trying to do. Maybe I didn't do it in the best way, but
21 I could have very easily just taken that directly from
22 LCF because it's paid directly to my bank account. My
23 accountant has access to my bank account. So I would
24 have had to have accounted, for tax reasons, for these
25 payments anyway. So it would have made no difference
1 whatsoever.

N3.7 Subsequently, LCF paid monies to Media GPS, which made payments to D1.[1184] On 25.11.16, LCF paid £100,000 to Media GPS.[1185] A few days later, on 29.11.16 and 30.11.16, Media GPS paid a total of £100,000 to D1.[1186] Similarly, on 11.12.17, LCF paid £175,000 to Media GPS, which paid £172,000 to D1 on the same day.[1187]

N3.8 In his witness statement, D1 claimed that some of these payments constituted his Christmas bonus from LCF and that, inexplicably, the level of his Christmas bonus was delegated by him not to one of the other members of LCF's board but to Katie Maddock.[1188] According to D1's evidence, Katie Maddock apparently decided that D1 should be paid £100,000 in 2016 and £175,000 in 2017. D1 admitted that rather than being shown as remuneration, these bonuses were recorded in LCF's accounts as an expense of LCF.[1189] Whatever the mechanism by which these payments were decided and made, there was no proper justification for them and they were not authorised by LCF's board. They simply represented another extraction of monies by D1.

N3.9 As explained below at P3.130 to P3.169, D1 also received large sums of monies from LCF through D6, which made payments to Media GPS, which then made transfers to D1.

[1184] Day 13/page 22/line 19 – page 24/line 25 **[A5/13/6]**.

[1185] MDR00007365 page 133

[1186] MDR00088777 pages 17-18; MDR00220286 pages 253-254

[1187] MDR00006944 page 1; MDR00220286 page 327 ; MDR00224651 ; MDR00224775 ; MDR00224791

[1188] Thomson ¶160 **[C2/1/54]**.

[1189] Day 26/page 151/line 22 – page 154/line 9 **[A5/26/38]**.

Source: Mouseinthecourt.co.uk

N3.10 None of these payments were justified. D1 was simply stealing money from LCF, at the expense of LCF's bondholders.

N4 LCF's loan to D4

N4.1 One of the biggest other sources of payments of LCF monies to D4 related to a loan made by LCF to D4, which was later waived when the liability was assumed by a company controlled by D4.[1190]

N4.2 LCF began making advances to D4 on 27.11.15.[1191] They were paid into a bank account operated and controlled by D4 named Home Farm Equestrian Centre. This was, and is, the name of a business carried on by D4 as a sole trader.

N4.3 By 29.01.16, LCF had advanced a total of £200,000 to D4.[1192] There was not yet any signed facility agreement.

N4.4 On 08.04.16, Alex Lee sent a draft loan agreement to D1, attached to an email entitled, "*Loan to Spencer Golding*".[1193] It was not signed at this time, however.

N4.5 Notwithstanding the absence of (i) a signed facility agreement and (ii) any security, LCF continued to make substantial payments to D4. It paid a further £100,000 to him on 22.04.16[1194] and a further £250,000 on 19.05.16.[1195]

N4.6 Alex Lee sent further drafts of the facility agreement to D1 on 26.05.16 (with a limit of £2 million).[1196] But still it was not signed.

[1190] Day 13/page 13/line 20 – page 16/line 4 **[A5/13/4]**.

[1191] MDR00027148 row 135

[1192] MDR00027148 rows 62, 87-88, 135; MDR00007227 page 5; MDR00045671; MDR00045681

[1193] MDR00034954; MDR00034957; MDR00034958

[1194] MDR00007241 pages 1-3

[1195] MDR00007247 page 3

[1196] MDR00042151; MDR00042152; MDR00042153; MDR00042154; MDR00042165; MDR00042166

Source: Mouseinthecourt.co.uk

N4.7 A further draft was sent to D1 on 21.06.16.[1197] But still nothing was signed.

N4.8 By this point, D4 owed £738,225 to LCF on a gross basis.[1198] Although there was still no signed facility agreement and no security, LCF continued to make payments to D4, including another £100,575 on 29.06.19,[1199] bringing his total debt (gross) to £906,812,[1200] and £25,000 in cash on 15.07.16.[1201]

N4.9 But still the agreement remained unsigned.[1202]

N4.10 LCF paid a further £201,150 to D4 on 01.09.16,[1203] bringing his total debt (gross) to £1.88 million.[1204] Still nothing had been signed and there was no security.

N4.11 On 22.09.16, D1 emailed Alex Lee asking, "*Can you give me an update on the loan doc for Spencer*".[1205] It appears that Alex Lee did not respond until 28.09.16.[1206]

N4.12 On 03.10.16, he emailed D1 again, attaching the latest draft facility, which continued to have a facility limit of £2 million.

N4.13 It was eventually signed by D1 and D4 at some point on or after 03.10.16 but was falsely backdated to 20.11.15 to make it seem as though it had been signed before the first advances to D4.[1207] The year 2015 appeared in typescript on the front pages.

1197 MDR00045410; MDR00045559; MDR00045568; MDR00045569

1198 MDR00045671; MDR00045681

1199 MDR00007256 pages 11-13

1200 MDR00051283

1201 MDR00052243

1202 MDR00053037

1203 MDR00007272 pages 11-15; MDR00058506 pages 14-15

1204 MDR00063018

1205 MDR00058885

1206 MDR00060300; MDR00060301

1207 MDR00057727; D1-0002917; MDR00225727

Source: Mouseinthecourt.co.uk

N4.14 LCF continued to make advances to D4 (including £1,400,779.50 on 21.07.17[1208] and £397,300 on 11.08.17[1209]): D4's liability to LCF continued to grow.

N4.15 A plan was hatched to prevent D4 from having to repay any of this money.

N4.16 A new company called River Lodge Equestrian Centre UK Limited ("**River Lodge UK**") was incorporated on 11.01.17. The sole director of River Lodge UK was a man called Rafael Ariza-Sanctuary (who ceased to be a director on 07.12.18), who held 50% of the shares on trust for D4.[1210]

N4.17 Alex Lee then prepared a new facility agreement between LCF and River Lodge UK and emailed D1 about this.[1211] The facility limit in the River Lodge UK facility agreement was to be £10 million. D4's liability to LCF (by this time, in the total sum of £6,228,262.64) was expressly to be treated as having been drawn down under this new facility agreement.

N4.18 Ultimately, the River Lodge UK facility agreement was signed on or around 09.10.17, with a facility limit of £20 million.[1212] D1 signed this document.

N4.19 D4 was thereby relieved from liability in respect of the sums previously advanced to him, which was now to be treated as lent by River Lodge UK instead.[1213]

N4.20 Katie Maddock emailed D4 (cc D1) on 11.10.17 to say that "*all loans …* [had] *been now repaid in full*".[1214] D4 forwarded this to D3, who replied, "*Nice!*"[1215]

[1208] MDR00007116 page 13

[1209] MDR00007331

[1210] D2D10-00035160; D2D10-00035161; D2D10-00035162; D2D10-00035163; D2D10-00035164; D2D10-00035165

[1211] MDR00085977; MDR00085981; MDR00093037; MDR00093038; MDR00093041; MDR00093043; MDR00102564; MDR00102568; MDR00102569; MDR00102570; MDR00102571; MDR00102573; MDR00102604; MDR00102777; MDR00102781

[1212] MDR00006313; MDR00007510; MDR00224398; MDR00006314; MDR00007535; MDR00106011; MDR00106012

[1213] Day 13/page 16/line 5 – page 17/line 3 **[A5/13/4]**.

[1214] MDR00106572

[1215] EB0061603

Source: Mouseinthecourt.co.uk

N4.21 LCF paid monies to River Lodge UK, which made payments to D4. On 14.12.17, LCF paid £904,050 to River Lodge UK,[1216] which paid £470,000 to D4 on 09.01.18.[1217]

N4.22 LCF also funded a loan by LCM to D4.[1218] LCF had made regular payments to LCM, which had built up in its bank account. On 14.11.18, D1 emailed Luke Tofts of GCEN to explain that LCM was going to be lending money to D4.[1219] He said that LCM would be transferring £452,000 to GCEN for onward transmission by GCEN to D4. Luke said he would "*speak to compliance and try to get it signed off ASAP*".[1220]

N4.23 LCM paid £452,000 to GCEN on 14.11.18 and 15.11.18.[1221] D1 then emailed Luke Tofts to ask him to send the £452,000 from LCM's account to D4.[1222]

N4.24 D1 and Luke Tofts had a telephone conversation[1223] in which Luke asked D1 for a copy of the loan agreement between LCM and D4.[1224] D1 promised that he would provide this to Luke Tofts in due course.[1225] GCEN then paid £452,000 to D4.[1226]

N4.25 D1 could not provide Luke Tofts with a copy of the loan agreement between LCM and D4, because no such document yet existed.

N4.26 On 03.12.18, Luke Tofts of GCEN emailed D1 to again request this agreement,[1227] adding, "*I put my neck on the line for you with compliance to get these payments made*

[1216] MDR00007049 page 9

[1217] MDR00224827 page 182

[1218] Day 13/page 17/line 4 – page 20/line 14 **[A5/13/5]**.

[1219] MDR00186408

[1220] MDR00186415

[1221] MDR00190996 page 1

[1222] MDR00187155

[1223] MDR00187176

[1224] MDR00192786

[1225] MDR00192786

[1226] MDR00187364; MDR00192786

[1227] MDR00192786

Source: Mouseinthecourt.co.uk

and LCM on-boarded in a very short time frame with no supporting docs, so it looks very bad that I still don't have the docs as they were promised 2 weeks ago".

N4.27 At this point, on 03.12.18, D1 drafted a loan agreement between LCM and D4, dated 01.11.18 in typescript. He sent this (as a Word document) to his assistant, Alex Mannering, presumably for printing.[1228] D1 signed it.[1229]

N4.28 Alex Mannering sent it to Luke Tofts.[1230]

N4.29 However, it had not been signed by D4. Luke Tofts spotted this and contacted Alex Mannering, who emailed D1 to say, "*Luke needs the countersigned version of the facility agreement*".[1231] Alex reminded D1 about this on 05.12.18 ("*Document needs countersigning for Luke Tofts*").[1232]

N4.30 A further version, purportedly signed by D4, was prepared on 06.12.18,[1233] when it was sent to Luke Tofts.[1234] It is clear that it had been falsely backdated. Further, there is no evidence that this document was sent to D4 for signature or signed by D4. The signature purporting to be that of D4[1235] does not resemble any other known exemplar.[1236]

N4.31 LCF paid a further £750,067.50 to D4 on 04.12.18.[1237] No explanation for this payment has been identified.

1228 MDR00192802; MDR00192804; MDR00192805

1229 MDR00193006; MDR00192994

1230 MDR00193029; MDR00193030

1231 MDR00193159

1232 MDR00194039

1233 MDR00194431

1234 MDR00194500; MDR00194501

1235 MDR00194501 page 21

1236 MDR00226310; D2D10-00038963 page 4; D8-0011765 pages 3, 6, 7, 10 and 12; D8-0018336; D8-0018748; EB0026962 page 8; **[B2/5/44]**; **[B4/6/8]**; **[N4/2/15]**; **[N4/3/16]**; **[N4/4/4]**; **[O3/2/2]**

1237 MDR00006892 page 5; Day 13/page 20/line 17 – page 21/line 16 **[A5/13/5]**.

Source: Mouseinthecourt.co.uk

N5 Helicopter transactions for the benefit of D4

N5.1 D4 also received the benefit of monies from LCF in connection with helicopters.[1238]

N5.2 D4 purchased a Eurocopter NS355N with registration N766AM ("**N766AM**") for £520,000,[1239] using £500,000 from LCF to fund this purchase.[1240]

N5.3 Subsequently, D4 sold N766AM to D1's company, London Financial Group Limited, for £650,000, which was paid to D4 by LCF with the reference N667AM [sic].[1241]

N5.4 D4 also bought a EC135 Eurocopter with registration G-MSPT ("**G-MSPT**") for £1,650,000 plus VAT, with a deposit of £800,000 and the balance in 3 instalments.[1242]

N5.5 This was funded by LCF. On 03.03.17, D8 emailed D1 and D4 to say that the vendor of G-MSPT was "*happy to accept payment from London Capital & Finance PLC without any further due diligence on the identity of the buyer*".[1243]

N5.6 On the same day, D1 transferred £800,000 from LCF's account to the vendor's solicitors and told D8 that he had done so.[1244] D1 transferred the first instalment of £393,333.33 from LCF's account to the vendor's solicitors on 16.03.17.[1245] The second and third

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[1238] Day 13/page 21/line 17 – page 22/line 18 **[A5/13/6]**.

[1239] D8-0010044; MDR_POST_00000530; D8-0009528 pages 12-15; D8-0010045; MDR00076660; MDR00076661; MDR00224826 page 95; MDR00076835

[1240] MDR00007266 page 13;

[1241] MDR00078822; MDR00224827 page 113; MDR00007300 pages 13-15; MDR00224676 page 9; MDR00224827 page 188; D8-0010045; D8-0010055; D8-0010057; D8-0010064; D8-0010143; D8-0010437; D8-0010438; MDR00076623; MDR00076625; MDR00076660; MDR00076661; MDR00076834; MDR00076835; MDR00076836; MDR00077363; MDR00078707; MDR00078795; MDR00078819

[1242] D8-0009506; D8-0009520; D8-0009528; D2D10-00025416; D2D10-00026349; D8-0009674; D8-0009691; D8-0010616; D8-0010939; D8-0011765; D2D10-00025416; D8-0009699; D8-0009601; D2D10-00025416; D2D10-00026349; D8-0009585; D8-0009601; D8-0010671; D8-0011645; D8-0011720; D8-0011735; D8-0011736; D8-0011781; D8-0011821; D8-0011916

[1243] D2D10-00025416

[1244] D2D10-00058153; MDR00224734 page 2; D8-0010703

[1245] MDR00080243; MDR00080245; MDR00224734 page 4

Source: Mouseinthecourt.co.uk

instalments were paid in May 2017 and June 2017, again funded by LCF.[1246] There was no justification whatsoever for the purchase by LCF of a depreciating asset for D4.

N6 Payments to D8

N6.1 As explained above, D8 played a major role in the administration of the fraud. Among other things, he advised on the dishonest backdating of documents to evade tax liabilities; he participated in the production of dishonestly backdated documents to deceive professionals and the public; he participated in the production of dishonestly backdated documents to justify ever-increasing payments from LCF to D1, D2, D3, D4 and D10; and he administered the payments under the Prime SPA through GAD. This has all been explained in detail above and is not repeated here.

N6.2 For his role in the fraud, D8 was paid very well. The payments to D8 known as at the start of the trial have been set out in schedule 2 of the neutral statement of uncontested facts.[1247] Monies from LCF were routed to him through various entities. As a result of the analysis of the bank statements produced pursuant to the Bankers Trust orders made by the Court in the course of the trial, the Claimants have identified further payments to D8. In total, D8 received at least £779,634.11.

N6.3 Some of these payments were ostensibly justified by invoices from D8's company, Sedgwick Company Management Limited.[1248] However, given the extent of D8's participation and knowledge, the fact that these payments were ostensibly made in return for services makes no difference to LCF's proprietary claims to recover these sums, because neither D8 nor his company was a bona fide purchaser for value without notice and the monies from LCF were not routed through a bona fide purchaser for value without notice. In any event, the burden would be on D8 to prove that he could retain the monies as a bona fide purchaser for value without notice, but he has not sought to discharge the burden of establishing that defence, as set out further below.

[1246] D2D10-00028174; D8-0014518; D8-0014520; D8-0016499; D8-0016223; MDR00224470; MDR00224826; MDR00221912; MDR00224942

[1247] **[A1/6/21]**.

[1248] MDR00005793; MDR00005792; MDR00005791; MDR00005789; MDR00005784; MDR00005788; MDR00005787; MDR00145321; MDR00005785; MDR00149737; MDR00149738

Source: Mouseinthecourt.co.uk

N7 Other payments to D2/D10

N7.1 Some of the other payments from LCF to D2 have been covered already above. LOG made frequent payments (funded by LCF) to D2's company LV Management, usually in the sum of £20,000 per month.[1249] Similarly, London Group LLP made payments deriving from LCF to LV Management, often in the sum of £24,000 per month.[1250]

N7.2 D10 also received monies directly from LCF. On 12.05.17, D3 asked D1 to pay £190,000 to D10.[1251] D1 replied, "*OK*". On the same day, LCF paid £186,200 to D10.[1252] Nothing can be found to explain or justify this payment to D10.

N7.3 D10 also received monies deriving from LCF indirectly, via LOG. On 12.06.17, LCF paid £601,750 to LOG,[1253] which paid £200,000 to D10 just two days later.[1254] The reference was "LOG Share Payment". Nothing can be found to explain or justify this.

N8 Other payments to D3

N8.1 The bank statements contain numerous payments to D3's company Wealden Consultants. (As explained above, this company later became London Power Consultants.)

N8.2 During the period when LCF was lending monies to L&TD, L&TD was making payments to Wealden Consultants. For example, on 01.04.16, LCF paid £53,144.18 to L&TD,[1255] which paid £12,000 to Wealden Consultants.[1256]

1249 D2D10-00034396 pages 2, 7 and 13; D2D10-00034707; D2D10-00034462; D2D10-00035062; D2D10-00039082

1250 MDR00220330 pages 3 and 6

1251 EB0047842

1252 MDR00007314 page 9

1253 MDR00007319 page 3

1254 MDR00006015 page 1

1255 MDR00007237 pages 3-5; MDR00215815 pages 21-22; MDR00034858

1256 MDR00215815 page 21

Source: Mouseinthecourt.co.uk

N8.3 LCF also made payments to Wealden Consultants directly, as mentioned above, including £32,700 on 28.04.16 for "*consultancy work*"[1257] (apparently in connection with an invoice from D4 for "*professional services*"[1258]). LCF paid £10,000 to Wealden Consultants on 25.07.16 (when it made matching payments to D1 and D4).[1259]

N8.4 On 12.05.17, D3 told D1 to pay £100,000 to Wealden Consultants.[1260] D1 complied: LCF paid £98,000 to Wealden Consultants on the same day.[1261]

N8.5 As explained above, monies from LCF were also paid to Wealden Consultants via LCM,[1262] LOG[1263] and London Group LLP.[1264]

[1257] MDR00007347 pages 1-3

[1258] MDR00037759; MDR00037760; MDR00037761

[1259] MDR00007356 page 3

[1260] EB0047842

[1261] MDR00007314 page 9

[1262] MDR00111033; MDR00190145; D1-0000086; D1-0003733 pages 1-3

[1263] MDR00007319 page 3; MDR00006015 page 2; D2D10-00034396 pages 2, 8 and 13; D2D10-00034707; D2D10-00034462; D2D10-00035062; D2D10-00039082

[1264] MDR00220330 pages 3 and 6

Source: Mouseinthecourt.co.uk

O. ATTEMPTS TO CONCEAL THE FRAUD AFTER DECEMBER 2018

O1 Introduction

O1.1 After the FCA raid on LCF on 10.12.18, D1 found himself in a difficult position. He needed to justify the very substantial payments that he had received from LCF. D8 sought to assist by drafting two documents: the so-called MOU and SPA. These were executed in 2019 and backdated to 15.07.15. Unfortunately for D1, D8 managed to draft two mutually inconsistent documents which were at odds with the historical record.

O1.2 D2 and D3 also faced difficulties following LCF's collapse of justifying the monies that had been extracted through the LPE SPA and the LPT SPA. Once again, D8 drafted a plethora of backdated documents. Unfortunately, these were also inconsistent and unconvincing and while sufficient to satisfy the credulous board of LOG, they did not convince LOG's company secretary, who resigned in protest.

O1.3 The Court is asked to find the following facts in relation to attempts to conceal the fraud after December 2018:

(1) Each of the MOU and the SPA were executed in 2019.

(2) D1 and D8 were each involved in the production of the MOU and the SPA in late 2018/early 2019.

(3) The purpose of the MOU and the SPA was to try and provide a *post hoc* justification for D1's receipt of monies deriving from LCF.

(4) D8 drafted backdated documents relating to the LPE SPA and the LPT SPA in January 2019.

(5) One purpose of drafting these documents was to mislead the LOG board into ratifying the sums paid out by LOG in relation to the LPE SPA and the LPT SPA.

Source: Mouseinthecourt.co.uk

O2 The "MOU" and the "SPA" and justifying receipt of LCF's monies by D1

O2.1 D1 places great reliance upon two written agreements, each of which bear a date of 15.07.15: a memorandum of understanding (the "**MOU**"), and a share purchase agreement (the "**SPA**").[1265] These documents are said to provide for a separation of the interests of D1 from those of D2, D3 and D4. The MOU supposedly provided for D1 not to be involved in D2, D3 and D4's companies while retaining a 5% "*beneficial interest*" in those companies. The SPA, which was supposedly executed on the same date, purportedly provided for D1 to sell his interest in D2 and D3's companies, in return for payment of 5% of the realisations from D2 and D3's companies over the following 5 years, capped at £5 million. In fact, these documents were fabricated after the FCA raid on LCF's premises on 10.12.18 in order to create a false impression that there was a proper basis for the receipt of around £5 million of LCF monies by D1.[1266]

The "MOU"

O2.2 The FCA raided LCF's premises on 10.12.18.[1267] The concerns held by the FCA related to, among other things, the identity of LCF's borrowers and what happened to the monies raised from bondholders. In a meeting on 10.12.18 at LCF's premises, when the FCA asked D1 whether he had received any financial benefit from the borrowers, D1 responded with a "*categorical NO*".[1268] However, this was false: D1 had received over £5 million of funds originating from LCF.[1269]

O2.3 The next day, on 11.12.18, a Word document was created by D8 (or on his computer).[1270] It is a draft of the MOU. The true date of the document's creation appears from its metadata. On its face, it says "*Dated July 2015*". It was unsigned and contains four clauses. It provides that D1 will continue to own and develop his separate business, LCF,

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1265 Thomson ¶24 **[C2/1/7]**.

1266 Day 9/page 39/line 23 – page 43/line 3 **[A5/9/10]**.

1267 MDR00195123

1268 MDR00195589

1269 Day 9/page 43/line 3 – page 46/line 17 **[A5/9/11]**.

1270 D8-0044884

Source: Mouseinthecourt.co.uk

without any involvement from D2 or D3, and that he will have an interest of 5% in businesses in which D2 and D3 invest.[1271]

O2.4 The next step in the chronology appears to be the preparation of the "SPA", which appears to have been prepared by February 2019 and is in circulation by 05.02.19. The SPA is considered further below.

O2.5 However, by 19.02.19, D1, D2 and D3 had returned to the idea of relying on the MOU (rather than the SPA), and this date is the first time that a signed version of the MOU appears in the documents.[1272] The signed version of the MOU is dated 15.07.15 and has been signed by D1 and D2. It has been amended from the Word document produced on 11.12.18: (i) in clause 1, the word "*co-operate*" has been changed to "*operate*"; (ii) in clause 2 the description of the proportions in which the parties invested ("*EB 50: SHK 45: MAT 5*") has been removed, presumably because these proportions changed over time; (iii) clause 4 has been changed from "*MAT shall not take any active role in the businesses that EB and SHK shall invest in*" to "*shall not take any active or passive role*"; and (iv) there is a new clause 5 which says "*The parties shall each operate their separate businesses totally at arm's length.*"[1273]

O2.6 The signed version of the MOU was sent by Nicola Wiseman to D2 on 19.02.19, who sent it on to Finbarr O'Connell, one of LCF's Joint Administrators, on the same day.[1274] There is no email or other contemporaneous communication in July 2015 attaching a copy of the MOU.[1275]

O2.7 Even on its face, the MOU presents a number of difficulties. At the time at which the MOU was purportedly executed, the "Golding SHK Agreement"[1276] had not yet been signed and so it was D4 (and not D1) who was the beneficial owner of the shares of

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[1271] Day 9/page 46/line 18 – page 49/line 11 **[A5/9/12]**.

[1272] D2D10-00057591

[1273] Day 9/page 73/line 22 – page 75/line 17 **[A5/9/19]**.

[1274] D2D10-00057590; D2D10-00057591; D2D10-00057594; D2D10-00057595; Day 9/page 75/line 18 – page 76/line 10 **[A5/9/19]**.

[1275] Day 9/page 77/lines 1-11 **[A5/9/20]**.

[1276] EB0139239

Source: Mouseinthecourt.co.uk

LCF. D4 was not party to the MOU and so the MOU cannot have given the beneficial interest in the shares of LCF to D1. If the MOU was an effective transfer of the beneficial ownership of LCF to D1, there would have been no need for the "Golding SHK Agreement", which is dated 27.07.15 and is a genuine document because it was first circulated by D8 on 16.07.15.[1277]

The "SPA"

O2.8 The first version of the SPA is a document which according to its metadata was produced on 05.02.19.[1278] On its face, it bears a date of 10.08.15 in manuscript. The SPA is a share purchase agreement between D1 as "seller" and D2 and D3 as "buyer". It provides that 5% of shares in companies held by the "buyers" (and shares in companies they may later acquire) are held on trust for D1. The current companies are listed in a schedule, and include the original LOG, which later became London Group plc and then GRP; London Trading; L&TD; IRG; LV Resorts; LCCL and CV Resorts.[1279]

O2.9 The SPA provides for D1 to sell his 5% interest in the shares, in return for 5% of the value of the various companies which is realised in a 5-year period, up to a maximum of £5 million. The SPA further provides (at clause 4) that on completion he shall resign any offices he holds in the companies listed in the schedule. By clause 6 of the SPA, D1 was to "*operate his business (LCF) independently of the business of the companies and shall comply fully with all laws and regulations that are applicable to LCF and any subsidiaries or associate companies of it*".[1280] The SPA was signed by D1, D2 and D3.

O2.10 It can immediately be seen that the SPA is inconsistent with the MOU. Under the MOU, D1 would continue to have a 5% interest in all businesses in which D2 and D3 invested. However, under the SPA, D1 was to sell his 5% interest in "shares" for a price.[1281] This version of the SPA was signed by D1, D2 and D3.

[1277] Day 9/page 76/lines 11-25 **[A5/9/19]**.

[1278] D8-0046802. The SPA was attached to an email withheld by D8 on the grounds of privilege: D8-0046801.

[1279] Day 9/page 49/line 12 – page 52/line 13 **[A5/9/13]**.

[1280] Day 9/page 52/line 14 – page 55/line 6 **[A5/9/13]**.

[1281] Day 9/page 55/line 20 – page 57/line 1 **[A5/9/14]**.

Source: Mouseinthecourt.co.uk

O2.11 The version of the SPA described above bore the date 10.08.15, but it seems to have been decided that it should be re-executed with the date July 2015. On 12.02.19, Paul Sayers emailed D8, Lucy Sparks, D2 and D3. He explained that he needed to see the "*Agreement with MAT on his equity circa July 15 (Robert)*".[1282] This appears to have been an entry in a list of tasks. A further version of the SPA was then created which was dated 15.07.15 in typescript.[1283] According to its metadata, the document was created on 12.02.19. This second version of the SPA was attached to an email dated 12.02.19 from D8 to D2, with the subject "*SPA for MAT's interest*".[1284] This second version of the SPA is in the same terms as the version dated 10.08.15. It has been signed by D1, D2 and D3.[1285]

O2.12 D8 attempted to be careful to refer to companies described in the SPA by the names they bore as at 15.07.15; however, there are a number of errors and anachronisms which are inconsistent with the SPA being a genuine document: (i) the list of companies in the SPA includes LCCL, but as at 15.07.15, D2 and D3 did not hold any shares in LCCL, and hence they could not hold an interest on trust for D1; (ii) the list of companies includes "London Oil & Gas Limited", but as at 15.07.15, this company was owned by the Bosshards, not D2 and D3[1286]; (iii) the registered office of LOG included in the SPA is incorrectly stated as the "Wellington Gate" address, and LOG only came to have this address from 4 August 2015 onwards.[1287]

O2.13 There is a further difficulty with the idea of the SPA having been entered into on 15.07.15: (i) a deed of trust dated 28.08.15[1288] provided for D1 to be a 5% beneficial owner of shares in London Group Ltd (previously called "London Oil and Gas Ltd"), which is one of the companies listed in the schedule to the SPA; (ii) a note prepared by D8 on 15.12.15 records D1 as holding 5% of the shares in London Group Ltd[1289]; (iii)

1282 EB0118238

1283 D8-0047170

1284 D2D10-00057223; D2D10-00057224

1285 Day 9/page 57/line 7 – page 58/line 20 **[A5/9/14]**.

1286 D8-0001667; D8-0001668

1287 **[R1/15/1]**; Day 9/page 58/line 21 – page 62/line 23 **[A5/9/15]**.

1288 EB0139158

1289 MDR00025711

Source: Mouseinthecourt.co.uk

an email from D8 to D2 copied to D3 records D1 holding 5% of the shares in London Group Ltd.[1290] Each of these documents is inconsistent with D1 having sold his shares in London Group Limited under the SPA on 15.07.15 and only make sense if in fact the SPA did not exist at the date on which each of the documents was produced.[1291]

O2.14 Similarly, the "Golding SHK Agreement" of 27.07.15 records D1 as being entitled to hold 5% of the shares in London Trading. London Trading was also recorded in the schedule to the SPA.[1292] In addition, the Lakeview SPA, by which D1 agreed to sell his shares in LCCL to London Trading was being drafted in July 2015 and was executed on 27.07.15.[1293] If the SPA had actually been executed on 15.07.15, it would mean that in the middle of finalising the sale of D1's shares under the SPA, D1 actually sold them to D2 and D3 before D1 then proceeded to sell those shares under the Lakeview SPA as though the sale under the SPA dated 15.07.15 did not exist.[1294]

O2.15 A further issue is that while the SPA provided for D1 to resign all his offices with the relevant companies on 15.07.15, this does not accord with what actually happened. So, for example, in an email from D1 to D8 dated 16.09.16, D1 wrote "*Further to our conversation please see below the companies that I am still listed as a director of which I should have been removed from. Also also [sic] below is a list of the directorships that I resigned from in June but the resignation was not processed until much later. Please can you remove me from the below company's [sic] and also confirm that I should have been removed in June 2015 and that I had no involvement past June 2015.*"[1295] D1 makes no mention of the SPA. D8 responded with a draft letter confirming that D1 had resigned from all relevant directorships as at the end of June 2015.[1296] He then sent an email to Michael Peacock on 17.10.16 asking him to "*arrange to resign Andy as director*" of various companies and saying "*Please show the date of his resignation as 30 June*

1290 MDR00039513

1291 Day 9/page 62/line 24 – page 65/line 22 **[A5/9/16]**.

1292 EB0139239; Day 9/page 65/line 23 – page 66/line 7 **[A5/9/17]**.

1293 D8-0001216; D8-0001218; D8-0001354; D8-0001355

1294 Day 9/page 66/line 8 – page 69/line 20 **[A5/9/17]**.

1295 MDR00058290

1296 MDR00058342; MDR00058346

Source: Mouseinthecourt.co.uk

2015."[1297] He does not mention the SPA either.[1298] However, under the SPA itself, the resignation date was supposedly the date of the SPA, i.e. 15.07.15. If the SPA had genuinely existed, D1 and D8 would not have been referring to the idea of D1 having resigned with effect from *June* 2015.

O2.16 Hence, the SPA contains errors which it would not have if it were a contemporaneous document. The historical record only makes sense where the SPA does not exist. The Court can conclude with some confidence that it is not a genuine document. Instead, it was created by D8 on or around 05.02.19, presumably because the MOU did not cater for all of the issues which D1 would need to account for to the FCA.[1299]

O2.17 As noted above, the MOU and SPA do not fit together: the MOU provides for D1 to retain his 5% shareholding in businesses run by D2 and D3, whereas the SPA provides instead for D1 to sell his 5% shareholding in businesses run by D2 and D3. The LCF Joint Administrators were provided with the MOU by D2 on 19.02.19. However, the SPA was only provided to the LCF Joint Administrators over a year later, when D3's solicitors provided a copy on 26.02.20. The documents are not contemporaneous documents which provide a possible justification for the receipt by D1 of bondholder monies but were created after the FCA raid on 10.12.18 in order to provide an ostensible justification for the receipt by D1 of LCF's monies.[1300]

O3 <u>D1's participation in and knowledge of the fabrication of the MOU and the SPA</u>

O3.1 D1 signed each of the MOU and the SPA.

O3.2 D1 knew that the MOU and the SPA did not reflect agreements as at the date at which they were executed but were produced in 2019 in order to mislead the FCA into believing that the monies he had extracted from LCF were justified.

[1297] D8-0006337

[1298] Day 9/page 69/line 21 – page 73/line 8 **[A5/9/18]**.

[1299] Day 9/page 72/lines 9-19 **[A5/9/18]**.

[1300] Day 9/page 77/line 12-page 81/line 7 **[A5/9/20]**.

Source: Mouseinthecourt.co.uk

O3.3 Indeed, the MOU and the SPA are a fundamental plank of D1's defence in these proceedings. He referred repeatedly in his oral evidence to the SPA as his "*buyout agreement*"[1301]; although this seems to have been a recently developed piece of terminology. However, D1 was wholly unable to provide an explanation for the compelling evidence, described in the preceding section, that these documents were produced after the FCA raid. He claimed that on 12.02.19, when the second version of the SPA was produced, he was "*standing on the edge of a cliff at Beachy Head.*"[1302] However, the version of the SPA in D1's disclosure[1303] was scanned on 12.02.19 at 11:48 suggesting that D1 scanned it on that date.[1304]

O3.4 D1 also claimed that the draft MOU produced by D8 in December 2018 was a recreation by D8 of a document that D1 had provided at an earlier date.[1305] This is an obviously nonsensical explanation which does not explain the differences between the initial draft of the MOU produced by D8 on 11.12.18 and the version signed in 2019.

O3.5 D1 was also unable to explain why, if the sums he received were paid under the MOU and/or the SPA, he started receiving a share of 7.5% in 2018. His suggestion that D2, D3 and D4 would voluntarily pay more to him than they would have been obliged to under the SPA, which had a time cap, was obvious nonsense.[1306]

O4 D8's participation in and knowledge of the fabrication of the MOU and the SPA

O4.1 D8 was involved in drafting each of the MOU and the SPA. As explained above, the first version of the MOU was drafted by him or on his computer (according to the metadata), and the SPA was plainly drafted by D8.

1301 See, for example, Day 22/page 115/line 17 – page 117/line 15 **[A5/22/29]**.

1302 Day 22/page 125/lines 23-25 **[A5/22/32]**.

1303 D1-0012931

1304 Day 23/page 1/line 5 – page 4/line **[A5/23/1]**.

1305 Day 22/page 119/line 20 – page 120/line 10 **[A5/22/30]**.

1306 Day 25/page 162/line 20 – page 163/line 14 **[A5/25/41]**.

Source: Mouseinthecourt.co.uk

O4.2 D8 knew that the MOU and the SPA did not reflect agreements as at the date at which they were executed but were produced in 2019 in order to mislead the FCA into believing that the monies extracted from LCF by D1 were justified.

O5 <u>Documents created to justify LOG's lending in relation to the LPE SPA and the LPT SPA</u>

O5.1 As is described above at L2.19 to L2.24 and M2.11 one of the problems with each of the LPE SPA and the LPT SPA was that LOG had not authorised the use of its funds for the purpose of funding payments under the LPE SPA.

O5.2 On 20.09.18, LOG's company secretary David Elliott sent an email to D2 and D3 in which he noted that "*I have not fully reconciled the balance since mid-June but there have been four large drawdowns totalling circa £22m … from late June to August*".[1307]

O5.3 Following LCF's collapse, on 08.01.19 D8 sent an email (cc D2 and D3) in which he suggested that LOG could be provided with "*a call option agreement to purchase the shares in LEP* [sic] *Enterprises for £1*".[1308] D8 prepared a draft call option agreement in those terms and circulated it on the same day.[1309] He also prepared a draft loan agreement between LOG and LPE Enterprises in respect of the on-lending to LPE Enterprises of the drawdowns that had been made on LOG's facility with LCF.[1310] The call option agreement entitling LOG to buy the shares in LPE Enterprises for £1 was then signed by D2 and D3 and backdated to 21.06.18 to make it seem as though it had come into existence on the same day as the LPE SPA.[1311] The loan agreement was also signed by D2 and D3 and back-dated to 21.06.18.[1312]

O5.4 On 17.01.19, David Elliott circulated an email to LOG's directors, including D2 and D3, to which he attached a presentation setting out his findings after his attempts to reconcile

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1307 MDR00000890; Day 9/page 81/line 8 – page 82/line 7 **[A5/9/21]**.

1308 MDR00220087

1309 MDR00220088; MDR00220090

1310 MDR00220089

1311 MDR00214273; MDR00214272

1312 D8-0046918

Source: Mouseinthecourt.co.uk

LOG's balances noting that there was a discrepancy between the amount borrowed by LOG from LCF, and the amount received by LOG from LCF. In relation to the LPE SPA, he noted that "*The spreadsheet shows that as at 31 December 2018 the total balance owed to LOG by LPE is £28.2m. It is proposed that a formal loan agreement will be drafted in support of the loan agreement and that this will also be supported by a debenture put in place between LOG and LPE.*". In relation to the LPT SPA, he wrote "*All of the sums borrowed by LOG and LPC have been treated as being borrowed on behalf of LPT and the total net borrowing is £16.6m. It is proposed that this sum will be grossed up for the cost of borrowing and will be repayable by LPT*".[1313]

O5.5 On 06.02.19, David Elliott sent a further email to LOG's directors, including D2 and D3, in which he referred to a board meeting scheduled for 12.02.19. Among the agenda items for that meeting was "*Summary of existing undocumented and unapproved loans by LOG to other London Group related entities and consideration of security package to support these and to be documented in due course. Ratification to be considered and risk of being set aside.*"[1314]

O5.6 On 11.02.19, the day before the board meeting, David Elliott sent an email to the LOG directors, including D2 and D3, in which he wrote:[1315]

> "*The board will be asked to consider the following resolutions at the LOG board meeting*
>
> • *Ratification of the loan arrangements with LPE Enterprises Limited, Intelligent Technology Investments Limited and London Power & Technology Limited. The lending to date will depend upon the terms of the loan agreements entered into but based on current information the cash amounts loaned to each of the entities is approximately £19.1m (LPE), £3.6m (ITI) and £16.6m (being LOG £12.5m and LPC £4.1m). Further funding is likely to be required for ITI in order to provide funding for Asset Mapping but the exact quantum is unknown at present. However, as LOG is unable to draw down any further funding from LCF, any such support will be need to be made available from third party sources. The board will need to consider whether it was beneficial for LOG to enter into these loans in each case and the corporate benefit arising from each such loan. The board should consider taking legal advice before reaching such a decision, given the appointment of administrators over LCF. If the board conclude that the loans should be*

[1313] D2D10-00055493; D2D10-00055494; Day 9/page 82/line 8 – page 85/line 23 **[A5/9/21]**.

[1314] MDR00220834; Day 9/page 85/line 24 – page 86/line 11 **[A5/9/22]**.

[1315] MDR00220555; Day 9/page 86/line 12 – page 90/line 14 **[A5/9/22]**.

Source: Mouseinthecourt.co.uk

ratified, then the key terms of the loans will need to be agreed, such as maximum facility available, repayment terms, interest rates and fees, purpose of loan, type of commitment etc. and the security/guarantee package to be entered into by LOG in relation to the loan payments and ranking as against any existing security in the entity.

Board members should be aware that the administrators of LCF, Smith & Williamson ("S&W"), have been provided with information relating to these balances and they have requested further documentation in order to understand the background to the loans. Subject to board approval, it is intended that Stephenson Harwood are instructed to assist with the preparation of a wider position paper that the board can present to S&W setting out the original planned restructuring of the oil group and tech group and be mandated to advise generally and assist us in the ongoing dialogue with the administrators. The board will also need to consider a number of other matters Iing, inter alia:

• The board will also need to consider taking legal advice in relation to any potential breach of the LCF loan facility as a result of the loans to LPE, ITI and LPT. This could include the loan to value ratio amongst other potential defaults.
• Whether the loans may be capable of being set aside as a transaction at undervalue in the event of the insolvency of LOG.

In the attached paper, I have referenced various sums loaned by LOG and also documents supporting these amounts. I would like to bring to the attention of the board the following:

• The initial loans made in February/March 2018 are annotated "pref shares" in the LOG nominal ledger. These were included in the draft March 2018 management accounts provided to the board and were treated as relating as an advance payment in relation to the payment for preference shares as set out in the Mazars restructuring paper, which was in draft form at that stage. These payments were allocated to the London Group LLP nominal ledger code as there was no further information in relation to their treatment.
• When a reconciliation of the spreadsheet that was sent to Lucy Sparks periodically by LCF to the LOG accounting records was undertaken in late September/early October 2018 there were a number of payments made directly from LCF to the recipients during June, July and August 2018 and these did not pass through the LOG or LPC bank accounts. Neither the accounts team nor Jo Marshall were aware nor had they been advised about any of these payments or transactions at the time. The accounts team became aware of them in late September 2018 when Lucy Sparks passed over a copy of the spreadsheet received by her from LCF showing the loan analysis. Once a reconciliation of the spreadsheet to the accounting records was completed, these payments were allocated to the London Group LLP nominal ledger code as there was no further information in relation to their treatment. This was completed as part of the work required for the audit for the period ended 30 September 2018.
• As part of the audit for the period ended 30 September 2018, BDO required an analysis of the balance with London Group LLP and an explanation of how this balance would be recovered. Neither the accounts team nor Jo Marshall were

Source: Mouseinthecourt.co.uk

aware nor had they been advised of the agreements detailed in my paper at the time they were entered into. I was first provided with a copy of the agreements on 4 December 2018 after asking Robert to review my proposed note to BDO on the recoverability of the debts. These were provided by me to the legal team during December and were then brought to the attention of the board at the meeting on 9 January 2019."

O5.7 As described above at L2.23 and L2.24, at the board meeting on 12.02.19, David Elliott reiterated his view that LOG's board had not authorised the use of LOG's monies in this way:[1316] "*The board could not have ratified the loans as they did not know the money had been borrowed*". David Elliott resigned as company secretary because he did not believe that the LPE loan agreement and the call option agreement had been produced in June 2018.[1317] He was right.

O5.8 The documents that David Elliott thought were backdated had in fact been produced by D8 in January 2019.[1318] In separate proceedings, D8 has admitted that he produced facility agreements between LOG and LPE Enterprises and LOG and LPT in January 2019 and backdated them.[1319] D8 also admitted that he produced two separate novation agreements in February 2019 by which loans from LOG to London Group LLP were novated to LPE Enterprises and LPT.[1320] These novation agreements were executed by D2 on behalf of each party to them and his signature was witnessed by D8.[1321] The novation agreements are inconsistent with the facility agreements that D8 produced in January 2019 and backdated; clearly by this stage he was in something of a panic.

O6 D8's participation in and knowledge of the documents created to justify LOG's lending in relation to the LPE SPA and the LPT SPA

O6.1 D8 knew that the monies paid ostensibly pursuant to each of the LPE SPA and the LPT SPA had not been authorised by LOG's board.

1316 MDR00212113

1317 Day 9/page 90/line 15 – page 107/line 1 **[A5/9/23]**.

1318 MDR00220087; MDR00220088; MDR00220089; MDR00220090; D8-0046917; D8-0046918; MDR00214273; Day 9/page 107/line 2 – page 115/line 13 **[A5/9/27]**.

1319 MDR00222522 page 12

1320 MDR00222522 page 16

1321 See, for example, D8-0047373

Source: Mouseinthecourt.co.uk

O6.2 D8 drafted facility agreements between LOG and each of LPE Enterprises and LPT in January 2019 and backdated them in an effort to mislead the board of LOG and, possibly the LCF Joint Administrators, into believing that the funds diverted from LOG under the LPE SPA and the LPT SPA were properly documented.

O6.3 D8 also produced and backdated a call option agreement that purported to give LOG the benefit of the LPE SPA when he knew that the monies paid out ostensibly under the LPE SPA had been received by D1, D2, D3 and D4. Again, the purpose of the document was to mislead LOG's board.

Source: Mouseinthecourt.co.uk

P. THE INVOLVEMENT OF D5, D6, D7 AND D9 IN THE FRAUD

P1 Introduction

P1.1 The initial involvement of D7 with SAFE is described at Section H5 above. The engagement of D6 by LCF is set out at H2.18 to H2.33 above. This section deals with the involvement of D5, D6, D7 and D9 in the fraudulent scheme carried on by LCF.

P1.2 As explained below, D5 suspected from the very outset that LCF was not legitimate. Over time, he discovered a large number of facts which substantiated these concerns. Ultimately, he was left in no doubt about how LCF operated. However, in light of the vast commissions paid by LCF to D6, he was keen for D6 to continue to sell LCF's bonds to members of the public in order to keep enriching himself.

P1.3 For his part, D7 had been involved in the affairs of LCF and SAFE for some time. He had even more reason than D5 and D6 to know that LCF was not a legitimate operation.

P1.4 D7 was a director of D9 from 05.09.13 and the sole director from 08.06.15.[1322] His knowledge is consequently to be attributed to D9.

P1.5 D5 was the majority owner of D6 from its incorporation; although for a period his share was held for him by Kerry Venn. He was a director of D6 only from 07.07.15[1323]; although, again, this appears due to some desire to conceal his interest in D6. In fact, he ran D6 from its inception. D5 was the CEO of D6 and his role was "*to set the strategic vision, to hire and retain the best people for the business and troubleshoot*."[1324] As Kerry Venn, the other director of D6 put it in her evidence, "*As CEO, Paul was always more in control of any decision than me… Everyone looked up to Paul and trusted him. He would come up with great innovations for the business that we wouldn't have thought of…His role demanded that his time and attention was focussed on innovation, strategy,*

[1322] **[A1/5/53]**.

[1323] **[A1/5/101]**.

[1324] Careless 1 ¶30 **[C2/3/6]**.

Source: Mouseinthecourt.co.uk

motivation, leadership and taking the business forward."[1325] D5's knowledge is consequently to be attributed to D6 at all material times.

P1.6 The Court is asked to find the following facts in relation to the involvement of D5, D6, D7 and D9 in the fraud:

(1) D5, D6, D7 and D9 participated in making the Representations defined in the RRRAPoC to prospective Bondholders.

(2) D5, D6, D7 and D9 knew that those Representations (or some of them) were false.

(3) D5, D6, D7 and D9 knew (in the relevant sense of the term) that LCF was not a legitimate business operation but was a Ponzi scheme operated by D1 and/or D4 and from which at least D1, D2 and D4 misappropriated monies.

(4) D5, D6, D7 and D9 participated in the misappropriation of LCF's monies by knowingly making unjustified payments to D1 and D4 from monies deriving from LCF and by D6 charging LCF an unjustifiably high commission, the benefits of which ultimately accrued to D5 and D7.

(5) At all material times the knowledge of D5 (and through him D6) and D7 (and through him D9) of the matters above was either: (i) actual knowledge; or (ii) wilfully shutting their eyes to the obvious; or (iii) wilfully and recklessly failing to make such enquiries as an honest and reasonable man would make.

P1.7 The submissions below deal first with matters relating principally to the participation of D5, D6, D7 and D9 before dealing with matters relating principally to their knowledge.

[1325] Venn 1 ¶39 **[C2/4/9]**.

Source: Mouseinthecourt.co.uk

P2 D5/D6's involvement with LCF

LCF's initial growth

P2.1 At some point before early 2015, D5 had started to sell leads to Blackmore but he was not content with this.[1326] He felt that he wasn't making enough money.[1327] He was "*scraping for funds*" and had some debts which he needed to settle.[1328] D5 had big ambitions for LCF,[1329] but he faced one major obstacle: a lack of money.[1330] He wanted to put on a "*growth sprint into LCF*", which D6 had started selling mini-bonds for on 04.08.15[1331] but he could not afford to pay for it.[1332] D6 had been "*operating on fumes for c6 months*."[1333] (D5 explained in cross-examination that he used the term "*sprint*" to refer to a big sales push. [1334])

P2.2 Accordingly, on 15.08.15, D5 emailed D4 to ask for a loan of £20,000.[1335]

P2.3 D5 explained to D4 that a loan of £20,000 would assist D6 to pay for a sales drive: "*We would increase to five sales guys for two weeks, working from our offices in Eastbourne where they can be driven by John. They are normally commission only but we will pay them £1k each for two weeks to push hard and work from our offices. The cash would also allow us to increase their lead volumes from 4 leads a day to 15 a day for that ten day period. During this sprint we would look to put at least £2m into LCF*".

1326 Careless ¶20 **[C2/3/4]**; SUR00000867-0001; SUR00000868-0001; SUR00000869-0001

1327 Day 28/page 10/lines 3-24 **[A5/28/2]**.

1328 Day 28/page 25/lines 14-20 **[A5/28/7]**.

1329 SUR00129311-0001

1330 SUR00001771-0001

1331 Day 28/page 80/lines 17-21 **[A5/28/20]**.

1332 SUR00001771-0001

1333 SUR00001720-0001

1334 Day 28/page 81/lines 6-7 **[A5/28/21]**.

1335 SUR00001783-0001

Source: Mouseinthecourt.co.uk

P2.4 D5 proposed that the loan made by D4 would be repaid by reducing the commissions charged by D6 to LCF to 12.5%, thereby demonstrating that he understood D4 and LCF to be inextricably linked.[1336]

P2.5 D4 was "*happy to assist*".[1337] He provided a loan of £25,000 to D6 on 18.08.15[1338] and a further loan of £25,000 to D6 on 03.09.15.[1339] This money was required because D6 was "*burning cash on growth at this stage*".[1340]

P2.6 These monies enabled D6 to ramp up its efforts to sell LCF's bonds, which D6's personnel pursued vigorously ("*Our immediate focus remains sales into LCF with a sense of urgency … It is another sprint week; I expect full throttle from everyone …*").[1341]

P2.7 D5 hoped to raise more than £1 million for LCF by the end of September 2015 ("*14 days left. You can hit £1m +. I just know it. We need another sales sprint starting Monday. All in, 15 leads per man, per day for three days each. Put a night out on at the end of the month for the boys. Something special*").[1342]

P2.8 D5 told Mark Partridge that D6 would "*break £1.2m into LCF in September*".[1343] The effect on D6's finances was transformative. In a very short space of time it had gone from "*operating on fumes*" to making well over £100,000 in profit per month.[1344]

P2.9 D5 set a target of £1.5 million into LCF by the end of November 2015.[1345] Things were moving quickly; £2 million for that month was becoming "*a distinct possibility*".[1346]

1336 SUR00001810-0001; Day 28/page 81/lines 10-21 **[A5/28/21]**.

1337 SUR00001810-0001

1338 SUR00001814-0001

1339 SUR00001984-0001

1340 Day 28/page 82/line 24 – page 83/line 3 **[A5/28/21]**.

1341 D7D9-0001950

1342 SUR00129440-0001

1343 SUR00129441-0001

1344 Day 28/page 85/lines 3-5 **[A5/28/22]**; SUR00164248-0001

1345 SUR00129785-0001

1346 EB0007959

Source: Mouseinthecourt.co.uk

P2.10 Kerry continued to help LCF to create the right impression: "*The recurring theme we should present: substantial, safe and secure. Branding and content that ooze Financial Institution, verified by trusted, regulated, independent bodies*".[1347]

P2.11 Kerry added further email addresses to the contacts page of LCF's website "*to create the impression that the organisation is larger than it is. This creates gravitas. Prospective investors are more likely to assume the organisation is larger and associate other perceptions with that such as safer, robust, longer term etc*".[1348] D1 agreed.[1349]

Reliance on GST to sell LCF bonds

P2.12 D5, D7 and Kerry sought to rely on the involvement of GST to reassure prospective investors that their monies would be safe.

P2.13 GST was controlled by D8.[1350] Initially, when GST was known as Global Business Security Limited, there was a security trust deed between LCF and GST (signed by D1 on behalf of LCF and by D8 on behalf of GST).[1351] Later, after Global Business Security Limited had changed its name to GST,[1352] LCF executed debentures in favour of GST[1353] which were filed with Companies House on 13.01.16.[1354] (The debentures in favour of GST were backdated by D8, who told D1 that he had done this.[1355])

P2.14 D6's sales people used GST's role to help them to sell LCF bonds. For example, Jo Baldock told prospective investors on 03.12.15, "*All bond holder funds are protected by an independent security trustee who manages the security held for the investor*".[1356]

1347 MDR00019633; MDR00019634 page 2

1348 MDR00021862

1349 MDR00021867

1350 MDR00038869 page 2

1351 MDR00000010; MDR00002139; MDR00002146

1352 MDR00020397; MDR00020398; MDR00020399

1353 MDR00002141; D1-0002116

1354 MDR00002140; MDR00002142; MDR00028021

1355 MDR00026940; MDR00026941; MDR00026942

1356 MDR00023601; SUR00130207-0001

Source: Mouseinthecourt.co.uk

P2.15 Similarly, D7 emailed prospective investors to tell them about the "*third party*" GST[1357] "*who ensures there is always adequate security in place to protect the bondholders*".[1358]

P2.16 D6's sales people used the same lines when communicating with bondholders.[1359] For example, Scott Allen of D6 told prospective investors on 13.06.16, "*An independent security trustee, Global Security Trustees Ltd, holds a charge over all LCF's assets (to include any new security LCF takes for additional loans made) which it holds on behalf of all bond holders*".[1360] These statements were included in an LCF fact sheet, which D7 circulated to D6's sales teams on 04.01.16[1361] and again on 14.01.16 ("*These assets are then held in the form of a debenture by Global Security Trustee's, a third party company who ensures there is always adequate security in place to protect the bond holders*").[1362]

P2.17 There was a live chat function on LCF's website, staffed by D6's sales people, who told prospective investors about the role of the independent trustee, among other things.[1363]

P2.18 However, D5 and Kerry became concerned that GST had no provenance or credibility. Kerry emailed D1 on 03.12.15 to say, "*Global Security Trustees Limited don't have a website, I believe they are a new company. This is something that the more research oriented / curious investors will pick up on. It will greatly assist our sales if they build a website so they have an online presence*".[1364]

P2.19 On 03.05.16, D5 said that he would "*chat with Andy on Thursday about setting up a good online trail of provenance to ensure when Googled it provides comfort*".[1365]

1357 MDR00026632; MDR00026697

1358 D7D9-0002441; D7D9-0002509; D7D9-0002479

1359 D7D9-0002508; D7D9-0002509; D7D9-0002510; D7D9-0002511; MDR00025991; MDR00027146; MDR00026924

1360 MDR00044477

1361 SUR00004744-0001; SUR00004745-0001

1362 SUR00005658-0001; SUR00005659-0001

1363 MDR00026689; MDR00026692; MDR00026755; MDR00026769; MDR00026801; MDR00045709; MDR00048347; MDR00048625; MDR00050219

1364 MDR00023582

1365 SUR00018798-0001

Source: Mouseinthecourt.co.uk

BSR

P2.20 D5 wanted LCF to be listed on www.best-investment-funds.co.uk.[1366] D5 confirmed to the Court that this site was run by him and Kerry.[1367] This site did not carry out any objective assessment of LCF but simply listed it for a fee.[1368] D5 described it contemporaneously as a "*bullshit site*":[1369] this terminology reflects the fact that it involved lying to members of the public by creating the impression that LCF had been endorsed by an independent third party when this was not true.[1370] Ever with an eye on maximising his returns, D5 pretended that this website was run by his "*friends*" and charged LCF £1,000 to be listed, despite the website in fact being run by D5.[1371]

P2.21 To assist with sales of LCF's bonds, D5 set up a fake comparison website, Best Savings Rates ("**BSR**"), which went live on or about 17.11.15.[1372] Subsequently, he set up other fake comparison websites, including Best ISA Rates ("**BIR**").

P2.22 The purpose of the websites was to push people through LCF's online application process, as Ryan Holdway noted in an email to D5 dated 10.09.15: "*We are going to be building a website that lists 10 or so accounts where a person can put their savings, like a comparison website. This will be used to push people through an online application process for LCF*".[1373] Despite this, D5 tried to deny that this was the case in his oral evidence but acknowledged that websites such as BSR were used to get people to go to LCF's website.[1374] One benefit of BSR and the other fake comparison sites was that members of the public could "*sign up hands free directly into LCF*" (i.e., by clicking

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1366 MDR00016546

1367 Day 28/page 69/lines 11 – 18 **[A5/28/18]**.

1368 Day 28/page 67/line 1 – page 68/line 14 **[A5/28/17]**.

1369 SUR00001692-0001

1370 Day 28/page 69/lines 10 – page 71/line 25 **[A5/28/18]**.

1371 MDR00016556; Day 28/page 68/line 24 – page 72/line 6 **[A5/28/33]**.

1372 SUR00002138-0001 ; SUR00129986-0001; MDR00021060; EB0007969

1373 SUR00002138-0001

1374 Day 28/page 129/line 4 – page 130/line 8 6 **[A5/28/33]**.

Source: Mouseinthecourt.co.uk

through to LCF's website and applying online, without any input from D6's sales people).[1375]

P2.23 Another intended benefit was that "*Best Savings rates will appear on Google for any search of LCF or its derivative search terms and can also be used as a direct sales aid by the sales team. This will enhance trust and therefore sales*".

P2.24 The rankings of the investment products on these websites were not based on any objective evidence. Instead, the websites were manipulated to put LCF in first place.[1376]

P2.25 On 24.05.17, for example, Ryan Holdaway of D6 emailed D5, D7, Kerry and Steve to explain, "*Today we are moving LCF to the top of all three of our comparison websites, and Blackmore will sit in fourth on all three. The traffic that was formally* [sic] *being driven to Blackmore, but not converting, will now be pushed through LC&F. LC&F will naturally see an increase in traffic, leads and sales*".[1377]

P2.26 Similarly, on 23.11.18, Jo Baldock emailed D5 and D7 to say, "*I propose we switch LCF back to the top of BIR until the end of November*".[1378]

P2.27 In his oral evidence, D5 admitted that the ranking on BSR and BIR was not based on any objective evidence but on which products D5 wanted to provide a boost in sales to at any given time and was set to optimise conversion rates.[1379] D5 also admitted that LCF was placed at the top of BSR because he wanted to optimise its position in order to maximise D6's commission.[1380] The BSR website was materially misleading because it presented itself as independent but in fact was run for D6's benefit, which has a financial interest in maximising sales of LCF's bonds. In this light, D5's protestations that D6 was independent of LCF do not bear up to scrutiny.[1381]

1375 SUR00002626-0001

1376 MDR00032670; MDR00032671

1377 SUR00075090-0001

1378 SUR00114170-0001

1379 Day 28/page 142/line 20 – page 144/line 6 **[A5/28/36]**; SUR00093119-0001

1380 Day 28/page 146/lines 14-17 6 **[A5/28/37]**.

1381 Day 28/page 147/line 14 – page 148/line 25 **[A5/28/37]**.

Source: Mouseinthecourt.co.uk

LCF's further growth

P2.28 In January 2016, D5 sought another loan from D4. This time the loan was for £200,000. As with D4's previous loans, it was to be repaid by D6 reducing the commissions it charged to LCF.[1382] D5 planned for £50,000 of this money to be paid to D5 personally, with £30,000 going to D7 whilst the remaining £130,000 would be for D6.

P2.29 Aided by LCF's number one ranking on BSR, D6's sales of LCF's bonds continued to grow. By February 2016, D5 was hoping for "*70 LCF leads a day starting tomorrow*".[1383] The aim was for £1 million in commission revenues and £600,000 in profit.[1384] Around this time, as described above at H7.16 to H7.29, D5 and D7 were discussing an exclusivity agreement with D2 and D4.[1385] D1 was not involved in these discussions. D5 did not want any discussion about it on email.[1386]

P2.30 April 2016 was a record month for sales of LCF bonds, with 196 applications totalling £3,441,700 and cleared funds of £2,080,500.[1387] The number for May 2016 was slightly down, with cleared funds of around £1.8 million.[1388]

P2.31 By the end of May 2016, D6 had raised almost £7.9 million for LCF.[1389]

P2.32 D5 set a new goal of £4 million per month[1390] ("*We will hit our 4 million goal, it's achievable and we are on target. Double income, bonuses all round*").[1391] D7 was enthused: "*my main focus will be to push LCF, this is our cash cow and I won't stop*

1382 SUR00005951-0001; Day 28/page 107/lines 5-11 **[A5/28/27]**.

1383 D7D9-0004710

1384 SUR00131245-0001; Day 28/page 153/line 21 -page 154/line 10 **[A5/28/29]**.

1385 SUR00007294-0001; D7D9-0004835; D7D9-0004836; Day 29/page 141/line 23 – page 145/line 4 **[A5/29/36]**.

1386 SUR00164278-0001

1387 MDR00038286

1388 MDR00042549; MDR00042550

1389 MDR00042549; MDR00042550

1390 SUR00025841-0001

1391 MDR00044326

Source: Mouseinthecourt.co.uk

until the 4m target is hit."[1392] D5 was jubilant about the sums flowing into D6, and shared this with Steve Jones on 17.06.16: "*Dude, we are making a fucking fortune.*"[1393]

P2.33 Jo Baldock emailed her colleagues on 22.07.16 to say that (as a result of "*rinsing every last client*") the current total of bond collections for June 2016 applications stood at £2,995,800.[1394] D5 replied, "*That is good work. 3m is a solid number*".[1395]

P2.34 July 2016 proved to be an even better month. On 24.08.16, Jo Baldock emailed her colleagues to say, "*we have had funds in today taking the total* [for July] *to £3,973,500 which means with Ami's client Mr Marshall and his £30k we are over the line! Great job everyone*".[1396] D7 replied, "*Great work everyone, 4 million!*".[1397]

P2.35 August 2016 was even better. On 15.09.16, Jo Baldock emailed her colleagues (on the email address sales@lcaf.co.uk) to say that they were up to £4.7 million for August and might hit £5 million for August by the end of the month.[1398]

P2.36 On 23.09.16, she emailed her colleagues again to say, "*And the scores on the doors this morning for August cash in are …. £5,007,400. BOOM! Great job everyone*".[1399] D5 replied, "*Excellent work, well done*".

P2.37 September 2016 was a slightly slower month, but £5 million remained the target for October 2016. Jo Baldock emailed her colleagues on 25.10.16 to say, "*let's crack on and smash through the very achievable £5m for October*".[1400]

1392 SUR00021045-0001

1393 SUR00026965-0001; Day 28/page 155/line 20 – page 158/line 1 **[A5/28/39]**.

1394 MDR00050658

1395 MDR00050663

1396 MDR00055278

1397 MDR00055280

1398 MDR00058126

1399 MDR00058991

1400 SUR00051000-0001

Source: Mouseinthecourt.co.uk

P2.38 On 31.10.16, she added, "*Last day of the month today so massive push please to get those cases over the line … We currently stand at just over £7m in applications in and £3.2m cash in. £5m is where we want to be , the leads are good and you all have plenty of data to work with*".[1401] On 02.11.16, she emailed again, "*This morning's cash in total £4,046,600.00. Keep up the momentum just under £1m to collect for the big £5m*".[1402]

P2.39 January 2017 was another record month. On 25.01.17, Steve Jones told Jo Baldock that they had already hit the target of £5 million of collections for January.[1403]

P2.40 D5 emailed his team on 31.01.17 to say, "*Today has been our best day on record. January has been our best month on record. As a group, we broke £1m in sales in one day … I expect to break this record several times in the next 30 days*".[1404]

P2.41 D7 replied, "*Great figures, the company is going from strength to strength and we are getting rich buddy!*"[1405] Jo Baldock said, "*Awesome job !*"[1406] Kerry said, "*Amazing!*"[1407]

P2.42 February 2017 was even more impressive. On 10.02.17, Aaron of D6 emailed his colleagues (sales@lcaf.co.uk) and D7 to say that "*funds in this month*" was already more than £2 million.[1408] D7 replied to say that it looked like another record month.

P2.43 Jo Baldock said, "*Stonking!*"[1409] In the event, by the end of February 2017, the total funds received in the month stood at £6,359,400.[1410]

1401 MDR00063574

1402 SUR00052406-0001

1403 MDR00072502

1404 MDR00073244

1405 SUR00062966-0001

1406 SUR00062970-0001

1407 SUR00062964-0001

1408 MDR00074636

1409 MDR00074637

1410 SUR00066574-0001

Source: Mouseinthecourt.co.uk

P2.44 The target for March 2017 was £7 million.[1411] D5 urged everyone to work long hours to hit this target ("*Let's push hard*").[1412] The target for April 2017 was £8 million.[1413]

P2.45 D6's sales continued to grow. D6 was on track to deliver £10 million into LCF during August 2017.[1414] D5 told Jo Baldock that £12 million was a possibility for that month.[1415]

The ISA bond

P2.46 On 16.08.17, Kerry told Kobus Huisamen about innovative finance ISAs.[1416] He began to investigate the possibility for LCF and seems to have told D1 about this opportunity.[1417] D1 started the process to launch LCF's innovative finance ISA bond. By 01.11.17, the process of putting together an ISA bond was well underway.

P2.47 On 20.11.17, D1 told D7 that HMRC had given the necessary approval and that Lewis Silkin had finalised the ISA bond documentation.[1418]

P2.48 The LCF ISA bond was launched at the beginning of December 2017.

P2.49 D5, D7 and Kerry agreed that the LCF ISA bond would be "*put top of BSR asap*".[1419] This change was duly implemented.[1420]

P2.50 The LCF ISA bond was transformative. Sales volumes were substantial. On 04.12.17, Jo Baldock told D5 that they had already hit £1 million in applications for December.[1421]

1411 SUR00069051-0001

1412 MDR00081987 page 5

1413 MDR00081756; MDR00081987 pages 1-2; SUR00080244-0001

1414 MDR00097952

1415 MDR00097609

1416 SUR00081389-0001

1417 SUR00081389-0001; SUR00127756-0001

1418 SUR00086365-0001

1419 SUR00087698-0001

1420 SUR00087843-0001; SUR00087848-0001

1421 MDR00115788

Source: Mouseinthecourt.co.uk

On 07.12.17, Aaron of D6 told Jo Baldock that they had received almost £500,000 into LCF's payment processor, GCEN, in a single day.[1422] She said, "*Holy shit!*"

P2.51 Applications for the LCF ISA bond were flooding in. On 07.12.12, Sarah Trigg sent a list of pending applications to Jo Baldock, who replied, "*Holy cow!*"[1423]

P2.52 On 08.12.17, Jo Baldock sent an email update to her colleagues which began with the words, "*Isa Isa baby!*"[1424] She said in her email, "*The scores on the doors after 5 days are: Applications in 632 totalling £4,816,419. Cash in at Gcen £3.3m … With these figures after one week imagine what can be achieved by hitting the lists and being proactive this could mean a very nice payslip in Jan!*" Her colleague Neil expressed the view that the figures were fantastic. Jo replied, "*Mental!!*"[1425]

P2.53 D6 was turbo-charging the LCF ISA bond by launching two new comparison websites: The ISA Experts and The Savings Experts. Chris Barnard of D6 emailed his colleagues including D5 and D7 on 01.01.18 to say, "*We are expecting the imminent launch of The ISA Experts and The Savings Experts. These will be game changers*".[1426]

P2.54 On 01.01.18, Jo Baldock emailed her colleagues to say that December 2017 had been a record month with total cash in of more than £7.8 million and total applications of more than £11 million.[1427] A few days later, she told her colleagues that there had already been a "*massive start to 2018*" with cash in of more than £2.5 million in just a few days.[1428]

P2.55 By the middle of January 2018, it seemed that LCF was going to hit £12 million to £13 million in new applications by the end of the month.[1429] Lead volumes were extremely

1422 MDR00116951

1423 SUR00088126-0001

1424 MDR00117436

1425 MDR00117437

1426 MDR00119697

1427 SUR00089256-0001

1428 SUR00089656-0001

1429 SUR00090354-0001

Source: Mouseinthecourt.co.uk

high. By 21.01.18, the "cash in" figure for January 2018 was already over £8 million.[1430] It seemed that January 2018 was going to be LCF's strongest month ever.[1431] Lead volumes for LCF's bonds continued to be very high.

P2.56 On 23.01.18, D5 emailed D1 saying, "*I can now confirm that this month is your best yet, the ISA has elevated LC&F to new heights*".[1432]

P2.57 This was no exaggeration: Jo Baldock emailed her colleagues on 24.01.18 to say that they had "*hit our best ever month with 5 days to go … £10.2m cash in. 836 applications. Our target is £12m as a team so let's sprint to the finish and smash it!*"[1433]

P2.58 On 05.02.18, she emailed her colleagues again to say that they had finished the month at £13,408,388 cash in.[1434]

LCF's continued growth

P2.59 February 2018 was another "*great month*" with cash in of £9.9 million.[1435] March 2018 was similar, with total cash in of £9.4 million in the first three weeks.[1436]

P2.60 April 2018 was another record-breaking month, with total cash in of £19.3 million.[1437] Jo Baldock commented to her colleagues that she was "*gutted LCF didn't hit £20m but let's not complain we have had worse months!*"[1438]

1430 MDR00124217

1431 SUR00090824-0001

1432 MDR00124513; SUR00090972-0001

1433 MDR00124841

1434 SUR00091926-0001

1435 MDR00132443

1436 D7D9-0007183

1437 SUR00098075-0001

1438 SUR00098075-0001

Source: Mouseinthecourt.co.uk

P2.61 LCF launched a new five-year bond. The first sale of this took place in early June 2018.[1439] D5 said, "*Boom!!!*"[1440] June also saw significant bond sales.[1441]

P2.62 July 2018 saw 902 new deals totalling £12,657,904.[1442] August 2018 saw 895 new deals totalling £12,667,400:[1443] "*Well goodbye August …it's been emotional!*"[1444]

P2.63 September and October 2018 also saw substantial sales. D7 told D1 on 24.10.18 that "*the completed cash in figure for the month will be nearly double compared to this time last year. We've come a long way, although 10m is our minimum target these days*".[1445]

P2.64 On 09.10.18, Chris Barnard of D6 told his colleagues that "*there is no reason why we cannot smash through the £10m mark … A big push today is needed, make every call count*".[1446] On 30.11.18, he reported that they had hit £10.5 million for the month.[1447]

D6's commission of 25%

P2.65 D6 was responsible for selling LCF's bonds to members of the public. Ben Beal introduced D5 and Kerry Graham to D7, who was working as a salesman for SAFE, earning a commission of 25% of the amount of each investment.

P2.66 Initially, D5 asked for a fee comprising (i) £500,000 upfront, (ii) £500,000 on the delivery of the first £5 million of cash; and (iii) 5% of all funds delivered.[1448]

P2.67 However, D2 and D4 were not keen on the idea of an upfront payment.[1449]

1439 SUR00100793-0001

1440 SUR00100807-0001

1441 MDR00153475

1442 MDR00169135

1443 MDR00169135

1444 MDR00169135

1445 MDR00180887

1446 MDR00185274

1447 MDR00192682

1448 D7D9-0001827

1449 D7D9-0001834; D7D9-0001840; SUR00128954-0001; SUR00158414-0001 page 3

Source: Mouseinthecourt.co.uk

P2.68 Ultimately, D7 agreed to work as D6's sales director, with D6 selling the SAFE investment product in return for 25% commissions,[1450] if D5 was prepared to agree that D7 could receive the same amount of profits as D5.[1451] D5 accepted in cross-examination that this was essentially a "*drive for [him] to ease [his] cash flow issues*".[1452]

P2.69 The figure of 25% was a sales commission. Kerry Graham explained, "*We do get paid a percentage of money into the pot which by most definitions is commission …*"[1453]

P2.70 D5 emailed Pat McCreesh of Blackmore on 09.07.15 to say, "*John has set up a deal with SAFE which will pay 25% commissions*".[1454]

P2.71 D5 thought that a commission of 25% was "*huge*".[1455] He discussed this by email with D6's accountant, Mark Partridge. On 23.07.15, D5 emailed Mark Partridge to say, "*Surge Financial Limited … sell a 2 year bond (8% pa) called London Capital & Finance (LCF) …* ***I earn 25% commissions of money into that fund. I know, that's huge right?***" (emphasis added).[1456]

P2.72 Mark Partridge thought that this was "*insane*". He replied on 24.07.15 to say:[1457]

> "***As you say this commission is insane. On a flat rate the fund would have to grow by 55% in two years to pay your commission and the interest***.
> *Who are LCF, is this the aim stock?*
> ***You 'pay' me to be cynical but I can't see how these figures are sustainable***" (emphasis added).

1450 SUR00001292-0001

1451 SUR00056027-0001; SUR00056028-0001; SUR00056031-0001

1452 Day 28/page 35/lines 17-20 **[A5/28/9]**.

1453 MDR00224137

1454 SUR00001292-0001

1455 SUR00129143-0001

1456 SUR00129143-0001

1457 SUR00129198-0001

Source: Mouseinthecourt.co.uk

P2.73 D5's colleague, Steve Jones, agreed ("*Agreed!*"). Steve Jones expressed the view that the figures were "*incredible*" whilst noting that LCF "[had] *been paying them for a number of years according to JRM*".[1458]

P2.74 D5 understood that new bondholders paid their monies to Buss Murton and that Buss Murton paid 25% of each receipt to D6. [1459]

P2.75 D5 was excited because such high commissions would result in high profits. He emailed Mark Partridge on 11.09.15 to say that he expected that D6 would earn *"£200k in comms minimum in September and with £50-60k in outgoings*" giving rise to a profit of £140,000 to £150,000 in a single month.[1460] D5 was pleased.[1461] He was keen to sustain the large profits and so set challenging targets for his team and had "*sales sprints*".[1462]

P2.76 This proved to be an under-estimate. On 22.09.15, Steve Jones told D5 that they might reach £260,000 in commissions for the month. D5 replied, "*200k profit for one month … Oh and we are embryonic*".[1463]

P2.77 D5 hoped that a high level of commissions and profits might enable him to realise his dream of buying a helicopter, particularly when combined with other business ideas.[1464]

P2.78 D5 told Mark about this on the same day ("*9 days of sales left too. Plus I have pensions and best savings rates.* ***Hello helicopter...***" (emphasis added)).[1465]

P2.79 On 28.09.15, Katie Maddock of LCF told Steve Jones that LCF's account would shortly be credited with £170,000 from new bondholders. Steve Jones forwarded this to D5,

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1458 SUR00129215-0001

1459 Day 28/page 79/lines 4-9 **[A5/28/20]** and page 87/lines 11-15 **[A5/28/22]**.

1460 SUR00129430-0001

1461 Day 28/page 85/lines 6-18 5 **[A5/28/22]**.

1462 Day 28/page 85/lines 19-22 5 **[A5/28/22]**.

1463 SUR00002362-0001

1464 SUR00129449-0001

1465 SUR00129449-0001

Source: Mouseinthecourt.co.uk

adding, "*That should be another £47k comms tomorrow!*"[1466] D5 seems to have been excited about this news: he forwarded the email to his father, to his accountant Mark Partridge and to his friend Ronak Patel.[1467]

P2.80 On 23.10.15, D5 told Steve Jones that if D7 and his team hit £1 million in sales per month, resulting in £250,000 in commissions, D6 would make a profit of £200,000 per month.[1468] Steve agreed in principle, but thought that D6's monthly expenditure would be closer to £65,000 (rather than £50,000) (so that D6's monthly profit would therefore be £185,000 rather than £200,000). He sent an email to D5 in these terms.[1469]

P2.81 By the end of January 2016, D6 had made profits of £353,870.[1470] But D5 could see that this was only the beginning. D7 and the other sales people working for D6 (including Jo Baldock) were proving to be very successful in selling LCF bonds to members of the public, generating substantial commissions and profits for D6.

P2.82 On 29.01.16, Steve Jones provided D5 with an update. D5 forwarded it to his father, saying, "*Fyi Pops. £180k cash in bank. £140k certain next week. £350k probably next week.* ***Feb we go for £1m revenues and £650k net profit***" (emphasis added).[1471]

P2.83 LCF was proving to be an effective revenue-generator for D6. On 17.06.16, D5 sent a text stating, "*56k comms. One fucking day …* ***Dude, we are making a fucking fortune***" (emphasis added).[1472] As explained above, D5 set a new goal of £4 million per month[1473] ("*We will hit our 4 million goal, it's achievable and we are on target. Double income, bonuses all round*"[1474]). D7 emailed D5 on 16.05.17 to say, "***[My] main focus as always***

1466 SUR00129510-0001

1467 SUR00129510-0001; SUR00129511-0001; SUR00129512-0001

1468 SUR00002842-0001

1469 SUR00002843-0001

1470 MDR00224028; MDR00062219

1471 SUR00131245-0001

1472 SUR00026965-0001

1473 SUR00025841-0001

1474 MDR00044326

Source: Mouseinthecourt.co.uk

will be to push LCF, this is our cash cow *and I won't stop until the 4m target is hit*" (emphasis added).[1475] D5 agreed with what D7 had said. He replied, "*I'm with you!*"[1476]

P2.84 D5 could see that this success was largely due to the deal that D7 had negotiated for the payment of 25% commissions. He expressed this view to Kerry Graham on 10.08.16, explaining, "*Without JRM we wouldn't be here today . He increased comms to 25%, it's the main factor in our current success*".[1477]

P2.85 Steve Jones was angry about the fact that D6 was paying large sums to D7. Steve said to D5, "*Can't help but be angry about it every time. It is so unfair. He does absolutely nothing to earn a penny of it*".[1478]

P2.86 D5 told Steve that there needed to be equality between D5's payments and D7's payments, because that is what D5 had agreed with D7 in connection with the 25% commissions: "*I agreed him to be equal when he secured the 25% deal. You continually being angry at that situation won't help … He needs to be the same as me. Your anger doesn't help. Deal with it, I have to … It's the deal we struck*".[1479]

P2.87 With the continuing increase in LCF bond sales, the commissions payable to D6 grew and D6's profits continued to increase. In the twelve months to 31.01.17, D6 made a post-tax profit of £2,440,680.[1480]

P2.88 On 11.05.17, Steve Jones emailed D5 to say that D6 was averaging net profit of £800,000 per month and was on track for net profit of £800,000 for May 2017. Steve Jones told D5 that if D6's total sales were to reach £9.5 million a month, then D6's profits "[would] *hit £1m a month, with costs pretty fixed at that point, anything over*

1475 SUR00021043-0001

1476 SUR00021045-0001

1477 SUR00035780-0001

1478 SUR00056046-0001

1479 SUR00056031-0001; SUR00056047-0001; SUR00056059-0001

1480 MDR00224028

Source: Mouseinthecourt.co.uk

these figures will translate directly to bottom-line profit figures. Anything we are able to shave from costs will also drop directly in to the bottom-line".[1481]

P2.89 D6 was selling two bonds, LCF and Blackmore, but the LCF bond was proving to be far easier to sell. The traffic from the feeder websites like BSR was therefore directed to LCF instead of Blackmore. Ryan Holdaway explained on 18.10.17, "*With three feeder websites and only a finite amount of traffic I need to ensure that we are allocating traffic as efficiently as possible. Over the last 6 months we have leant* [sic] *LCF the vast majority of traffic as Blackmore simply wasn't converting*".[1482]

P2.90 When Ryan proposed an adjustment to the allocation of web traffic, Jo Baldock agreed on the basis that "*the main aim is to generate the maximum amount we can for Surge as a group*" and "***LCF is the cash cow of the business***" (emphasis added).[1483]

P2.91 On 29.07.18, Jo Baldock told her colleagues that "***LCF* [is] *the cash cow that supports Surge** and has allowed the company to grow to where it is today*" (emphasis added).[1484]

RP Digital

P2.92 D6's largest expense was the cost of advertising on Google. D6 also paid for advertisements on Facebook, although this cost was relatively low in comparison to Google. There were advertisements for LCF, as well as advertisements for the feeder sites like BSR, which promoted LCF and Blackmore.

P2.93 The advertisements on Google and Facebook were paid for by another company, RPDigitalServices Limited ("**RP Digital**"), which had been set up by D5 and his friend Ronak Patel and was controlled by D5 and Steve Jones.[1485]

[1481] SUR00073567-0001

[1482] MDR00107361

[1483] MDR00107361

[1484] D7D9-0007557

[1485] **[A1/5.1/9]**; SUR00129432-0001; SUR00129473-0001; Day 28/page 128/lines 16-24 **[A5/28/32]**.

Source: Mouseinthecourt.co.uk

P2.94 RP Digital passed this cost on to D6 with a mark-up to provide additional monies for diversion to D5, Steve Jones and Aston Beckworth Limited ("**Aston Beckworth**"), which was owned and controlled by D5.[1486]

P2.95 RP Digital's bank statements show that the receipts from D6 exceeded the payments to Google and other companies. The bank statements from 05.12.15 to 04.05.16 show that RP Digital paid most of this surplus to D5 and Steve Jones.[1487]

P2.96 The bank statements from 05.06.16 to 14.08.18 show that RP Digital also paid large part of the surplus to Aston Beckworth,[1488] a company owned by D5 and Kerry Graham.[1489]

P2.97 The sums paid by D6 to RP Digital were not calculated on a precise basis. There does not seem to have been any standard mark-up.

P2.98 Instead, monies were simply transferred from D6's account to RP Digital's account to ensure that RP Digital's account remained in credit notwithstanding the payments to Google and Facebook, and the transfers to D5, Steve Jones and Aston Beckworth.

P2.99 Steve Jones emailed his son, Ashleigh Newman-Jones, on 03.08.17 to provide guidance to this effect, with the subject, "*While I am away*":[1490]

> "***Need to keep an eye on RP Digital bank account.*** *There is c£25k per day going out of the account so I don't like to let the balance drop below £40k.* ***Top it up with £50k (+ vat) invoices from Surge as and when needed.*** *Invoices to be kept in sequential order, see reference on last invoice paid from Surge Bank account and continue from there (template attached).*

1486 **[A1/5.1/3]**.

1487 SUR00009479-0001; SUR00009475-0001; SUR00009476-0001; SUR00009477-0001; SUR00020642-0001; SUR00020643-0001; SUR00049882-0001; SUR00020641-0001; SUR00049883-0001; SUR00020645-0001; SUR00049884-0001; SUR00128917-0001

1488 SUR00047209-0001; SUR00047214-0001; SUR00049886-0001; SUR00047213-0001; SUR00049887-0001; SUR00047218-0001; SUR00047220-0001; SUR00049888-0001; SUR00047229-0001; SUR00047211-0001; SUR00049889-0001; SUR00057599-0001; SUR00059441-0001; SUR00127015-0001; SUR00067654-0001; SUR00067655-0001; SUR00070674-0001; SUR00073453-0001; SUR00079467-0001; SUR00079469-0001; SUR00082913-0001; SUR00097493-0001; SUR00082911-0001; SUR00089570-0001; SUR00099862-0001; SUR00102375-0001; SUR00107070-0001; SUR00117655-0001; SUR00112686-0001; SUR00128917-0001

1489 SUR00120839-0001

1490 SUR00080516-0001

Source: Mouseinthecourt.co.uk

Top up funds to Aston Beckworth when drops below £10k, funds from RP Digital, £10 or £15k plus vat*, again ensure correct invoice number used (from last payment reference), Invoice template attached*" (emphasis added).

P2.100 In another email, Ashleigh said to Steve, "*I had to send Paul another £30k from RPD yesterday for his car so I topped RPD up with £30k from Surge*".[1491]

P2.101 D5 became nervous about connections between RP Digital and D6. On 30.03.16, D5 emailed Kerry to ask her to spend some time "*tomorrow morning seeing who or what is connected to RP digital as if you were someone looking into it, please?* ***I want to see where the contamination is****. Thinking SF* [D6]*, IC* [D5's other company, Info Connections]*, RP* [RP Digital]*, LCF etc*" (emphasis added).[1492]

P2.102 Subsequently, Kerry reported to D5 that they did have what she called a "*connectedness issue*": "*Steve is a Director of RP, if an investigator looked at the Directors of RP then looked at their other Directorships; they would discover that he is also a Director of IC. IC is linked to Surge in two ways: 1. I am Director of both 2. There is an intercompany loan (which would be declared when turnover exceeds the auditable threshold). Mark, if this intercompany loan is cleared before we get to auditable accounts threshold stage, I'm guessing it would not be traceable in any way?*"[1493]

There was no signed written agreement between LCF and D6

P2.103 Notwithstanding the fact that LCF paid 25% of all sums received from Bondholders to D6 (in a total sum of over £60.8 million over the life of LCF), there was never any signed written agreement between those two companies. The agreement for the payment of 25% of all receipts to D6 was only ever an oral agreement.

P2.104 As set out below, the only 'signed' agreement ever to have existed between LCF and D6 is the one which D1 faked (and backdated) on 07.10.16 to deceive LCF's auditor, PwC.

1491 SUR00036741-0001

1492 SUR00132236-0001; SUR00132237-0001

1493 SUR00132291-0001

Source: Mouseinthecourt.co.uk

P2.105 On 27.07.15, Kerry Graham emailed D1 to say, "*We need to put an introducer agreement in place between Surge Financial Limited and London Capital and Finance Limited, do you have a standard agreement we can review?*"[1494]

P2.106 D1 did not respond. On 03.08.15, Kerry emailed him to remind him that "*we still need … an introducer agreement*".[1495] D1 prepared a draft agreement which provided (in schedule 1) for the payment of such fees and charges as may be agreed from time to time between the parties.[1496] He sent it to Kerry, adding, "*let me know what you think*".[1497]

P2.107 Kerry sent it to D5 and D7, asking, "*Are you both happy for me to sign?*"[1498] D5 replied, "*I'm happy. Control the tap, control the bath!*"[1499] Steve was also happy with it.[1500]

P2.108 However, Kerry decided not to sign D1's draft agreement, because the schedule referred only to "*such fees and charges as may be agreed from time to time between the parties*" and failed to record the agreement about the payment of 25% commissions.

P2.109 Kerry asked D1 to provide a new schedule but he did not do so. She told D1 on 24.08.15, "*We haven't signed the introducer agreement contract, you were going to attach an appendix which would itemise the commissions owed then send it back to me for review. As we are now selling and cash has been received for the first couple of clients and a lot of pipeline should close this week, it would be prudent to put this in place*".[1501]

P2.110 The next day, D5 told Kerry that she should ensure that a contract was in place and that this was urgent.[1502] She replied to D5, "*Re the contract with LCF, the Body of the*

1494 SUR00001538-0001; D1-0000788; EB0006648

1495 D1-0000787; D1-0000788

1496 D1-0000789

1497 D1-0000790

1498 SUR00001595-0001

1499 SUR00001595-0001

1500 SUR00001598-0001

1501 MDR00016773

1502 SUR00001876-0001

Source: Mouseinthecourt.co.uk

contract is fine but Andy is writing an appendix to it which confirms our commission at 25% and I should have that today".[1503]

P2.111 On 25.08.15, D1 sent a draft distribution agreement to Kerry.[1504] In this version, Appendix A provided: "*A Commission of 25% of funds raised is payable to the distributer* [sic] *when funds are cleared into the Principles* [sic] *bank account*".

P2.112 Kerry signed it and returned it to D1 on 28.08.15.[1505] (The version which she signed had been backdated to 03.08.15, in typescript on the front page.)

P2.113 D1 failed to sign it. On 10.09.15, Steve Jones sent an email to Kerry asking, "*Do you have a copy of the Surge agreement with LCF?*"[1506] She replied, "*Andy has not returned a copy to me with his signature as yet. I have chased*".[1507]

P2.114 On 15.09.15, Kerry chased D1 for a signed copy of the agreement.[1508] D5 asked Steve Jones to ensure that the agreement between LCF and D6 was signed by D1.[1509]

P2.115 Still D1 did not sign it. On 14.10.15, Kerry chased D1 again for a signed copy.[1510]

P2.116 Kerry's agenda for a meeting with D1 and D4 on 15.10.15 (which she sent to D5 on 14.10.15: "*agenda for our 2pm with Spencer and Andy*"[1511]) included: "*Andrew signature on Introducer Agreement. I requested he bring a hard copy today as this is now very overdue and I sent to him originally on 28th August*".[1512]

1503 SUR00001883-0001

1504 MDR00016800; MDR00016803; D1-0000917

1505 MDR00016952; MDR00016953

1506 SUR00002141-0001

1507 SUR00002141-0001

1508 MDR00017384

1509 SUR00129432-0001

1510 MDR00018729

1511 SUR00002675-0001

1512 SUR00002676-0001

Source: Mouseinthecourt.co.uk

P2.117 Yet still D1 did not sign it.

P2.118 This became a problem at the time of LCF's first audit, which was being conducted by PwC. On 28.09.16 PwC asked D1 for a copy of the contract between LCF and D6.[1513]

P2.119 However, the previous version of the agreement, as signed by Kerry on 28.08.15 (and never signed by D1), was now out of date. It referred to London Capital & Finance *Limited*, but LCF had since become a plc. It referred to LCF's former registered office address, rather than to the current one. It also referred to LCF issuing loan notes, rather than bonds. And the definition of "*Services*" referred narrowly to making introductions between LCF and prospective bondholders but did not mention the other services that D6 was providing to LCF, such as the provision of marketing services, the creation and maintenance of LCF's website, the conduct of online marketing services and the development and maintenance of a cloud-based client management portal including application procedures and investor accounts.

P2.120 Accordingly, D1 prepared a further draft.[1514] This new version reflected the fact that LCF had become a plc with a new registered office address. It referred to bonds, rather than only to loan notes. It included a new definition of the term "*Services*" which referred to the provision of marketing services, the creation and maintenance of LCF's website and the conduct of online marketing services and the development and maintenance of a cloud based client management portal including application procedures and investor accounts. Appendix A now referred to a "*fee*" (rather than a "*commission*").

P2.121 D1 sent the new version of the agreement to Kerry on 28.09.16.[1515]

P2.122 She forwarded it to D5 on the same day, explaining:[1516]

> "***Andy has asked me to sign a contract between LCF and Surge (attached). He wants this signed today because his auditors need it.***

[1513] MDR00059484

[1514] MDR00059587

[1515] MDR00059585; MDR00059587

[1516] SUR00135646-0001 ; Day 30/page 116/lines 16-18 **[A5/30/29]**.

Source: Mouseinthecourt.co.uk

I promised to review today and if all is well to sign it. ***I haven't read it yet****, I have some urgent things to do first, I might not look at until after 4pm. I will read it later in the afternoon and come back to you with my comments.*
Please also review for your own reassurance. This is potentially a very sensitive issue and we should look at how liability will fall before signing. ***We need to make sure we are not unduly exposed if LCF are investigated or if they go bust***" (emphasis added).

P2.123 D5 asked her to forward it to Steve Jones and Mark Partridge; and she did so.[1517]

P2.124 Kerry was keen to have it reviewed by a solicitor. She told D1 (cc D5 and D7), "*Sorry I know you really need this signed ASAP for your audit but I do have to run it by our solicitor. I will find out how quickly it can be turned around and get back to you*".[1518]

P2.125 D1 emailed D5 about this a few minutes later saying, "*As discussed, please find attached the agreement that was agreed but not signed last year, its fairly basic but covers the basis. I have* [tweaked] *one section to add the provision of the online support you give us and the dashboard Ashleigh created*".[1519]

P2.126 D5 discussed the position with Kerry, who said, "[It] *would be prudent to have our solicitor review. I won't sign until I have that confirmation. Andy needs this ASAP so I will get it fast tracked. Let's hope I can get it approved by tomorrow*".[1520]

P2.127 D5 asked, "*Can we just sign this? It's to help him*".[1521] In his oral evidence, D5 explained that "*The reason I was keen to get the audit is, all of the cynicism that you see as suspicion, it would have cleared it up.*"[1522]

P2.128 Kerry replied, "*Sorry, I don't mean to be difficult, I would help him if I could but I believe the more important issue here is to have this reviewed by a solicitor*".

1517 SUR00135648-0001

1518 MDR00059706

1519 MDR00059715; MDR00059716

1520 MDR00059717

1521 MDR00059720

1522 Day 30/page 117/lines 13-19 **[A5/30/30]**.

Source: Mouseinthecourt.co.uk

P2.129 D5 said, "*Yes, that's fine … I'll let him know …*"

P2.130 The delay caused problems with PwC, who wanted to see the signed agreement.[1523]

P2.131 PwC asked D1 to bring the signed agreement to their offices at 9.00am on 29.09.16.[1524]

P2.132 On 30.09.16, D1 said to Kerry, "*I really needed it yesterday morning, not having it has created additional work and has prompted PWC looking into us in more detail. We have nothing to hide but this will add more time to the production of* [the accounts]".[1525]

P2.133 D1 then sent a further message to Kerry:[1526]

> "*You have completely missed the point of why I needed it, this was the contract we agreed last year, I thought it would be a simple request to simply sign it. I need Surges support to get the audit concluded and it didn't happen and has knock on issues. As you are wanting to go down the solicitor route I will forward your revisions to Lewis Silkin who will not doubt advise me that LCF needs a far more robust contract to protect its position …*"

P2.134 Kerry replied to D1 to reiterate her position, saying, "*I'm not signing a contract that a solicitor hasn't reviewed. Let's get it right first time*".[1527]

P2.135 D1 seems to have concluded that he was getting nowhere with Kerry and decided to direct his communications to D5 instead. D1 emailed D5 on 30.09.16 to say that he had made only a few changes to the agreement which were all minor and that the new agreement was "*practically identical*" to the one that Kerry had previously signed.[1528] D1 sought to persuade D5 that "*legal input*" was unnecessary.

P2.136 D1 also told D5 that "*if we don't have an agreement in place*" by Monday, PwC would have to "*put a qualification in the audit regarding the robustness of LCF as a going*

[1523] MDR00059776

[1524] MDR00059780

[1525] D7D9-0006795

[1526] D7D9-0006795

[1527] D7D9-0006795

[1528] D1-0002988

Source: Mouseinthecourt.co.uk

concern as it does not have an agreement in place with a business critical supplier". D1 was clearly asking D5 to help him create evidence to give to his auditor.

P2.137 D5 forwarded this to Kerry, Steve and D7.[1529] Kerry emailed D5, Steve and D7:[1530]

> "*All he has to do is call me.*
> *I will explain why I want the clauses he added in, removed and why.*
> *I do want further revision re clause 5. Nothing unreasonable.*
> *He's really making a meal of this. A quick call would resolve / at least put him in the loop.*
> *Also I'm shocked that he would send a contract where the liability re FCA is a big exposure and expect me not to get a solicitor to review?!? Sending Wednesday afternoon and getting a response Friday morning is good. He should be thanking us for the fast turnaround. He shouldn't be criticising the decision not to sign when he hasn't even asked why we won't sign.*
> *We have good reasons and I would love to tell him about them if he would answer my calls and not just cancel them and send me abusive text messages*".

P2.138 Mark Partridge emailed D5 to point out the inconsistency in D1's position:[1531]

> "***He just talks out of his arse.*** *The original agreement is fine the other one is fundamentally different. If he wants to pay vat on top of the commission, he can sign the new one.*
> *Or just re-sign the original agreement if* [it's] *so close*" (emphasis added).

P2.139 In his oral evidence, D5 accepted that he understood "*talks out of his arse*" to be a euphemism for lying.[1532]

P2.140 D5 forwarded Mark's email to D7, Kerry and Steve.[1533] Steve replied to D5, "*Kerry already signed and returned the original doc over a year ago, he has that already!*"[1534]

P2.141 Mark's comment about LCF having to pay "*vat on top of the commission*" if the new agreement was signed reflects a particular concern about the definition of "*Services*".

[1529] SUR00135741-0001

[1530] SUR00135762-0001

[1531] SUR00135764-0001

[1532] Day 30/page 123/lines 20-23 **[A5/30/31]**.

[1533] SUR00135766-0001

[1534] SUR00135767-0001

Source: Mouseinthecourt.co.uk

P2.142 D6's position was that introduction commissions were not subject to VAT. On this basis, D6's invoices to LCF did not include VAT. Mark's comment related to the prospect of D6 agreeing in writing to provide services (such as marketing services, the creation and maintenance of LCF's website and the conduct of online marketing services, and the development and maintenance of a cloud-based client management portal including application procedures and investor accounts) which *would* be subject to VAT.

P2.143 Accordingly, Kerry and D6's solicitor, Steven Kinch of SDK Law, prepared a further draft of the agreement.[1535] They changed back the definition of "*Services*" so that it again referred solely to the making of introductions between LCF and prospective bondholders, without mentioning any other services. They changed the terminology throughout to refer to D6 as the Intermediary, rather than the Distributor. They amended clause 5 to water down and qualify D6's obligations in respect of compliance with anti-money laundering legislation. They added new obligations of LCF in what was now clause 6 requiring LCF to help D6 to comply with FCA Rules. They amended exclusion of liability in clause 8. The draft was still dated 2015 in typescript on the front page.

P2.144 On 02.10.16, Kerry sent this to D1 (cc D5 and D7): "*I attach the amended contract for you to review. All changes are done as tracked changes so you will be able to easily identify the requested variations. Recognising that this is time critical, I also attached a signed version so you have this in place to use at your meeting on Monday*".[1536] This attached contract still bore the date "*2015*" but the fact that the agreement would be backdated did not appear to cause anyone at D6 any concern and Kerry Venn was happy to sign it in this form.

P2.145 On 03.10.16, D1 sent this to Alex Lee of Buss Murton.[1537]

P2.146 On the next day, D1 emailed Alex Lee again, saying, "*How are you getting on with the Surge agreement, I'm being pushed by PWC for it*".[1538]

[1535] MDR00060094

[1536] MDR00060092; MDR00060094; MDR00060093; MDR00224135

[1537] MDR00060232

[1538] MDR00060431

Source: Mouseinthecourt.co.uk

P2.147 The continued delay was causing problems for D1 with PwC. Jessica Miller of PwC emailed him on 05.10.16 to ask, "*Would it be possible for you to arrange for a scan of the Surge Financial contract to be emailed to me today / tomorrow, this was the one document that you didn't have when we met last week. We have had one of our final quality reviews of the audit and we need this to be documented on our file*".[1539]

P2.148 However, this was not going to be possible, because such a contract did not yet exist; LCF and D6 had not yet even been able to agree on the definition of "*Services*".

P2.149 D1 replied to Jessica, "*I completely forgot! I'm out of the office at the moment but I'll try to have a copy scanned over, if not I can do it first thing tomorrow morning*".[1540]

P2.150 Alex Lee prepared a heavy mark-up of the draft LCF D6 agreement.[1541] Among other things, he deleted much of the new wording in clause 5, stating that an obligation on the part of D6 to "*take all reasonable steps*" could not be agreed by LCF ("*They either act in compliance or they don't. Taking reasonable steps is not a defence to any allegation by the FCA*"). He introduced a new clause 6 which (*inter alia*) required D6 to "*maintain professional indemnity insurance with reputable insurers lawfully carrying on business in the United Kingdom, in an amount each year of not less than Five million pounds for any one occurrence or series of occurrences arising out of one event for a period of twelve (12) years after the last date upon which the Intermediary carries out the Services provided always that such insurance is available at commercially reasonable rates and terms*". He amended the clause dealing with LCF's obligation to help D6 to comply with FCA Rules (which had been clause 6 and was now clause 7). He amended the exclusion of liability which had been clause 8 and was now clause 9.

P2.151 At 4.01pm on 05.10.16, Alex Lee sent his mark-up to D1.[1542]

[1539] MDR00060609

[1540] MDR00060610

[1541] MDR00060631; MDR00060632

[1542] MDR00060631

Source: Mouseinthecourt.co.uk

P2.152 D1 forwarded this to Kerry, adding, "*The immediate issue is I have been able to put off PWC until now but they are expecting a doc first thing tomorrow, they have completed the accounts but won't release until they have a scan of the agreement*".[1543]

P2.153 Kerry reviewed Alex's mark-up and told D1 that Alex had made some helpful revisions.[1544] She mentioned that D6 did not have insurance at the level required by the new insurance clause. She identified in particular Alex's comment in the mark-up about acting in compliance with anti-money laundering regulations and the prospect of liability for this. She suggested that the clause might "*need re-writing from scratch as might be easier than amending now, what does Alex think? Can we agree the sentiment together and get your solicitor to propose the re-work?*" She provided some bullet points containing what she thought should be covered by the clause.

P2.154 On 06.10.16, D1 forwarded Kerry's email to Alex Lee,[1545] who replied with his thoughts on the compliance and liability issues.[1546] He concluded, "*Perhaps I have missed something but it seems that Surge are trying to say that they do not want to take the requisite responsibility for the work you are asking them to undertake. In which case I am struggling to advise you that such a contract is ok to enter into*".

P2.155 D1 forwarded Alex's email to Kerry.[1547]

P2.156 D1 then emailed PWC, "*Sorry not to have sent the surge doc over … I'm on my way back now and will get it sorted later today*".[1548]

P2.157 PwC replied, "*That would be great if we can get it today*".[1549]

1543 MDR00060633; MDR00060634

1544 MDR00060649; MDR00060650

1545 MDR00060666

1546 MDR00060722

1547 MDR00060723

1548 MDR00060725

1549 MDR00060730

Source: Mouseinthecourt.co.uk

P2.158 At 3.48pm on 06.10.16, Alex Lee sent an email to D1 attaching "*the clean version of what I sent over yesterday*".[1550] (Alex Lee had actually done a bit more than simply accept the changes. He had also deleted the words "*take all reasonable steps to*" (to which he had objected) in clause 5.1.1, rearranged clause 6 on insurance, and had deleted two stray words ("*The Inter*") at the end of clause 7.)

P2.159 Kerry emailed D1 about Alex's new clause 6 to ask, "*if the PI cover has to be for 12 years*".[1551] D1 provided her with the clean copy.[1552] Kerry said she would review it.[1553]

P2.160 By this time, PwC had finished the audit and were preparing a "*pretty version*" of LCF's accounts.[1554] There was only one outstanding item: PwC still needed to see the signed agreement between LCF and D6 and would not sign off LCF's accounts without it.

P2.161 On 07.10.16, D1 sent an email to Jessica Miller of PwC with the subject "*Surge agreement*":[1555] "*I finally got back to the office this morning (it's been an entertaining week!!!) and have scanned in the agreement below*".[1556]

P2.162 The attachment was an agreement between LCF and D6 dated 03.08.15 which had purportedly been signed by D1 on behalf of LCF and Kerry Graham on behalf of D6.[1557]

P2.163 It had clearly been backdated because it was the version that Alex Lee had sent to D1 at 3.48pm on 06.10.16 containing (for example) the new clause 6 on insurance (referring to "*professional indemnity insurance … for a period of twelve (12) years*"), which Alex had first sent to D1 at 4.01pm on 05.10.16.

1550 MDR00060815; MDR00060816

1551 MDR00060823

1552 MDR00060845; MDR00060846

1553 MDR00060851

1554 MDR00060875

1555 MDR00060881

1556 MDR00060881

1557 MDR00060883

Source: Mouseinthecourt.co.uk

P2.164 Further, in light of the chronology set out above, it is also clear that Kerry had not signed it. The signature purporting to be hers had been taken from the previous agreement in very different terms which Kerry had signed and returned to D1 on 28.08.15[1558] (and which D1 had never signed). Compare MDR00016953 page 11 (which Kerry had signed on 28.08.15) with MDR00060883 page 12 (which D1 sent to PwC, purportedly with it having been signed by Kerry, on 07.10.16): the signatures of Kerry Graham are identical.

P2.165 The fact that Kerry had not signed any new agreement (and that D1 had instead forged her signature without her knowledge) is confirmed by the subsequent correspondence.

P2.166 On 26.10.16, D1 emailed Kerry to say, "*I havnt* [sic] *heard anything from you on the proposed agreement I sent over a couple of weeks ago? do you have any questions or are you happy to agree it*".[1559]

P2.167 Kerry responded, "*Re the contract. This has been parked for a while to allow our accountant to investigate the VAT issue. I will chase for an update*".[1560]

P2.168 D1 replied:[1561]

> "*Appreciate you need to speak to your advisors but its been weeks now and I haven't heard anything and we don't have any agreement in place. I was put in an extremely difficult position with PWC over it which had the potential to damage everything, this needs resolving sooner rather than later. Can you please chase your advisors and advise of the urgency*".

P2.169 Kerry said, "*Yes I will do*".[1562]

1558 MDR00016952; MDR00016953

1559 SUR00051281-0001; MDR00063283

1560 SUR00051281-0001; MDR00063283

1561 MDR00063304

1562 SUR00051295-0001

Source: Mouseinthecourt.co.uk

P2.170 But there was further delay. On 28.10.16 Kerry told Mark Partridge (cc D5), "*Andy is back pushing us over the contract issue …* [We] *do need to once and for all establish the VAT situation so that we can finalise a contract*".[1563]

P2.171 On 03.11.16, Kerry emailed Mark Partridge again (cc D5) saying, "*Andy is chasing me to complete the contract*".[1564] She asked Mark if he had made "*any progress with establishing if we are VAT exempt*". D5 reiterated that it needed to be finalised.[1565]

P2.172 Mark advised Kerry (cc D5), "*This really isn't something that can be rushed as it is crucial and arcane … BTW LCF accounts have been filed so he cannot use the auditor requirement on us*".[1566] It would have been obvious to D5 and Kerry Venn that D1 had found some way of satisfying PwC that there was a written agreement in place between LCF and D6.

P2.173 On 11.11.16, Kerry chased Mark again about this.[1567] Mark said he understood her frustration but he wanted to wait until they had obtained tax advice from Macfarlanes.[1568]

P2.174 On 21.11.16, Kerry's "to do" list continued to include this issue ("*Must get to bottom of VAT issue to complete contract with LCF!*").[1569]

P2.175 Kerry chased Mark Partridge again, saying, "*Luckily Andy hasn't been chasing me this week but it's been two months since this issue first arose and I do feel we ought to resolve now. It benefits all parties if we have an adequate contract in place*".[1570]

1563 MDR00224136

1564 MDR00224139

1565 MDR00224140

1566 MDR00224141; MDR00224142

1567 MDR00224142

1568 MDR00224143; MDR00224144; MDR00224145; MDR00224146

1569 SUR00054881-0001

1570 MDR00224147

Source: Mouseinthecourt.co.uk

P2.176 The next year, on 13.01.17, Mark asked for the "*latest draft contract with LCF*".[1571] Macfarlanes wanted to see it in order to advise on the VAT position.

P2.177 On 16.01.17, Mark chased Kerry, adding, "*Macfarlanes are now chasing me for the introducers agreement as is so that we can discuss VAT*".[1572]

P2.178 Kerry replied to Mark (cc D5) on 17.01.17 to say, "*Agreements aside, we want to know if Surge is VAT exempt or not? Even if we never sign an agreement with LCF we need to know this … I have previously emailed you … a one page summary of all of the activities that Surge does. The activity list is perhaps more useful as it was to be used to establish if the blend of activities made us exempt or not*".[1573]

P2.179 There was no real progress. On 01.06.17, Kerry emailed D5 to say that D1 was "*keen to get a contract in place before his next audit*".[1574] However, the issue was not resolved. Kerry's "to do" list a few days later still included this item in paragraph 3.[1575] D5 advised her, "*The LCF contract needs to be in second spot please*".[1576]

P2.180 However, weeks elapsed without progress. D5 emailed Kerry, Mark, Steve and D7 on 27.06.17 to say, "*I want Andy to have signed a Surge/LCF contract. Kerry, can you forward what we have with salient points as soon as you can. Everyone needs to check it before Kerry gets a clean copy over to Andy to sign*".[1577] Kerry circulated a draft contract; D7 and Mark provided her with their comments.[1578]

P2.181 On 30.06.17, Macfarlanes provided Kerry with an entirely new draft agreement between LCF and D6.[1579] They had completely re-written it. This new draft agreement was

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1571 MDR00224148

1572 MDR00224148

1573 MDR00224148

1574 MDR00224102

1575 SUR00076337-0001

1576 SUR00076337-0001

1577 MDR00224105

1578 MDR00224105; MDR00224150; MDR00224153; MDR00224154; MDR00224155

1579 MDR00092336

Source: Mouseinthecourt.co.uk

entitled, "*Services agreement*". It was a very lengthy agreement. Schedule 1 provided that LCF would pay "*a marketing fee equal to 25% of each investment*". Schedule 2 contained a lengthy description of "*Services*". Clause 8.1 of Schedule 2 provided, "*The Customer hereby grants the Service Provider the exclusive right to market, advertise and promote Bonds to Investors during the Term*".

P2.182 Kerry emailed this to D1, saying, "*Some good news, long overdue but I do now have a services agreement for your review and signature. I have been conscious that we were not able to get this in place before your audit last year and have now made sure this is ready well in time of your next audit*".[1580] D1 replied, "*I note that it is a completely new agreement so I will have to send it to our solicitors at Lewis Silkin to look through*".[1581] He sent it to Lewis Silkin.[1582] On 05.07.17, Graham Reid of Lewis Silkin emailed D1:[1583]

> "*In summary* ***this is not an agreement you can sign not least as you would be encouraging and acquiescing in Surge Financial Limited ("Surge") (a party not regulated by the FCA) to carry out FCA regulated activities (a criminal activity)***" (emphasis added).

P2.183 D1 forwarded Graham's email to Kerry.[1584] She forwarded it to D5 (cc D7), adding, "*Rather than amend our contract, Andy has received advice to reject it. See this detailed explanation from Lewis Silkin. I fear a stand-off. If they made suggestions for revisions, we have the starting point for a negotiation. This is just a flat out obstruction*".[1585] D5 seems to have suggested that Lewis Silkin should prepare a re-draft.[1586]

P2.184 Lewis Silkin began to prepare a new version,[1587] but progress was slow. On 25.07.17, Kerry emailed D1 asking, "*Is there any progress with regards to a contract? I am*

1580 MDR00092487

1581 MDR00092488

1582 MDR00092489

1583 MDR00092873

1584 MDR00092875

1585 SUR00139923-0001

1586 MDR00092896; MDR00092897

1587 MDR00093392; MDR00093466; MDR00093478; MDR00093479

Source: Mouseinthecourt.co.uk

wondering is [sic] *Lewis Silkin have had a chance to draft this please?*"[1588] Eventually, on 03.08.17, D1 was able to provide Kerry and D5 with Lewis Silkin's re-draft.[1589] They had cut down the definition of "*Services*" in Schedule 2.

P2.185 Kerry replied to D1 (cc D5) to say that the "*sticking point is going to be around the Services i.e. Schedule 2. I assume you have scaled this back for regulatory reasons?*"[1590] She attached a document which contained the terms of the Schedule 2 drafted by Macfarlanes. She asked if Lewis Silkin could "*highlight any clauses that could compromise your regulation*".[1591]

P2.186 On 23.08.17, Kerry re-sent this document to D1 (cc D5 and D7).[1592] D7 then emailed Kerry and D5 to say, "*I think we should be harder with Andy on the points raised … Paul and I can discuss this with Spencer on Tuesday and get him to squeeze Andy if required*".[1593] Kerry accepted that one option would be to "*get Spencer to make him accept the Services section as it is*" but was concerned that this could cause regulatory problems for LCF.[1594] D7 and Kerry agreed that Kerry would attend a forthcoming meeting with D4 to discuss "*the service review part*" with him.[1595]

P2.187 This issue remained unresolved. On 29.08.17, Graham Reid of Lewis Silkin emailed his colleague, Owen Watkins, to say that he might need Owen's input in respect of Kerry's document (containing the terms from Macfarlanes' Schedule 2),[1596] commenting that Lewis Silkin's view "*was that much of this was not something that the service provider should be doing not least as they are not regulated*".[1597]

1588 MDR00098885

1589 MDR00098885; MDR00096119; MDR00096121

1590 MDR00098885

1591 MDR00098885; SUR00080508-0001; MDR00098918

1592 SUR00081984-0001

1593 SUR00080533-0001

1594 SUR00140352-0001

1595 SUR00140352-0001; SUR00140357-0001

1596 MDR00098918

1597 MDR00098917

Source: Mouseinthecourt.co.uk

P2.188 On 29.08.17, Graham advised D1 that Macfarlanes' draft was seriously defective:[1598]

> "*As drafted the document indicates that the Service Provider anticipates carrying out regulated activities while not regulated (a criminal offence) – for example clause 8.1. I'd suggest that we speak with their lawyers in order to amend the document in a way that it is compliant for all parties – this is a complex area of law which in many circumstances (frustrating though it maybe) only allows things to be done in certain ways*".

P2.189 Kerry and D1 initially agreed that Lewis Silkin and Macfarlanes should "*work through the redraft together*".[1599] By 11.09.17, however, Kerry had become concerned that this would probably be "*quite an expensive way to go about it*" and that it would therefore be preferable for Lewis Silkin to simply set out their concerns.[1600]

P2.190 On 02.10.17, therefore, Graham Reid emailed Chris Mortimer of Macfarlanes to explain that D6 "*should not be 'bringing the deal together' which was what we are all agreed is the regulated activity*".[1601] The problem seemed to be that Kerry and Macfarlanes were keen for the contract to set out precisely what D6 was doing, but Lewis Silkin held fast to the view that D6 should not be doing those things because it involved "*carrying out regulated activities while not regulated (a criminal offence)*" and that the contract should therefore not say what Kerry and Macfarlanes wanted it to say.

P2.191 Kerry explained the problem to D1 (cc D5 and D7) on 22.02.18:[1602]

> "*The services section has been pretty much deleted so that they state that we only do web hosting, web development and assisting people to go through the online sign up process. We deliberately gave a detailed list of services which is what we need to be in the contract to prove the blend of services we provide make us VAT exempt.* ***We have been told that the list we provided made Lewes*** **[sic]** ***Silkin uncomfortable on the basis that it could be argued some are regulated activities and Surge is not regulated***" (emphasis added).

1598 MDR00099003

1599 MDR00099758

1600 MDR00101030

1601 MDR00105314

1602 MDR00131178

Source: Mouseinthecourt.co.uk

P2.192 This obstacle seemed to be insurmountable. No agreement was ever signed.

P3 Knowledge of D5, D6, D7 and D9

P3.1 D5 was always more concerned with making money than with being honest and scrupulous in his dealings with member of the public. The Investment Experts, which is described at H2.18 above, stated on its website that it was "*completely confidential*"[1603] when in fact the business model behind the website was to harvest data on members of the public and sell their information to independent financial advisers.[1604] D5 had no qualms about lying to members of the public to make money.[1605]

P3.2 A further example at the outset of D5/D6's relationship with LCF is that D5 was happy for D7 to tell members of the public that he was calling from The Investment Experts when pursuing leads generated by that website, even though this was untrue.[1606] D5 accepted that this involved making incorrect statements to members of the public. However, D5 considered that telling the truth to members of the public was sometimes not "*realistic, commercial or indeed practical*".[1607]

P3.3 D5 also wanted references to the quantum of LCF's lending to be removed from a letter from Buss Murton because he thought "*It makes the entire operation look very small*".[1608] The size of LCF's lending operation would clearly have been material information to prospective investors but D5 wanted to remove it to increase the attractiveness of an investment in LCF. He wanted LCF to be perceived as a multi-million-pound organisation. [1609] The offending lines were duly removed from the letter.[1610]

[1603] SUR00129198-0001

[1604] Day 28/page 4/line 10 – page 7/line 14 **[A5/28/1]**.

[1605] Day 28/page 5/line 25 – page 6/line 2 **[A5/28/2]**.

[1606] D7D9-0001771; Day 28/page 22/line 22 – page 23/line 18 **[A5/28/6]**.

[1607] Day 28/page 23/line 19 – page 24/line 20 **[A5/28/6]**.

[1608] MDR00227547; SUR00129106-0001; SUR00129111-0001

[1609] Day 28/page 60/line 17 – page 65/line 3 **[A5/28/15]**.

[1610] SUR00164239-0001

Source: Mouseinthecourt.co.uk

Suspicions at the outset

P3.4 Prior to the initial meeting in February 2015 with D2 and D4, D5 had conducted no real due diligence on the products that he was told by D7 would be under discussion. His knowledge was limited to some cursory internet searches carried out by Kerry Venn.[1611]

P3.5 From the beginning of D5's involvement, D5 was acutely aware of the fact that the entire operation would seem inherently suspicious and he knew that the unregulated mini-bond market was full of chancers. He knew at the outset that other people in the industry would instinctively think that LCF was a fraud.[1612] He emailed Patrick McCreesh of Blackmore on 09.07.15 to tell him about LCF: "*The SAFE product is being re-branded and I am comfortable that it is not a 'rinse' … John has set up a deal with SAFE which will pay 25% commissions … I know you'll be screaming 'RINSE'! It's not*".[1613] (D5 accepted in cross-examination that a 'rinse' is a fraud.[1614])

P3.6 The concerns about the legitimacy of LCF did not go away. On 23.09.15, Desmond Bailey, a salesman for D6, emailed D7 and D5 (cc Steve and Kerry) to say:[1615]

> "***I had a call from a client investing in LCF this morning which has made me begin to question the integrity of this investment*** *… I reassured the investor I would not have any part in a scam that was taking people's hard earned money … I feel totally uneasy about this and the potential issues our company could be faced with …* ***John, can I ask you what due diligence you have carried out on LCF?***"

P3.7 In his oral evidence, D5 said in relation to Desmond Bailey's concerns "*I agree with the entirety of the email*."[1616] However, at this stage, no due diligence had been carried out on LCF. While D5 disputed this in his oral evidence, he was unable to point to anything

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[1611] Day 28/page 12/line 5 – page 15/line 9 **[A5/28/3]**.

[1612] Day 28/page 33/line 1 – page 34/line 4 **[A5/28/9]**.

[1613] SUR00001292-0001

[1614] Day 28/page 33/lines 1-2 **[A5/28/9]**.

[1615] SUR00002372-0001

[1616] Day 28/page 158/lines 5-22 **[A5/28/40]**.

Source: Mouseinthecourt.co.uk

that had been done other than speaking to D7 and Kerry Venn's Google searches in February 2015.[1617]

P3.8 That no other due diligence had been carried out by D5 or Kerry Venn is clear from D7's response to Desmond Bailey's email. D7 said:[1618] "*With regards to the product itself, when SAFE originally launched their bond, I carried out an enormous amount of DD at their office, which also involved BM Law as well. The important things like the security and contracts were disclosed and confirmed suitable by BM law, which then led on to BM law being happy to be involved as their custodian*". There had been no due diligence by D5 or D6. D5 thought that this was a "*Great response*" to Desmond Bailey.[1619]

P3.9 Soon, D6's accountant, Mark Partridge, expressed his views on LCF.

P3.10 D5 valued Mark's opinion. He explained, "*Mark is a shareholder, friend and a Chartered Accountant and I trust him implicitly*".[1620]

P3.11 Mark's views on LCF were clear and Mark expressed them frankly, as D5 explained to Steve Jones on 27.10.15: "***Mark thinks Spencer is Maddoff*** [sic]" (emphasis added).[1621] D5 tried to suggest in his oral evidence that this had been only a joke:[1622]

> 4 Q. Well, you were having a drink with him at a pub
> 5 in October 2015 and he told you Spencer was Madoff,
> 6 didn't he?
> **7 A. Yes, I have seen that in the discovery, I didn't --**
> **8 until I saw it recently, yes.**
> 9 Q. So, he's previously said the commission is insane and
> 10 unsustainable because, on a flat rate, the fund would
> 11 have to grow by 55 per cent in two years to pay the
> 12 commission and the interest; now he's saying Spencer is
> 13 Madoff. This is the man you trust implicitly, isn't it?
> **14 A. Yes.**
> 15 Q. You didn't want to be put off by what Mark was saying
> 16 because you were making too much money?
> **17 A. No, that's not true. I mean, Mark and I had**
> **18 a colloquial -- a friendship, a colloquial friendship,**

[1617] Day 28/page 158/line 23 – page 160/line 12 **[A5/28/40]**.

[1618] SUR00159541-0001

[1619] SUR00159543-0001; Day 28/page 161/line 6 – page 162/line 9 **[A5/28/41]**.

[1620] MDR00027361; EB0012005 ; Day 28/page 42/lines 5-23 **[A5/28/11]**.

[1621] SUR00129710-0001

[1622] Day 28/page 163/line 4 – page 164/line 24 **[A5/28/41]**.

Source: Mouseinthecourt.co.uk

19 and we would -- you know, there was still humour around,
20 back in those days, and we would laugh and joke. I'm
21 afraid the industry was very -- you know, there was an
22 ingrained cynicism in all of us, but, you know,
23 obviously, especially Mark, about the industry and about
24 all products, all bonds, no matter how big they were and
25 if they were on TV or not or whatever. Of course, Mark

1 was at the vanguard of that cynicism.
2 But I wouldn't read too much -- I didn't read too
3 much into it.
4 Q. You wanted to brush it to one side because you were
5 making £250,000 commission per month at that point?
6 A. No, that's just simply not true.
7 Q. You wanted to fill the coffers and ease your cash flow
8 difficulties?
9 A. No, that's also not true. I wanted to build a proper
10 business, a good business, a solid business, one that
11 I could be proud of.
12 Q. You talk about how there was a lot of cynicism due to
13 sort of operators in the industry. You would have
14 thought at the time that it was important to carry out
15 due diligence if you wanted to satisfy yourself that the
16 company you were dealing with was not a scam?
17 A. Well, yes, that's correct.
18 Q. If your trusted advisor, Mark, said Spencer was Madoff,
19 that's surely something you would take seriously?
20 A. No, that's something I would not read too much into.
21 Albeit we had a professional relationship, we also had
22 a personal relationship, and I'm afraid you are taking
23 a throw-away, joking comment as a serious allegation,
24 and they are not the same.

P3.12 However, D5 clearly took Mark Partridge's concerns seriously enough to tell Steve Jones about them. D5 also suggested that he would not have taken Mark Partridge seriously because, while "*the industry was awash with, you know, unusual products*", LCF was "*using PwC*" and "*barristers from Lewis Silkin*."[1623] However, at the point at which Mark Partridge made this comment, PwC had not carried out any audit. In fact, as is explained below, D5 was genuinely concerned that LCF might be a Ponzi scheme and this concern persisted and intensified until it was confirmed to D5 beyond all doubt.

LCF's interest rates were too good to be true

P3.13 One obvious concern about LCF related to the extremely high rates of interest that it offered to investors.

[1623] Day 28/page 165/line 1 – page 166/line 5 **[A5/28/42]**.

Source: Mouseinthecourt.co.uk

P3.14 As explained above, D5, Kerry and Steve ran a website, www.investment-experts-online.co.uk. The basic premise of the website was that members of the public could seek free investment advice from experts. Each such enquiry was received by D5, Kerry and Steve by email. Members of the public began to submit enquiries about LCF, asking whether the extremely high rates of interest meant that LCF was too good to be true.

P3.15 On 07.12.15, for example, a member of the public submitted an enquiry: "*How safe is your money in an investment bond, such as those offered by London Capital and Finance. They are offering 8% p.a. on a 3 year fixed rate bond. Are these figures too good to be true?*"[1624] This was received by D5, D7, Kerry and Steve. D5 said, "*Very interesting*". He forwarded it to Mark Partridge[1625] and his friend Ronak Patel.[1626]

P3.16 Similarly, on 15.12.15, another member of the public asked: "*London Capital and Finance are doing a 3 year bond with an 8% interest rate, does this seem too good to be true? Is this a reputable company with financial equity in the event of going bust, as I wish to invest a large sum. Will my money be safe?*"[1627] Again, this was received by D5, D7, Kerry and Steve. Another prospective investor asked, "*What's the catch?*"[1628]

P3.17 LCF's unfeasibly high rates of interest caused a problem when setting up BSR, as Kerry explained to D5, Steve and others on 23.09.15 (with the subject, "*Content for BSR*"):[1629]

> "*1. You will note that LCF is only listed in the 1 year bond option.*
> *2. The rate is 2.7%.*
> *3. The minimum balance is £2k.*
> *Why?*
> *1.* ***We currently sell the 2 year bond for 8.5% the average 2 year bond in the comparison table offers 2%. I was faced with a dilemma: I could not put 8.5% next to 2% and remain credible****. I could not offer a 2 year option close to 2% because any client going to the LCF website would see that it is being marketed at 8.5%. Therefore we will only offer the 2 year bond via an assisted sale for 8.5% (business as usual) we will only offer a 1 year bond (2.7%) via the hands free online sale.*

1624 SUR00004092-0001

1625 SUR00004095-0001

1626 SUR00004096-0001

1627 SUR00004450-0001

1628 SUR00004233-0001

1629 SUR00129471-0001

Source: Mouseinthecourt.co.uk

2. I have proposed a rate of 2.7% to LCF because it is higher than – but still in line with – the competition. ***8.5% would stand out like a sore thumb next to 2%***" (emphasis added).

P3.18 Kerry put together a table for the website to rank the best products by interest rate.[1630] The highest interest rate apart from LCF was 2.1%. In his oral evidence, D5 acknowledged that to include LCF's 8.5% bond on this site would not have been credible but refused to concede that the interest rate offered by LCF was incredible, choosing to prevaricate rather than admit the obvious:[1631]

25 Would you have agreed that you couldn't put 8.5 per cent
1 next to those rates and remain credible?
2 A. No, you would want to put other similar style returns,
3 I think.
4 Q. Well, LCF was paying 8.5 per cent at this time, wasn't
5 it?
6 A. I believe so, yes.
7 Q. And you knew that at the time?
8 A. Yes.
9 Q. That's not what Kerry's put in this table. She's put
10 2.7?
11 A. Yes.
12 Q. Because she wants something in line with the
13 competition?
14 A. Yes.
15 Q. She thought that 8.5 per cent would stand out like
16 a sore thumb next to 2 per cent?
17 A. Yes.
18 Q. Seeing her email, you must have thought, "That's a good
19 point, LCF is not credible"?
20 A. Sorry, could you ask me the question again?
21 Q. Let's put it a different way: revealing the true
22 position to members of the public would have been
23 undesirable to you because you thought members of
24 the public would look at that and say, "This can't be
25 right. How can something be offering 8.5 in a market of
1 2 per cent?"
2 A. I don't think the 8.5 per cent was for one year.
3 I think that was a five-year bond, Mr Robins.
4 Q. It was for a two-year bond, 8.5 per cent per annum?
5 A. Oh, it was a two-year, right.
6 Q. And putting --
7 A. Are you sure about that, Mr Robins? I think perhaps, as
8 I recall, I think their one-year bond was as seen here.
9 I seem to think the three-year bond was 6.5.
10 Q. That was later, the second series, after the end of
11 2015, beginning of 2016, and you have one year 3.9; two
12 years 6-point-something; and three years, 8 per cent.
13 But at this time, it's a two-year bond, 8.5 per cent per

[1630] SUR00129472-0001

[1631] Day 28/page 132/line 25 – page 137/line 11 **[A5/28/33]**.

Source: Mouseinthecourt.co.uk

14 annum. Kerry is right, isn't she? You can't put that
15 in a table among 2 per cent and remain credible?
16 A. It is our job to market our client and we want to put
17 them at the best possible chance of getting a click
18 through to their website, so we are going to try and put
19 their best product forward.
20 Q. They didn't have a 2.7 per cent bond. Kerry was saying
21 they need to create one to remain credible?
22 A. I beg your pardon. Right. Then, yes. So, part of our
23 role as marketeers would have been to advise them on the
24 market. That's what marketeers do. We have a good view
25 of the types of products, types of bonds, alternate and

1 unregulated products from funding circle all the way
2 down to bonds that just launch. It is our job to try
3 and make our clients know the market, stay competitive
4 and make recommendations among those lines.
5 Q. Staying competitive would normally involve paying more
6 interest than the competition, wouldn't it?
7 A. Not necessarily. I think -- well, could do. I think it
8 will come down to a number of things. Whether or not
9 they have FSCS, depending on the rate, depending on the
10 type of product. I think there are a lot of things. If
11 it was as simple as the highest rate converts people
12 into running -- into investors, I think -- I just don't
13 think -- you know, you want to have a good rate, of
14 course you do. If you want to be competitive and
15 attract income -- inflows.
16 Q. But, here, your advice to your client was, "You're
17 paying too much. 8.5 per cent is not credible. It
18 stands out like a sore thumb"?
19 A. Right.
20 Q. So you thought LCF was not credible?
21 A. I don't think I wrote that. I think Kerry wrote that.
22 But, yes. I think, in this matrix that you presented
23 here, I don't think it does -- I don't think it would
24 convert very well, frankly, to have 8.5 per cent. You
25 would want some more competitive products alongside it.

1 Q. You don't think it would convert very well because
2 people would look at that and think 8.5 per cent is not
3 credible, this is too good to be true?
4 A. But at the time in the market, Mr Robins, there were
5 quite a number of products, products which are household
6 names were --
7 Q. Kerry has done a table for a website, Best Savings Rate.
8 These were the best rates available at the time, weren't
9 they?
10 A. I'm not sure if -- we would have gone through an
11 enormous amount of iterations on these sites. At one
12 point, there was an algorithm that sort of did things as
13 well. But -- I'm sorry, are you inferring that we were
14 telling them what percentage we should have done to be
15 competitive?
16 Q. No, what I'm asking is, you knew that the 8.5 per cent
17 per annum offered by LCF was not credible?
18 A. I disagree with that. I mean, the market at the time
19 had a plethora of products offering similar rates in
20 various guises.
21 Q. If you had known about the different rates, wouldn't you
22 have put them on your website, Best Savings Rates?

Source: Mouseinthecourt.co.uk

23 A. Some of them, yes, but not all of them. It was down
24 to -- our job as marketeers was to get people to click
25 onto their website and Google and -- I used to come from

1 a price comparison background, as I mentioned earlier.
2 Price comparison is an exceptionally good way to present
3 things in a list. I know you have described these as
4 fake websites, but things which were not fake about
5 them -- and indeed, when we were dealing with the
6 Advertising Standards Authority, we ensured (inaudible).
7 The rates were correct that we saw using our algorithm,
8 the sort of type of product and security there, we were
9 trying to get our clients into the eye of the consumer
10 for the term "best interest rates" and "investment
11 rates" and other --

P3.19 D5 later tried to claim that there were plenty of other products with comparable interest rates to LCF but that they were not included on BSR because they were not paying a fee to be listed on BSR. This evidence was nonsensical because there were products already listed from providers who did not pay fees.[1632]

P3.20 Similarly, on 25.11.15, Kerry observed that LCF "*pays a significantly higher rate by comparison*" with the other listings on BSR ("*Could be a positive and could be a negative*").[1633] (The other listings on BSR at that time were paying interests rates of 4.4%, 2.5%, 2.44%, 2.4%, 2.3%, 2.75% and 3% per annum.)

P3.21 Members of the public continued to submit enquiries on www.investment-experts-online.co.uk asking if LCF was "*too good to be true*".[1634]

P3.22 Sometimes, members of the public who had learnt of LCF on BSR would then ask www.investment-experts-online.co.uk whether it was legitimate: "*I am thinking of investing £10,000 with LCF in a protected bond. The interest for one year is 3.9% and 6.5% for two years. This seems very high compared with other rates on offer. How safe is my investment?*"[1635] D5 thought that this phenomenon was brilliant ("*Bouncing off from BSR. Brilliant!*").[1636] Equally, members of the public regularly sought to contact

[1632] Day 28/page 172/line 4 – page 174/line 19 **[A5/28/43]**.

[1633] SUR00003547-0001

[1634] SUR00004738-0001

[1635] SUR00005114-0001

[1636] SUR00005117-0001

Source: Mouseinthecourt.co.uk

LCF, asking whether it was "*too good to be true*"; their queries went to D6.[1637] Transcripts of their online conversations were sent to D5[1638] and Kerry.[1639]

The commission paid by LCF was "insane" and unsustainable

P3.23 Another obvious concern related to the commission that LCF was prepared to pay to D6, which, at 25% of all receipts from bondholders, was phenomenally high.

P3.24 On 23.07.15, D5 emailed Mark Partridge to say, "***I know, that's huge right?***" (emphasis added).[1640] Mark Partridge expressed the view that it was "*insane*":[1641]

> "***As you say this commission is insane. On a flat rate the fund would have to grow by 55% in two years to pay your commission and the interest.***
> *Who are LCF, is this the aim stock?*
> *You 'pay' me to be cynical but I can't see how these figures are sustainable*"
> (emphasis added).

P3.25 In September 2015, D5 thought that D6 would make a profit of £200,000 in its first full month of trading.[1642] D5 knew that D6's commission was paid directly from bondholders' monies on their receipt by LCF.[1643] It would have been obvious to him that this level of profit was simply unsustainable and that there was no realistic prospect of LCF being able to generate enough profits to repay its investors. In his oral evidence, D5's answer to this was that the 25% commission was "*market rate*".[1644] This is incorrect for the reasons given below but, in any event, does not absolve D5 in circumstances where it was obvious that, whatever rate of commission other bond

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1637 SUR00004982-0001; SUR00004985-0001; SUR00006212-0001; SUR00005420-0001; SUR00006131-0001; SUR00009193-0001; SUR00013450-0001; SUR00018166-0001; SUR00018964-0001; SUR00020208-0001

1638 SUR00004983-0001; SUR00004986-0001; SUR00009927-0001; SUR00009928-0001; SUR00010440-0001; SUR00010738-0001; SUR00011021-0001; SUR00011109-0001; SUR00011224-0001; SUR00011841-0001; SUR00013449-0001; SUR00013453-0001; SUR00018164-0001; SUR00018965-0001; SUR00020210-0001

1639 SUR00006133-0001; SUR00006214-0001; SUR00009194-0001

1640 SUR00129143-0001

1641 SUR00129198-0001

1642 SUR00002362-0001

1643 SUR00129510-0001; Day 28/page 86/line 9 – page 87/line 15 **[A5/28/22]**.

1644 Day 28/page 152/lines 14-19 **[A5/28/38]**.

Source: Mouseinthecourt.co.uk

issuers might pay, LCF could not operate sustainably paying 25% commission on the basis of the business model described in LCF's IMs and other materials.

P3.26 D5's knowledge that the commission was entirely unjustifiable has led him and Kerry Venn in recent years to put a great deal of effort into trying to justify it by reference to the fees paid in relation to other and different products. These efforts began almost immediately after LCF's collapse. However, many of the examples used by D5 and Kerry Venn to justify the fees charge by D6, such as Funding Circle, are simply erroneous because the marketing costs were a percentage of those companies' revenue, not the gross monies raised from investors.[1645] Kerry Venn frankly admitted that she had simply uncritically taken information from an article in the Financial Times and that "*it was flawed to use*."[1646]

P3.27 D5 has consistently sought to use the 20% commission paid to D6 by Blackmore as justification for the level of commission paid by LCF.[1647] However, this comparison actually undermines D5/D6's argument: the Blackmore bond was a 5-year product so on an annualised basis, the commission payable was 4% per year. This is substantially cheaper than the annualised rate of the LCF commission[1648] for exactly the same services.[1649] Furthermore, the initial rate agreed by Blackmore when D6 first started selling bonds for Blackmore in June 2015 was only 7.5%.[1650]

P3.28 A further excuse used by D5 was that the 25% commission was "*the industry standard*."[1651] This is contradicted by the evidence of both Mr Grainger and Dr Okongwu, who agree that at the outset of D6's relations there was "*no generally accepted market rate for the set of services which are said to have been provided by*

1645 Day 28/page 41/line 18 – page 42/line 4 **[A5/28/11]**; Day 31/page 175/line 6 – page 181/line 22 **[A5/31/44]**.

1646 SUR00121444-0001; Day 33/page 63/line 10 – page 68/line 3 **[A5/33/16]**.

1647 **[M1/9/11]**; Careless 1 ¶24 **[C2/3/4]**.

1648 **[A1/16/1]**.

1649 Careless 1 ¶24 **[C2/3/5]**.

1650 SUR00001292-0001; SUR00001331-0001; SUR00001451-0001; Day 28/page 38/line 12 – page 41/line 23 **[A5/28/10]**; SUR00129143-0001; Day 28/page 42/line 24 – page 44/line 17 **[A5/28/11]**; SUR00129198-0001; Day 28/page 50/lines 7-25 **[A5/28/13]**; SUR00001783-0001; Day 28/page 80/lines 6-15 **[A5/28/20]**.

1651 Day 28/page 45/lines 4-12 **[A5/28/12]**.

Source: Mouseinthecourt.co.uk

Surge."[1652] It is also contrary to the fact that D6 had agreed to charge Blackmore a significantly lower fee for precisely the same services. D5 appears to have reached the view that because, for example, entities seeking funding for a product like a litigation bond, which is very high-risk but also offers potentially a very high rate of return were willing to pay a given rate, that rate was applicable irrespective of the product being sold.[1653] That is obviously incorrect. Litigation funding is a different industry with a different business model and a different risk profile. It cannot be compared to the business model or risk profile described by LCF. As Kerry later put it in a message to D5 about litigation funding, "*What other industry can pay 30% for money and make a profit / be unlikely not to go bust.*"[1654] Her question answers itself: the corporate loans industry, at least on the basis of the business model described by LCF, obviously could not.

P3.29 Kerry Venn and her team were "*furiously trying to find independent evidence*" that D6's commission rate was market standard but "*struggled to provide evidence that proved [D6's commission rate] was market standard*"[1655]. Kerry Venn decided to generate some "independent evidence" herself. So, on 22.02.19, she asked Nick Morrison of D6 to place an email from Pat McCreesh of Blackmore in a share folder entitled "*Fees Evidence*".[1656] She wrote, "*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.*" However, this was not true. Kerry Venn had provided Pat McCreesh's with a draft email for him to send to her.[1657] Similarly, from the timing and the first line ("*I was very interested to see your success in raising funds from Investors and I had hoped that you may help us raise funds for our business for a 25 per cent commission*"), it appears that an email from Chris Brown of Hydrogard Legal Services sent on 22.03.19[1658] is likely to have been induced by D5 or Kerry Venn. D5 also now seeks to contend that Highgrove Osprey bond, a company associated with D7,

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1652 **[D3/3/5]**.

1653 Day 28/page 46/line 19 – page 48/line 16 **[A5/28/12]**.

1654 SUR00152773-0001

1655 Day 33/page 68/lines 10-24 **[A5/33/17]**.

1656 SUR00125178-0001

1657 SUR00118090-0001; SUR00118099-0001; SUR00118100-0001; SUR00118102-0001

1658 SUR00158203-0001

Source: Mouseinthecourt.co.uk

was prepared to pay high commissions. The documents show that D7 sold the Highgrove Osprey bond.[1659] It is unclear what level of commission Highgrove Osprey actually did pay[1660] but, in any event, it soon ran into difficulties.[1661] A report from its liquidator suggests that the director had been misappropriating company assets.[1662] The comparison therefore does not assist D5.

P3.30 These excuses are simply *post hoc* attempts by D5 to justify a fee that he knew at the outset was "*huge*" and "*unsustainable*". The actual quantum of the fee had nothing to do with the "*industry standard*" and D5/D6 had no role in negotiating it. D5 simply agreed an arrangement with D7 by which D5 and D7 would be equal partners on the basis that they would continue to be paid the 25% commission which D7 was already receiving from LCF.[1663] D5 knew that the commission rate was so large that he was prepared to split his share of D6 with D7. D7 had had a business relationship with D4 for over 15 years.[1664]

P3.31 The size of the commission paid would obviously have put off potential investors. For this reason, it was not contained in any of LCF's marketing material despite D5 knowing that it would be material to the decision of any prospective investor as to whether to provide money to LCF.[1665] As Kerry Venn said:[1666]

> 16 Was your thinking at the time, if we have to flag
> 17 20 per cent clearly on the Blackmore website, their
> 18 conversions are going to plummet?
> **19 A. Yes.**
> 20 Q. Do you accept that if LCF had been open with the public
> 21 about the 25 per cent commission, it would have had an
> 22 extremely low conversion rate and raised considerably
> 23 less money than it actually did?
> **24 A. Yes. The same is true of any minibond in the UK. If**
> **25 they had prominently advertised the cost of marketing**

1659 D7D9-0001214; D7D9-0001663

1660 SUR00130107-0001

1661 SUR00008560-0001

1662 **[R1/29/1]**.

1663 SUR00056027-0001; SUR00056059-0001; SUR00035780-0001; Day 28/page 54/line 5 – page 56/line 14 **[A5/28/14]**.

1664 SUR00159541-0001

1665 Day 28/page 65/line 4 – page 66/line 13 **[A5/28/17]**.

1666 SUR00154485-0001; Day 33/page 93/line 16 – page 94/line 1 **[A5/33/24]**.

Source: Mouseinthecourt.co.uk

1 it would have been offputting.

Absence of information about LCF's borrowers

P3.32 The concerns about LCF's bona fides were only compounded by D1's failure – and, later, flat-out refusal – to provide *any* information about LCF's loans to borrowers.

P3.33 On 16.07.15, Kerry emailed D7 to say that she was—

> "*trying to build a picture of the success* [and] *selling points of the business and* ***always like to lead with facts and figures as these increase credibility****, it would help to know: How many (approximate figure) loans to date, how many defaults, type of loan i.e. for what purpose, average term, interest rate (I believe it is arranged according to risk level, please elaborate), Size of companies borrowing*?" (emphasis added).[1667]

P3.34 She requested case studies and testimonials from borrowers.

P3.35 D7 forwarded her email to D1.[1668] However, D1 did not provide any of the requested information about LCF's borrowers.

P3.36 On 20.07.15, D7 sent a chaser email to D1.[1669] D1 replied (cc D3 and D4) to say that he was working on it, but he did not respond further.

P3.37 On 29.07.15, Kerry reiterated her requests to D1:[1670]

> "*Reading about how Mr X – from a real company that they can see on the internet – was able to benefit from finance that the bank refused and it enabled him to purchase stock / take advantage of opportunities that resulted in him increasing his turnover by 25%, etc… Good success stories really help to sell the bond because investors can see the actual need and results*".

[1667] SUR00001422-0001

[1668] SUR00001422-0001

[1669] SUR00129105-0001

[1670] SUR00001538-0001; EB0006648; D1-0000788

Source: Mouseinthecourt.co.uk

P3.38 Still D1 did not provide the requested information. Kerry mentioned it again the next day on 30.07.15.[1671] Still he did not provide it.

P3.39 At some point, Kerry discussed this issue with D4. On 13.10.15, Kerry emailed D4, cc D7: "*Spencer, As discussed, I have been waiting for the Case Studies for some time. I had a look back through my emails and can see I first requested this on the 29th July*".[1672]

P3.40 But still D1 did not provide any of the requested information about borrowers.

P3.41 A related issue that was causing concern at this time was the absence of a lending page on LCF's website. There was nothing to give credence to the idea that prospective borrowers could apply to LCF for a loan. This undermined LCF's credibility.

P3.42 Given that D6's role was to maximise LCF's bond sales, it fell to D6 to resolve this issue by creating a plausible-looking lending page. Manuel Espinoza of D6 designed a lending page for LCF's website.[1673] D7 provided comments on it.[1674]

P3.43 D5 said, "*We need the lending page on LCF going live and with it we need to add what a normal company we would lend to look likes. I.e. £10m turnover; looking for £500k over 6 months; Company has £4m in Company Assets for protection of our loan*".[1675] This lending page never actually went live.

Some light-touch due diligence and a worrying discovery

P3.44 On 08.12.15, D5 emailed Mark Partridge to discuss the idea of conducting a bit of light-touch due diligence on LCF:[1676]

> "*I couldn't get hold of Spencer last night but will do today.* ***I have a plan to make the necessity of the DD seem more run-of-the-mill and less holly-shit-this-better-***

[1671] SUR00001555-0001

[1672] EB0006648

[1673] MDR00027127; D7D9-0003267; D7D9-0003267

[1674] MDR00027127

[1675] MDR00026970

[1676] SUR00127979-0001; SUR00158416-0001

Source: Mouseinthecourt.co.uk

> ***not-be-a-ponzi*** [sic]. *Ill basically say that as Spencer is looking to revise an offer to be involved exclusively with us in one way or another we want to run some DD to make the process easier down the line.*
> *Spencer doesn't like getting emails. I know, I know.*
> *But you will be getting an intro email to Andy Thomson later. I would start with a call with him to get an overview before you request the evidence you need*" (emphasis added).

P3.45 In his oral evidence, D5 accepted that in order to establish that LCF was not a Ponzi scheme, the due diligence would require an understanding of where new investor money was going and how payouts to existing investors were being funded. He also accepted that Mark Partridge had persuaded D5 that due diligence was required by telling him that it might be a Ponzi scheme.[1677] D5 also accepted that he would not have thought due diligence was necessary unless there was a real risk that something could be wrong in LCF:[1678]

8 Q. You had been persuaded by Mark you needed to satisfy
9 yourselves that the underlying asset performs
10 efficiently and that you could be comfortable that your
11 clients' coupon and your fees would be paid?
12 A. Yes.
13 Q. You wouldn't have been persuaded of that unless you had
14 actually thought there was a real risk that LCF might
15 not be a legitimate business, would you?
16 A. No.

P3.46 D5 emailed Mark (cc D7) about this issue again on 10.12.15 to say, "***We need to conduct this DD with a light touch***" (emphasis added).[1679] In his oral evidence, D5 accepted that he did not want to jeopardise D6's 25% commission or for D1 or D4 to get annoyed with him, as they might do if he asked awkward questions.[1680]

13 You don't want to rock the boat, annoy them and
14 jeopardise the 25 per cent commissions?
15 A. No.
16 Q. You're saying, "If we start the DD with
17 John Russell-Murphy, ask him some questions, we can
18 avoid any unnecessary annoyance to Spencer or Andy"?
19 A. Yes.
20 Q. That's what you are saying, isn't it?
21 A. Yes.

[1677] Day 29/page 56/line 23 – page 57/line 8 **[A5/29/14]**.

[1678] Day 29/page 57/lines 19-23; Day 29/page 59/lines 8-16 **[A5/29/15]**.

[1679] SUR00004217-0001

[1680] Day 29/page 60/lines 17-20 **[A5/29/15]**; Day 29/page 61/lines 10-21 **[A5/29/16]**.

Source: Mouseinthecourt.co.uk

P3.47 Mark replied, "*If they have nothing to hide, they shouldn't be concerned about DD*".[1681] D5 accepted in his oral evidence that his concerns that D1 or D4 would only be likely to get annoyed if due diligence were conducted if they did have something to hide.[1682] It follows that D5's concerns about jeopardizing D6's commission if D6 conducted due diligence was because he believed it likely that D1 and D4 did have something to hide and that LCF was probably not a legitimate business.

P3.48 Mark then told D5 about a worrying discovery that he had made:[1683]

> "*The worse news is*
> ***All their loan book is lent to Thomson's company!*** *This loan (or some of it not clear) was then shifted to International Resorts Group, a company that Thomson used to be a director for.*
> ***So it could be that the liabilities now have no assets to back them up***"
> (emphasis added).

P3.49 D5 knew that International Resorts Group was "*basically a land bank*" and accepted in his oral evidence that a land bank would not make profits.[1684] Clearly if LCF's only investment was not generating profits and LCF was having to pay bondholders and D6's commission, then LCF must have been using monies from new bondholders to make those payments. This raises obvious concerns about its sustainability and about whether it is operating as a legitimate business. D5's oral evidence on this point was vague and unsatisfactory:[1685]

> 3 Q. So you'd been told by Mark that LCF, run by Mr Thomson
> 4 on a day-to-day basis, is lending all the money to
> 5 a land bank of which Mr Thomson also used to be
> 6 a director. You must have thought, "How on earth is
> 7 that going to generate these returns week by week, month
> 8 by month, to pay our commission and the interest?" That
> 9 must have been going through your head.
> **10 A. Yes -- well, yes, paying the coupon and paying people if**
> **11 they -- you know, if they go under, of course, is --**
> **12 that takes precedence when it comes to DD over anything**

[1681] SUR00130330-0001; SUR00130337-0001

[1682] Day 29/page 63/line 24 – page 64/line 14 **[A5/29/16]**.

[1683] SUR00130330-0001; SUR00130337-0001

[1684] Day 29/page 68/line 19 – page 70/line 2 **[A5/29/17]**.

[1685] Day 29/page 70/line 3 – page 71/line 10 **[A5/29/18]**.

Source: Mouseinthecourt.co.uk

13 else. It takes precedent over who owns what, what
14 people say in a video. Ultimately, if a company has
15 security to pay back the bondholder, should it go wrong
16 or their plans go awry, or the people are corrupt or
17 fraudulent, then that of course is the number one
18 priority, and it's really the only thing I really cared
19 about. I didn't care what -- I'm sorry, that sounds --
20 of course I cared, because I don't want my client to go
21 under, otherwise I have five years of litigation. But
22 that security is the focus for me, not what people say
23 and not what a land bank does, frankly. I mean, I did
24 read this, of course I would have read it because, if
25 Kerry did -- you know, I try my best to read most

1 things, but I genuinely don't see how I could have
2 worked it out, you know.
3 Q. You knew LCF started 25 per cent down because of
4 the commission, Mark had told you on a flat rate it
5 would have to grow by 55 per cent in two years. You're
6 then told the 75 per cent that it's left with has gone
7 into a land bank. You must have thought that it was
8 looking more and more like it could well be a Ponzi
9 scheme?
10 A. I'm sorry, I just don't agree with that, Mr Robins.

P3.50 The reality is that by this time D6 had received, and was continuing to receive, so much money from LCF that D5 did not want to know the true position.

P3.51 D5 emailed D1 (cc Mark Partridge and D7) on the same day to say:[1686]

> "***We want to better understand how LCF operates*** *to assist in both our sales and also from a commercial prospect. As it is way above my pay grade and JRM is snowed under I have asked Mark Partridge, our accountant to liaise directly with you.* ***We anticipate at least £50m into LCF bonds over the next 12 months and it would be helpful for us to ensure we know how the underlying assets work in more detail.*** *Can I leave Mark in your capable hands to provide him with those details please*" (emphasis added).

P3.52 D1 failed to provide Mark with any response to these requests. On 13.12.15, D5 emailed Mark, saying, "*Give him a nudge … for me please*".[1687]

[1686] MDR00024468; SUR00004241-0001

[1687] SUR00130384-0001

Source: Mouseinthecourt.co.uk

The lack of information was causing difficulties

P3.53 D1's failure to provide any information about LCF's borrowers was causing difficulties for D6's sales people. Prospective bondholders often sought information about how their money would be used by LCF to generate a return. The inability to provide basic information in response to these questions was raising eyebrows.

P3.54 On 16.12.15, Kerry asked D1, "*How many borrowing companies are there at this time and what is the average loan size please?*"[1688] D1 replied, "*To date the company has c. £5,000,000 under management … Currently we have in place funding lines for an additional £10,000,000 split over 5 company's* [sic]".[1689]

P3.55 Kerry forwarded this to D5 and Mark Partridge at 2.40pm, commenting, "***See Andy's comments regarding the £10m over 5 borrowing companies. I'm interested to know if all 5 are ultimately under the same/connected ownership***" (emphasis added).[1690] D5 agreed in his oral evidence that this was a pertinent question to ask.[1691]

P3.56 Later on the same day (at 3.31pm), the issue of LCF's borrowers was raised again by a prospective bondholder. He emailed Kerry to ask, "*Am I correct in thinking that you were reluctant to tell me how many borrowers you have on your books?*"[1692]

P3.57 At 4.16pm on the same day, Kerry seems to have been distracted by a new lead – a person who had £500,000 to invest ("*That's really amazing, £500k!!!!*").[1693]

P3.58 D1 had still not answered Kerry's question about the average loan size.

P3.59 The prospective bondholder kept pressing Kerry for this information.

[1688] MDR00024960

[1689] MDR00024968

[1690] SUR00004510-0001

[1691] Day 29/page 74/lines 8-13 **[A5/29/19]**.

[1692] SUR00130462-0001

[1693] SUR00004522-0001

Source: Mouseinthecourt.co.uk

P3.60 She asked D7 about how to respond.[1694] Eventually, on 22.12.15, D7 suggested that Kerry get the figures from D1.[1695] She emailed D1 that same day:[1696]

> "*Generally I have been trying to steer customers away from questions about our lending book however one particular chap is very persistent and wants me to answer the following question, can you please suggest a reply that you are comfortable with:*
> *What about telling me how much in total you have lent and what is the average sum per contract?*"

P3.61 D1 did not answer this question. Instead, he said he would "*have a think*" and email her something in the morning.[1697] He did not email her anything in the morning.[1698]

Further concerns about LCF's legitimacy

P3.62 D5 had a lunch meeting with D4 scheduled for 29.12.15.[1699] On 28.12.15, D5 emailed his team (cc D7 and Jo Baldock to say, "*We had a great end to 2015, breaking £1m into LCF in just 18 days (including two weekends!)*".[1700] Mark Partridge replied:[1701]

> "***DD is obviously very important here in my eyes anyway*** *…* ***So you are seeing Spencer tomorrow. Do you want me there or is it a three wise monkeys meeting?*** *I would not be offended btw but at some time we do have to address this issue*" (emphasis added).

P3.63 D5 was not sure if the meeting with D4 would go ahead but he had obviously been in touch with him because he replied to Mark Partridge on 28.12.15 to say that D4 "*has offered £30m in security, first charge etc, let's take that this month, for starters covers us while we get to grips with the underlying asset and how it performs*."[1702] In his oral

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1694 SUR00130462-0001

1695 SUR00130541-0001

1696 MDR00025395

1697 MDR00025395

1698 MDR00025747

1699 SUR00004668-0001

1700 MDR00025611; SUR00004663-0001

1701 SUR00004668-0001

1702 SUR00004672-0001

Source: Mouseinthecourt.co.uk

evidence, D5 accepted that he understood from D4's willingness to provide security that he might be the borrower.[1703] D5 also understood that D4 exercised significant control over LCF.[1704] The fact that D4 appeared to be on both the lender side and the borrower side was clearly a matter that merited investigation and gave rise to serious concern about the legitimacy of LCF's business, particularly in light of the representations that were being made to prospective investors about LCF lending to SMEs. D5 also accepted in his oral evidence that the security D4 had offered didn't remove the need for D6 to conduct due diligence and that D6 would not be able to continue to take 25% commissions legitimately unless it could "*get to grips with the underlying asset and how it performs*."[1705]

P3.64 D5 also emailed D7, Mark, Kerry, Steve and Jo Baldock on 28.12.15 to provide them with a link to a story in *The Telegraph* about a bond issuer called Wellesley,[1706] which they had been discussing by email.[1707] D5 added:

> "*JRM and I are meeting with Spencer on Tuesday mid-morning in Crowborough. I intend to bring Mark and use this article as a discussion point that if we had the recently referred to security in place, LCF would be in a far stronger place than Wellesley.* ***If you scroll right down and read the comments, you'll see the obvious concerns we need to address, 'Peter Smythe' in particular nails it****. Having £30m on the balance sheet would defeat that argument and conversions would increase*" (emphasis added).

P3.65 Peter Smythe's comment (which, according to D5, "*nails it*") was:

> "***If you bothered to look properly at the 'savings bond' offering, you would see that they can basically do whatever they want with the money****. The funds invested in the 'savings bond' will be used to 'expand its business' and 'lending capabilities' i.e. they can use the money for television adverts and raising even more money to do, basically, whatever they like with it.* ***How does the FCA allow this stuff? These guys dangerously masquerade around as peer-to-peer lenders***

[1703] Day 29/page 80/lines 11-19 **[A5/29/20]**; Day 29/page 81/lines 8-11 **[A5/29/21]**.

[1704] See Section H7**.**

[1705] Day 29/page 81/line12 – page 82/line 7 **[A5/29/21]**.

[1706] MDR00025617; SUR00127976-0001

[1707] MDR00025611; SUR00004663-0001; SUR00004668-0001; SUR00004672-0001

Source: Mouseinthecourt.co.uk

but all they are in reality is an unregulated fund that offers terrible returns … next scandal waiting to happen" (emphasis added).[1708]

P3.66 Steve Jones responded to D5, "*Interesting and timely article. I am sure they will be sniffing around LCF in no time at all*".[1709]

P3.67 D5 replied, "***No they won't.*** *Wellesley got spotted because it went above the parapet by advertising on TV.* ***They'll stay under the radar for a while yet***" (emphasis added).[1710] D5 said in his oral evidence that if he had thought he was marketing a legitimate business, he would have wanted them to advertise on TV rather than staying under the parapet. As regards LCF, however, he said that he did not want LCF to advertise on television because he did not want the FCA to conduct a review of LCF's marketing.[1711] Had the FCA conducted such a review it would have discovered, as D5 knew, that LCF was not lending to a diversified portfolio of SMEs but rather to a connected company that was a land bank and which did not generate any profits. D5 would naturally have been keen that the FCA did not discover this.

P3.68 Mark Partridge's scepticism about LCF was increased by D1's statements about capital gains allowances and withholding tax. D1 said that bondholders could use capital gains allowances (and that withholding tax would not be applicable) and that this had been confirmed by BDO and Lewis Silkin. D1 then performed a volte-face and emailed D7 to say that "*all interest paid for the bonds is subject to withholding tax at 20%*".[1712] D7 emailed D6's staff saying, "*Just to clarify – all bonds will be subject to 20% withholding tax … Andy has also confirmed that their legal and accountancy advisers have stated that clients cannot utilise their capital gains allowance on maturity of the bonds*".[1713]

1708 SUR00004693-0001

1709 SUR00004684-0001

1710 SUR00004685-0001

1711 Day 29/page 83/line 14 – page 84/line 19 **[A5/29/21]**.

1712 SUR00130885-0001

1713 SUR00130885-0001

Source: Mouseinthecourt.co.uk

P3.69 D5 forwarded this to Mark Partridge, who replied, "*No fcking* [sic] *shit Sherlock ... Sorry a bit rude but really! What happened to BDO and Lewis Silkin's advice?*" D5 asked Mark to clarify what he meant by this. Mark explained:

> "***It is completely the opposite of what was stated last week*** *when utilising your capital allowance was all the rage – alleged backed by BDO and Lewis Silkin. Despite my scepticism.*
> *That's why emails go out giving completely the wrong advice. Because people want to say the thing punters want to hear rather than reality.*
> ***That's the sort of thing that ends up shutting the company down. Bullshit.***
> ***You can't believe anything that comes out of Spencer's lot and so JRMs mouth.***
> ***Diversify asap. And consider your sales management***" (emphasis added).

P3.70 In his oral evidence, D5 accepted that D7 was one of "*Spencer's lot*".[1714] He also accepted that Mark Partridge was advising him to get clients other than LCF and that he should consider parting company with D7.[1715] D5 did neither of these things. Instead, he focused on trying to make LCF look more credible to members of the public by creating a lending page on LCF's website as a "*sales tool*" to give a more convincing impression to prospective investors that LCF did actually lend to unconnected companies.[1716]

Uncertainty about security

P3.71 D5's comment on 28.12.15 about getting "*£30m on the balance sheet*"[1717] is explained by subsequent emails which reveal D1 and D4 had said that they were putting a "*land asset*" worth £30 million into LCF in order to provide security to bondholders.

P3.72 On 29.12.15, Mark said, "*Certainly gives comfort to the proposition. Still big concern is one type £30m asset backing this. Wellesley implies a spread of risk as per original thought with spencer*". After the meeting, on 02.01.16, D7 emailed D1, asking, "*how are you progressing with the 30 Million land asset being placed into the company?*"[1718]

[1714] Day 29/page 95/line 9 – page 96/line 5 **[A5/29/24]**.

[1715] Day 29/page 93/lines 6-19 **[A5/29/24]**.

[1716] Day 29/page 93/line 20 – page 94/line 22 **[A5/29/24]**.

[1717] MDR00025617; SUR00127976-0001

[1718] MDR00025708

Source: Mouseinthecourt.co.uk

P3.73 Kerry emailed D5 on 06.01.16 to say, "*I am concerned that the targets might not be achieved without the £30mil security … Do we have a timeline for the enhanced security?*"[1719] Just over a week later, D5 emailed D3 (cc D7 and Mark Partridge) on 14.01.16, saying, "*I need to get the security on the balance sheet as fast as possible. I also need to understand what exactly it is, as the Account Managers will need to explain it to the clients it needs to be simple. It will defeat our main objection and increase conversions immediately; therefore, it being added quickly will help increase sales*".[1720]

P3.74 On 07.01.16, with still no news on the promised security, Mark Partridge sent an email to D5 in which he wrote "*For DD purposes…*".[1721] Attached was a picture of a board game called "*Ponzi Scheme*".[1722] In his oral evidence, D5 put this down to Mark Partridge's dislike of the finance industry and his cynicism before reverting to his answer that it was a joke.[1723] However, D5 also accepted that people often joke about "*things that are real, things that are difficult or uncomfortable*". The context in which this email is sent clearly shows that Mark Partridge was making a joke which was based on his real views about LCF which were known to and understood by D5.

P3.75 D5 chased D3 (cc D7, Kerry, and Mark) again on 18.01.16, saying, "*What is the update on this please? In particular, the security on the balance sheet*".[1724] D5 forwarded this email to Steve;[1725] D3 forwarded it to D1.[1726] Mark emailed D5 to say:[1727]

> "*As per the literature LCF lend to 75% of asset value.*
> *We should consider this. Per our conversation with LCF, 50% of this asset is liquid. The rest is deferred 'consideration'.*
> *We need to consider whether to stop placing funds at £7.5m x 75% = £5.625m or £15m x 75% = £11.25m*".

1719 SUR00004894-0001

1720 MDR00027361; EB0012005

1721 SUR00158417-0001

1722 SUR00158418-0001

1723 Day 29/page 89/line 9 – page 91/line 24 **[A5/29/23]**.

1724 MDR00027361; EB0012443

1725 SUR00005979-0001

1726 MDR00027361; EB0012446

1727 SUR00005975-0001

Source: Mouseinthecourt.co.uk

P3.76 The story about the additional security had therefore changed. It was no longer a "*30 million land asset*". Instead, it was now an asset worth £15 million which was "*50% liquid*" and 50% "*deferred 'consideration'*" – hence Mark's question whether D6 should "*stop placing funds at £7.5m x 75% = £5.625m or £15m x 75% = £11.25m*".[1728]

P3.77 D5 chased D3 (cc D7, Mark and Kerry) on 21.01.16:[1729]

> "*What would help us significantly is removing the objection about the Company being young and having an empty balance sheet. The sooner the security is added the better. Can I ask you to let me know what the security will be precisely and when it will be added by in a way in which members of the public can see and our team can quote it*".

P3.78 D5 chased D3 and D1 (cc D7, Mark and Kerry) again on 25.01.16:[1730]

> "*I am just following up on my email from Thursday to you both.* ***Can I get a response this morning by email regarding the security which is being added to the company please.*** *We are growing very quickly and the quality of the balance sheet needs to be shored up to provide comfort for the clients. It remains the largest, most singular objection and hold backs the conversions considerably. It requires your urgent attention*" (emphasis added).

P3.79 D1 replied by saying that he wanted to discuss.[1731] However, D5 was out of the office.[1732] The changing description of the security and the fact that it had not been provided was not reassuring for D5.[1733]

[1728] MDR00026970; Day 29/page 97/lines 4-22 **[A5/29/25]**.

[1729] MDR00028356

[1730] MDR00028356

[1731] MDR00028358; EB0120976

[1732] MDR00028358

[1733] Day 29/page 100/line 23 – page 101/line 5 **[A5/29/25]**.

Source: Mouseinthecourt.co.uk

Shocking discoveries

P3.80 Kerry spoke to D1 on 25.01.16. The conversation was extremely concerning for many reasons. She sent a report to D5, D7, Mark and Steve immediately:[1734]

> "***I have just spoken with Andrew Thompson*** **[sic]**, ***we discussed some quite sensitive information which he initially didn't want to be communicated by email but has given me permission to relay this information assuming your commitment not to mention the details outside of this small group****. Please don't even mention to the sales team yet …*
> *He has not replied to Marks request for DD because he did not receive the emails.* ***There is no £30million security. There is a transaction taking place with $30mil (yes dollars) to the benefit of LC&F and inter related companies however the only 'asset' which they are able to use for the purposes of enhancing LC&F is a loan note for £15mil (yes sterling) in favor of LC&F.*** *They have had it confirmed by their accountants that the loan note can be positioned in the balance sheet so that the assets of the company are boosted. The balance sheet currently shows assets of £6mil therefore an extra £15mil will take it to £21mil which is sizeable and therefore should assist sales but will not be as beneficial as the £30mil charge over property which was originally suggested.* ***Andy says this was a miscommunication by Spencer and it was never an option.***
> ***The loan book:***
> · *Since inception LC&F (formerly SAFE) has lent £4.2 million.*
> · *Currently there are 80 loans.*
> · *The average loan size is £75k*
> · *The largest loan ever was £220k*
> · *Terms range from 3 months bridging finance to 2 years property development finance.*
> · ***Crucially all 80 loans are to Spencer related businesses i.e. they are funding their own operations*** *…*
> …
> ***BIG ISSUE:***
> ***The FCA contacted Andy 10 days ago to say that they have received numerous complains re TIE promoting LC&F. They have also been forwarded email communications from TIE staff. They have mystery shopped us. In the FCAs opinion, we are miss-selling*** **[sic]**. ***It is not OK to state that bond holders capital is 100% safe, there are risks and we are no longer allowed to be so categorical in our statements*** *…*" (emphasis added)

P3.81 The fact that there would be "*no £30million security*" was obviously a concerning development, which was contrary to what had previously been asserted. More significant still was the knowledge that "*all 80 loans are to Spencer related businesses i.e. they are funding their own operations*"; although, in his oral evidence D5 said that "*I had already*

[1734] SUR00131168-0001

Source: Mouseinthecourt.co.uk

worked that out, pretty much, fairly early on".[1735] That D4 was effectively the sole borrower would presumably have greatly simplified the due diligence that D5 claims he wanted to undertake, given that D5 communicated with D4 both directly and via D7 on a fairly regular basis. In his oral evidence, D5 acknowledged that he could simply have asked D4 the questions he says he wanted answer to[1736]; however, he did not because he did not want to jeopardize the large amount of money flowing into D6.

P3.82 D5 was really focused on the final point in Kerry's email: the fact that the FCA had "*received numerous complains [sic] re TIE promoting LC&F*" and had concluded that D6 was "*mis-selling*". D5 responded quickly. He emailed his colleagues (including D7 and Jo Baldock) on 25.01.16 to say:[1737]

> "*Something is coming our way … The dots are forming a line and we have too much to lose to not* [take] *action. Therefore: -*
> ***1. Pause all TIE advertising***
> ***2. Pull TIE down, no pages live, have a page saying, "This site is currently offline."*** *…*
> *It could be a competition or anyone, even someone who recently left. Some people when they are not allowed to play in goal, try and pop the ball. Either way, for now it closes.*
> *Lastly.* ***All connections, IP, Limited Companies or people connected with TIE need considering or removing from all our other sites. Consider it toxic.*** *…*
> *Report when completed. These actions may not stop what may come but it may help. It can always and easily relaunch. Nothing is forever*" (emphasis added).

P3.83 Within 15 minutes, www.investment-experts-online.co.uk had been taken down.[1738]

P3.84 D5 said Kerry was working on any cross-pollination which she would email around in the morning for resolution.[1739]

P3.85 On 26.01.16, D5 emailed D7, Steve, Kerry and Jo Baldock, with the subject "*TIE*":[1740]

[1735] Day 29/page 109/lines 19-24 **[A5/29/28]**.

[1736] Day 29/page 120/line 16 – page 122/line 14 **[A5/29/30]**.

[1737] MDR00028517

[1738] MDR00028519

[1739] MDR00028535

[1740] D7D9-0004170

Source: Mouseinthecourt.co.uk

"*As you know I have brought TIE down. It is a pre-emptive move as I am expecting repercussions from the FCA regarding some of our dealings with clients. Where we go from here is not decided but to head off a potential issue of breaching the grey area of advice with at least one of our Analysts is paramount … Kerry – Please let me know what cross pollination is existing between TIE and other entities … Then we wait and see what happens*".

P3.86 Kerry emailed everyone to tell them to remove any reference to TIE from LinkedIn.[1741]

Still no information from D1

P3.87 D1 was still failing to provide any testimonials from LCF's borrowers.[1742]

P3.88 On 29.01.16, Kerry emailed D5 (after a discussion between them) saying, "***Missing piece of the 'is it a ponzi' jig saw:*** ***we need access to the lending book, inclusive of details re the security in place, what percentage is property and at what gearing, if not property what is it and how was it valued?*** *Is Mark following up, I put him back in contact with Andy on Andys new email address*" (emphasis added).[1743]

P3.89 In his oral evidence, D5 agreed that Kerry was not joking in this email; it was a serious email focused on what was needed for D6 to be satisfied that it could carry on working for LCF.[1744] He also acknowledged that he had had discussions about the possibility that LCF might be a Ponzi scheme.[1745]

P3.90 On 01.02.16, Mark Partridge asked D5 if he should continue to "*request DD information*" from D1.[1746] Initially, D5 did not get back to him on this;[1747] it is unclear from the documents whether they discussed it subsequently.[1748] What is clear is that LCF

1741 D7D9-0004175

1742 SUR00006835-0001; SUR00006836-0001

1743 SUR00158422-0001

1744 Day 29/page 130/line 21 – page 131/line 7 **[A5/29/33]**.

1745 Day 29/page 132/lines 16-18 **[A5/29/33]**.

1746 SUR00131253-0001

1747 SUR00131394-0001

1748 SUR00131395-0001

Source: Mouseinthecourt.co.uk

had not yet provided sufficient information for D6 to be satisfied it was a legitimate business.[1749]

P3.91 It is also clear that D5 did not want the commissions to stop. When he learnt of the possibility of a large investment from Alan Darrah on 01.02.16[1750], his thoughts immediately turned to how he would be able to spend his share of the commission: "*if JRM pulls off that 1m Friday then I'll be buying a 70k car with the comms the week after … Operation fuck you everyone who didn't believe*."[1751]

P3.92 D5 wanted to get rich; he wanted to make enough money over 3 to 5 years to leave with millions in the bank.[1752]

21 Q. You wanted to get rich?
22 A. Don't you?
23 Q. Is the answer to my question "Yes" or "No"?
24 A. Yes.
25 Q. You wanted to make enough money over a three- to

1 five-year period to exit with millions in the bank,
2 didn't you?
3 A. Yes, I did.

P3.93 D5 did not want anything to interfere with this and so he did not want to have a difficult but necessary conversation with D1 or D4. Instead, he was focused on setting demanding targets for his team: "*We will hit £3m cash into LCF Bond in Feb. We will hit £5m in cash into LCF Bond in March.*"[1753] D5 also continued to progress the discussions about a proposed exclusivity agreement with D2 and D4.[1754]

1749 SUR00007413-0001; Day 29/page 141/lines 12-15 **[A5/29/36]**.

1750 D7D9-0004583

1751 SUR00007377-0001 page 3

1752 MDR00035082; Day 29/page 140/line 21- page 141/line 4 **[A5/29/35]**.

1753 SUR00008006-0001

1754 D2D10-00014833; SUR00009048-0001; SUR00009378-0001

Source: Mouseinthecourt.co.uk

P3.94 In early March 2016, Mark met with D1, who agreed to provide him with "*the security documents held by LCF against the loans provided to date*".[1755] D1 failed to provide these to Mark, who chased him on 01.04.16, asking also to see a schedule of loans.[1756]

P3.95 D1 apologised for the delay and said that he had been waiting for one particular document to become available.[1757] Mark asked him to send over whatever was available "*as a matter of urgency*".[1758] D1 did not send anything to Mark. Mark Partridge kept D5 updated on his communications with D1.[1759] Through his discussions with Mark Partridge, D5 knew that D1 had mentioned having security over land in the Dominican Republic.[1760] He therefore knew that LCF was lending to the leisure and tourism business that D5 and Kerry Venn had considered was too high-risk to be attractive to retail investors in February 2015.[1761]

P3.96 On 08.04.16, D1 told D5 (cc D7 and Kerry) that he had "*instructed* [his] *solicitor to send Mark all the docs*".[1762] Mark objected, "*I have not heard from your solicitor yet!*"[1763] Mark Partridge was trying to obtain all LCF's security and loan documents from D1.

P3.97 On 12.04.16, Alex Lee sent Mark Partridge a facility agreement between L&TD, a corporate guarantee from London Group plc and a debenture supporting the facility agreement.[1764] It would have been obvious from this that: (i) LCF had only one borrower at this stage; and (ii) D4 and his associates were still (in Kerry's words) funding their own operations. References to diversification (e.g. in LCF's video) were therefore false: a loan to a single borrower cannot sensibly be said to amount to a diversified loan book. D5 claimed that he was at this stage "*comfortable they had enough security*"[1765] but D5

1755 MDR00034184

1756 MDR00034184; SUR00132306-0001

1757 MDR00034189

1758 MDR00034201

1759 Day 29/page 155/lines 6-21 **[A5/29/39]**.

1760 Day 29/page 155/line 22 – page 156/line 24 **[A5/29/39]**.

1761 Day 29/page 156/line 25 – page 160/line 24 **[A5/29/39]**.

1762 MDR00034970

1763 MDR00035001

1764 MDR00035261; MDR00035262; MDR00035263; MDR00035264

1765 Day 29/page 172/line 7 – page 173/line 6 **[A5/29/43]**.

Source: Mouseinthecourt.co.uk

cannot have had any real idea of the actual value of LCF's security, if any. He simply did not want to ask any difficult questions because it would stop the commission payments that he was keen for D6 to continue receiving. D5 also knew from the documents provided that information being given to the public such as the fact that LCF lent to SMEs and the fact that it had a diversified loan book were untrue.

Concerns about GST's credibility

P3.98 As explained above, D6's sales people sought to rely on the involvement of GST, a company controlled by D8,[1766] to reassure prospective investors that their monies would be safe. D6's sales people said that GST was an independent security trustee which monitored the adequacy of security on behalf of bondholders.[1767] D5 knew this.[1768] He also knew that D6 did not have any information about the security trustee beyond the fact that it was connected in some way to D1.[1769] He must therefore have known that GST was not independent of LCF but in his oral evidence he waffled frantically to avoid admitting this, finally saying "*I believed the security trustee was doing an independent job*" before admitting he knew nothing about GST.[1770]

P3.99 However, prospective bondholders who looked for information about GST found nothing.[1771] For a long time, Kerry had been saying that "*GST require an online presence*".[1772] D5 agreed, saying, "*I will chat with Andy on Thursday about setting up a good online trail of provenance to ensure when Googled it provides comfort*".[1773] Of course, providing some information online would not have made GST independent of

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1766 MDR00038869

1767 MDR00023601; SUR00130207-0001; MDR00026632; MDR00026697; D7D9-0002441; D7D9-0002509; D7D9-0002479; D7D9-0002508; D7D9-0002509; D7D9-0002510; D7D9-0002511; MDR00025991; MDR00027146; MDR00026924; MDR00044477; SUR00004744-0001; SUR00004745-0001; SUR00005658-0001; SUR00005659-0001

1768 Day 30/page 1/line 11 – page 2/line 7 **[A5/30/1]**; D7D9-0002637; D7D9-0002723; D7D9-0003167; D7D9-0003168

1769 Day 30/page 6/lines 18-23 **[A5/30/2]**.

1770 Day 30/page 4/line 4 – page 6/line 23 **[A5/30/1]**.

1771 MDR00038468

1772 SUR00006472-0001; SUR00006473-0001

1773 SUR00018796-0001

Source: Mouseinthecourt.co.uk

LCF but it would have removed an impediment to bond sales, which was all that D5 was really concerned about.[1774]

P3.100 Prospective bondholders continued to ask about GST, but D6's sales people were unable to answer their questions.[1775] On 05.05.16, Jo Baldock told D1 that it was "*embarrassing and unprofessional on our part when we don't have enough information*".[1776]

P3.101 D1 replied on 06.05.16 to say, "*GST is a company set up by lawyers who have 120 years combined experience in this industry and have specifically set up GST to provide a vehicle to independently represent investor interests*".[1777]

P3.102 Kerry was not satisfied with this response. She told D5 on 07.05.16, "*GST need a proper online presence. They play an important role yet anyone going* [sic] *DD won't find much about them and they are not FCA regulated*".[1778]

P3.103 D5 reiterated this to D1 (bcc Mark Partridge and others) ("*Off record*"), adding that he was happy to set up the online provenance for free "*so the issue disappears*".[1779] He meant the issue of GST impeding bond sales.

P3.104 Mark Partridge read the email chain and was concerned by D1's statement about GST having been set up "*to provide a vehicle to independently represent investor interests*". He knew that this statement was not true: GST was in fact connected with LCF in various ways. He emailed D1 (cc D5 and D7) on 09.05.16 to raise his objection:[1780]

> "*Hope you are well. Just seen the trail below.*
> ***There is a statement that GST are independent.***
> ***Without casting aspersions or commenting on their magnitude there are a number of connections between LCF and GST.***
> ***Whilst doing our DD we did note that:***

[1774] Day 30/page 8/lines 16-20 **[A5/30/2]**.

[1775] MDR00038884

[1776] MDR00038884

[1777] MDR00038884

[1778] SUR00019509-0001

[1779] SUR00019510-0001; SUR00019512-0001; MDR00038916

[1780] MDR00038990

Source: Mouseinthecourt.co.uk

GST, LCF and LG (and subsidiaries etc) share the same registered office.
The sole Director and shareholder of GST is also Company Secretary at LG and indeed most of LG's group.
LG's group presumably owning the main UK asset as well as overseas assets upon which LCF is relying.
As I am sure you are very aware" (emphasis added).

P3.105 Mark Partridge had therefore confirmed to D5 that D1 was giving him information that was false and D5 would therefore have known that the information D6 was providing to members of the public was false.[1781] He did nothing.

P3.106 Following a call between Kerry and D1 on 18.05.16, Kerry emailed D5, D7 and others to say that "*GST will remain in place long term*". She asked:[1782]

> "*1. How will we represent what they do to advantage sales when we can no longer claim they manage the security on behalf of the investor on a day to day basis?*
> *2. How can we build them an online provenance when they are effectively a one or two solicitor firm without a track record? This is further exacerbated by the fact that the main solicitor is standing down due to a conflict of interest*".

P3.107 The issues in respect of GST remained unresolved.

Information from Mark Partridge

P3.108 In response to Mark's comment about the connections between LCF and GST, D7 emailed Mark (cc D5) saying, "*Any other linked directorships etc would be useful*".[1783]

P3.109 Mark responded on 09.05.16 by providing D5 and D7 with a colour-coded spreadsheet identifying connections between LCF and various companies including GST, London Group plc, L&TD, London Trading, LCCL, Waterside Villages and CV Resorts, as well as various other companies connected with D1, D2, D3 and D8. Mark had also identified overlapping officers and shareholders (including D1, D2, D3 and D8).[1784] This information had been obtained by Mark Partridge from Companies House. He had not

[1781] Day 30/page 13/line 21 – page 15/line 6 **[A5/30/4]**.

[1782] MDR00041231

[1783] SUR00132806-0001

[1784] SUR00132808-0001; SUR00132807-0001

Source: Mouseinthecourt.co.uk

been provided with any further information by LCF, D1 or D4.[1785] Significantly, the information obtained by Mark (and recorded in his spreadsheet) suggested that the value in the group of companies lay with London Group plc, a company from which LCF had not obtained security, whilst L&TD, which had granted the debenture in favour of LCF, had no assets of any value on its balance sheet.[1786] Mark Partridge told D5 that he was concerned about the "complete lack of security". [1787]

P3.110 By this time, therefore, D5, D7 and Kerry knew that, although D1 had said that LCF had made 80 loans, they had all been made to only a small number of companies.[1788] D5 understood from D1 that "*80 loans*" did not mean that there were 80 borrowers; D1 explained to D5 that there had been 80 drawdowns on a facility agreement by a small number of borrowers[1789] ("*5 company's*").[1790] Kerry had wondered "*if all 5 are ultimately under the same/connected ownership*"[1791] and D1 had later confirmed that "*all 80 loans are to Spencer related businesses i.e. they are funding their own operations*".[1792] This meant that what was said in the video posted on LCF's website about diversification was untrue.

P3.111 Mark Partridge had now identified LCF's borrowers (and the relevant connections) in his very detailed colour-coded spreadsheet.[1793]

P3.112 These facts did not trouble D5. On 10.05.16, he sent an email setting out objectives for his team. The top priority was "*LCF to £4m – **deadline – 30 days** | new fucking brochures, new API, Savings Nest live, leads increased to 150 per day and new Ams.*"[1794] When asked about this in his oral evidence he appeared to regret the "*fruity language*"

[1785] Day 30/page 17/lines 6-9 **[A5/30/5]**.

[1786] Day 30/page 18/line 24 – page 20/line 11 **[A5/30/5]**.

[1787] SUR00021238-0001; Day 30/page 25/lines 5-19 **[A5/30/7]**.

[1788] MDR00024968; SUR00004510-0001; SUR00004525-0001

[1789] Careless 1, [72] **[C2/3/16]**.

[1790] MDR00024968

[1791] SUR00004510-0001

[1792] SUR00131168-0001

[1793] SUR00132808-0001; SUR00132807-0001

[1794] SUR00020067-0001

Source: Mouseinthecourt.co.uk

but was unable to explain away the clear evidence that his primary focus was raising money for LCF as quickly as possible.[1795]

P3.113 D5, D7 and Kerry also knew that LCF had initially proposed to grant security over a "*30 million land asset*"[1796] but that had then changed to an asset worth £15 million which was "*50% liquid*" and 50% "*deferred 'consideration'*"[1797] before D1 had told them that there was actually no £30 million security (and that this had been "*a miscommunication by Spencer and it was never an option*") and that the security for the loans was instead going to consist of a "*loan note for £15mil (yes sterling) in favor of LC&F*".[1798]

P3.114 However, D1 had not provided them with access to LCF's lending book or with any details of any security or any valuations of any security.

D1's unsatisfactory answers to questions from D6's sales team

P3.115 Awareness of the information set out above was tightly confined. As set out above, D1 had imparted much of this "*quite sensitive*" information to Kerry orally on 25.01.16 (because "*he initially didn't want* [it] *to be communicated by email*") on terms that it could be shared only with D5, D7, Steve and Mark and that they could "*not ... mention the details outside of this small group*".[1799] In particular, D1 appears to have insisted that D5, D7, Kerry, Steve and Mark should not "*even mention* [it] *to the sales team yet*".[1800]

P3.116 As a result, D6's sales team remained unaware of these facts. This caused problems in practice, because prospective bondholders were obviously keen to understand how their money would be used. D6's sales team wanted to know the answers to some fairly obvious questions which were frequently asked by prospective bondholders.

[1795] Day 30/page 22/lines 9-21 **[A5/30/6]**.

[1796] MDR00025708

[1797] SUR00005975-0001

[1798] SUR00131168-0001

[1799] SUR00131168-0001

[1800] SUR00131168-0001

Source: Mouseinthecourt.co.uk

P3.117 Louise Finney, who sold LCF bonds for D6, compiled a list of frequently asked questions, which included the following key questions for D1: "*LENDING: HOW MANY CLIENTS HAVE WE LENT TO? WHO DO WE LEND TO? AVERAGE LOAN SIZE?*"; "*ASSETS: WHAT ARE THE ASSETS HELD? WHAT IS THEIR VALUE? WHERE CAN I FIND THIS INFORMATION*".[1801] She sent this to Jo Baldock on 12.05.16 attached to an email entitled, "*Questions for Andy*".[1802]

P3.118 On 13.05.16, Jo Baldock sent these to D1 (cc D7, D5 and Kerry) attached to an email with the subject, "*Common Questions*".[1803] She explained that she had "*now spoken with the account managers and we have complied a list of frequently asked questions*".

P3.119 D5 forwarded this to Mark, who replied, "*I'd like to see the answers!!!*"[1804]

P3.120 At around this time, D5 seems to have become anxious about the idea of letting prospective investors ask questions about LCF. On 17.05.16, when a prospective bondholder asked Christopher Barnard (one of D6's sales people) a question about D1's role within LCF, D5 sent an email advising Christopher Barnard not to answer it:[1805]

> "*I'm going to jump in here. I don't think it's a good idea to let prospective investors dictate questions to us. What's next? What is Andy's star sign. I think the key is to not let the customer or prospect dictate the terms so easily*".

P3.121 Also on 17.05.16, Mark Partridge asked D5 if he could push D1 further "*on his complete lack of security*." [1806] D5 also did not want to rock the boat with D1. He replied to Mark Partridge "*Re AT – let's wait to see his response to Jo's email before we make our next move. I am also Jedi Knighting him on Thursday so need him the right side of happy.*"

1801 MDR00040470

1802 MDR00040469

1803 SUR00020686-0001

1804 SUR00132905-0001

1805 MDR00041097

1806 SUR00021238-0001

Source: Mouseinthecourt.co.uk

P3.122 By 18.05.16, however, Kerry was able to report to the others that D1 had "*agreed to send us his answers to the questions Jo sent through last week*".[1807]

P3.123 On the same day, D1 drafted his answers to the frequently asked questions:[1808]

> "*HOW MANY CLIENTS HAVE WE LENT TO?*
> *As at the beginning of May 2016 LCF has made 121 loans …*
> *WHO DO WE LEND TO, WHAT SECTOR?*
> *LCF lends to all sectors.*
> *AVERAGE LOAN SIZE?*
> *The total size of the loan book at the beginning of May 2016 is £9,055,096.11, this drives an average loan size of c.£75,000*
> *WHY IS THERE NO MENTION OF HOW TO MAKE A LENDING APPLICATION, THERE IS NO FACE TO THIS SIDE OF THE BUSINESS OR CONTACT NUMBER ETC?*
> *LCF uses a network of professional introducers to source lending opportunities and as such does not need to advertise.*
> *ASSETS*
> *WHAT ARE THE ASSETS HELD AND UNDERLYING SECURITY?*
> *The assets LCF currently hold as security is a mixture of property, land, contractual obligations, shares, warrant's* [sic] *and corporate guarantees from listed company's* [sic].
> *WHAT IS THEIR VALUE?*
> *The current value (borrowing directors confirmed updated valuations as at the end of April 2016) of the assets pledged as security against LCF's loan book is c. £62,000,000 (£14m floating charge contractual value, £17.5m property & £34.5m development land). The security taken against these assets is a mixture of corporate guarantees & fixed and floating charges …*"

P3.124 D1 sent the document to Kerry Graham and D7 (cc Jo Baldock), adding, "*I've put together some answers to the account managers questions*".[1809]

P3.125 D1's answers were plainly inconsistent with the information that he had previously provided to D5, D7, Kerry, Steve and Mark on a confidential basis only a few months earlier. Jo Baldock forwarded D1's answers to D5, who forwarded them to Mark Partridge.[1810] Mark responded, "*Just the usual bs* [bullshit] *I'm afraid*".[1811] D7 also

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[1807] MDR00041231

[1808] MDR00041257; SUR00021583-0001

[1809] MDR00041314

[1810] SUR00021720-0001

[1811] SUR00021720-0001

Source: Mouseinthecourt.co.uk

forwarded D1's answers to D5,[1812] who replied, "*Grrrr*".[1813] D5 accepted in his oral evidence that he knew that when D1 said that LCF had made 121 loans, he did not mean that LCF had 121 borrowers and that D1's answer gave a misleading impression.[1814]

14 Q. Can we look at what Mr Thomson said about one of his
15 answers, please? It is <A5/26> at page 43. Internal
16 page 171 through to internal page 172. On the left-hand
17 page, if you take the top right box and the bottom right
18 box and magnify them, if that is possible. We will
19 start with this one. You can see the left-hand side,
20 line 9. I took him to the document. Lines 12 to 13:
21 "Question: ...
22 "'Hi, I've put together some answers to the account
23 managers questions ...'
24 "Do you remember being given some questions from the
25 account managers?

1 "Answer: The account managers put together
2 questions on numerous occasions."
3 At 19, I said.
4 "Question: Can we look at the answers you
5 drafted ... Do you see, at the bottom of the page, there
6 is a heading 'Lending' and it says:
7 "'How many clients have we lent to?'.
8 "You understand, as a matter of ordinary English,
9 that's obviously referring to the number of borrowers?
10 It is asking how many borrowers LCF has lent to, isn't
11 it?
12 "Answer: Yes, and I can see where you're going with
13 it, Mr Robins. This also accompanied the conversation
14 that I had with Surge. They were aware that we only had
15 a few. But they were also aware that each drawdown was
16 a loan in its own right.
17 "Question: Do you say that the answer you gave, 'As
18 at the beginning of May 2016 LCF has made 121 loans', is
19 an accurate and non-misleading answer to the question
20 'How many clients have we lent to?'.
21 "Answer: Standing here now, reading that, I can see
22 your point that that is misleading."
23 You knew, as you have confirmed, that 121 loans
24 didn't mean 121 borrowers, so presumably you would agree
25 with Mr Thomson that the words, "HOW MANY CLIENTS HAVE

1 WE LENT TO? As at the beginning of May 2016 LCF has
2 made 121 loans", are words which give a misleading
3 impression?
4 **A. Yes, I would.**
5 Q. You knew that at the time?
6 **A. I mean, Mr Robins, when it came out that they had**
7 **11 borrowers, that's what we told the members of**
8 **the public. When they -- you know, however that did**

[1812] MDR00041314

[1813] MDR00041316

[1814] Day 30/page 30/lines 7-10 **[A5/30/8]**; Day 30/page 34/lines 1-25 **[A5/30/9]**; Day 30/page 48/lines 4-6 **[A5/30/12]**.

Source: Mouseinthecourt.co.uk

9 **come out. This year, within a few months of 2016,**
10 **that's the information we provided.**
11 Q. You knew at the time that it was misleading information
12 to give to members of the public?
13 **A. I just can't sit here and condemn myself just to appease**
14 **the pressure you're applying on me today for this.**
15 **I notice Kobus -- I forgot about this chap -- is here as**
16 **well.**
17 Q. This is in Mr Thomson's answer, but he wasn't in my
18 question.
19 **A. Sorry.**
20 Q. You would agree with Mr Thomson that the words at line 7
21 on the right, "As at the beginning of May 2016 LCF has
22 made 121 loans", is not an accurate and non-misleading
23 answer to the question, "HOW MANY CLIENTS HAVE WE LENT
24 TO?"; you agree that it is misleading?
25 **A. Yes.**

P3.126 However, he did not stop D6's sales people from passing this misleading impression onto potential investors.[1815]

2 Q. Let me take you to the document I took Mr Thomson to.
3 <MDR00042902>. It is an email from Jo Baldock to
4 a member of the public called Mr Warman:
5 "Further to your enquiry today I believe you
6 requested some further information relating to your
7 lending figures and current loan book.
8 "I have provided ... some of the common questions
9 asked along with the answers.
10 "HOW MANY CLIENTS HAVE WE LENT TO?
11 "As at the beginning of May 2016 LCF has made 121
12 loans."
13 You would agree that any reasonable person reading
14 that would think Jo was saying there are 121 borrowers?
15 Mr Warman, reading that, is going to think, "Oh, 121
16 clients they have lent to", isn't he?
17 **A. To be absolutely fair to Jo Baldock, she just -- it**
18 **looks like she's copied and pasted what he said and**
19 **presented it to the client. I don't think she's tried**
20 **to mislead the client there.**
21 Q. Was that my question?
22 **A. No, sir. Yes, then, possibly, is the answer.**
23 Q. A reasonable person would think, "Oh, they have got 121
24 borrowers"; yes?
25 **A. Yes, possibly so, yes.**

1 Q. Could we go back to <A5/26>, page 43, please. Page 172.
2 You can see, in the middle of the page, I took
3 Mr Thomson to that and I read it out and said, at the
4 bottom:
5 "Question: So, do you accept that you were
6 responsible for misrepresentations being made to
7 prospective bondholders?"
8 Over the page, he responded:

[1815] SUR00028672-0001; SUR00028677-0001; SUR00030041-0001; SUR00031894-0001; SUR00032040-0001; SUR00032040-0001

Source: Mouseinthecourt.co.uk

9 "Answer: I accept that that is not absolutely
10 accurate at all. Yes, we did make 121 individual loans.
11 However, looking at the question, yes, I can do nothing
12 but agree with you, Mr Robins.
13 "Question: Isn't it an answer that's deliberately
14 crafted to mislead?
15 "Answer: It is an answer crafted to create an
16 impression.
17 "Question: To create a false impression,
18 Mr Thomson?
19 "Answer: Yes, we did have -- we did make 121 loans.
20 We didn't have 121 clients. I can do nothing but agree
21 with you, Mr Robins. It is incorrect."
22 You wouldn't disagree with what he said there, would
23 you?
24 **A. No, sir.**

25 Q. Could we look at <SUR00028657-0001>, please. Here is

1 a chat copied to you. This is June. You can see at
2 4:19:28, towards the bottom -- is it Neil Morrison?
3 **A. It is Nick Morrison.**
4 Q. He says:
5 "LCF have been in business since July 2012, we have
6 700 + investors on this current run of bonds
7 (since January 2016) we have approx 120 loans out ..."
8 That creates a misleading impression, that there are
9 120 borrowers, doesn't it?
10 **A. Yes, it does.**

4 Q. You knew 120 loans didn't mean 120 borrowers, didn't
5 you?
6 **A. Yes, sir.**
7 Q. You knew 120 loans in messages like this to the public
8 created a misleading impression and would encourage
9 people to think that there were 120 borrowers, didn't
10 you?
11 **A. It was a script. The script was provided by the client.**
12 **And we would have read it. But, yes, I -- but I would**
13 **have made moves -- I wouldn't have, but someone in the**
14 **company would have made moves to correct that in**
15 **everything, brochures, websites, there is a lot to do**
16 **when things change.**
17 Q. You didn't care if your salespeople were giving
18 misleading information to members of the public so long
19 as it increased conversions, did you?
20 **A. I just don't agree with that.**

P3.127 It is clear from the documents that D5 did not care about misleading the public; he just wanted to ensure that he made a "*shitload of money*".[1816]

[1816] SUR00022341-0001

Source: Mouseinthecourt.co.uk

P3.128 As explained above, this was not the first occasion on which Mark had advised D5 that D1 was lying to them. On a previous occasion, Mark had told D5 that he "[could not] *believe anything that comes out of Spencer's lot and so JRM's mouth*".[1817]

P3.129 Further evidence that D1 was not to be trusted came on 01.07.16. D1 told D7 that LCF held security valued at £35 million and its loan book was £15 million.[1818] These figures were markedly different from those provided by D1 on 18.05.16; the loan book had increased very substantially and the value of the security had plummeted. This didn't bother D5; he was just interested in increasing sales.[1819]

Payments by D6 to D1

P3.130 On 14.06.16, D1 sent an email to D5 saying, "*As agreed I've raised an invoice for professional fees for May, if you need any more detail on it just let me know*".[1820]

P3.131 The attachment was an invoice (number #0001) from Media GPS to D6 for "*professional services*" in the sum of £8,909.48.[1821]

P3.132 The significance of the sum of £8,909.48 is clear and would have been understood by D5. During May 2016, LCF had received a total sum of £1,781,896 from new bondholders.[1822] Half of one percent of £1,781,896 is £8,909.48.

P3.133 Thus, D1 was asking D6 to pay 0.5% of LCF's receipts from new bondholders in the previous month to D1's company, Media GPS. Given that D6's commission from LCF was 25% of receipts from new bondholders, this was equivalent to 2% of D6's

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1817 SUR00130885-0001

1818 MDR00047328

1819 Day 30/page 48/line 4 – page 49/line 22 **[A5/30/12]**.

1820 SUR00026165-0001

1821 SUR00026166-0001

1822 SUR00029112-0001

Source: Mouseinthecourt.co.uk

commission from LCF in respect of receipts from new bondholders in the previous month.

P3.134 D5 forwarded the invoice to Steve Jones.[1823]

P3.135 On the same day, D6 paid £8,909.48 to Media GPS.[1824]

P3.136 On 04.07.16, D1 provided D5 with an invoice (invoice #0002) from Media GPS to D6 for "*professional services*" in the sum of £13,100.[1825] D1 explained:[1826]

> "*I've attached the Media GPS invoice for June and have based it on the funds through the account and not on the cleared figure from the deals spreadsheet as this better reflects the actual position*".

P3.137 D1 sent a further email to D5 to confirm:[1827]

> "*I based it on cash through the account for the month so it mirrors what we pay in comms for the prior month, this way I'm invoicing for what has actually been paid for the prior month and will only raise an invoice at the beginning of each month. From an accounting point it should work better for your books as it balances against the comms you received the prior month*".

P3.138 In a subsequent email, D1 explained to D5, "*I'll submit one at the beginning of each month to capture what was paid the previous month, so after this one the next will be in the first week in August and then monthly thereafter*".[1828]

P3.139 D5 sent the invoice to Steve Jones for payment.[1829]

1823 SUR00026261-0001

1824 MDR00221776 page 15; SUR00056792-0001 page 2

1825 SUR00029677-0001; SUR00029678-0001

1826 SUR00029677-0001

1827 SUR00029693-0001

1828 SUR00029732-0001

1829 SUR00029734-0001; SUR00029800-0001; SUR00029801-0001; SUR00029802-0001

Source: Mouseinthecourt.co.uk

P3.140 D6 paid £13,100 to Media GPS.[1830] Steve sent a text message to D5 stating, "*Andy's invoice has been paid*".[1831]

P3.141 Media GPS then paid £13,000 to D1.[1832]

P3.142 On 08.08.16, D1 provided D5 with an invoice (invoice #0003) from Media GPS to D6 for "*professional services*" in the sum of £18,109.[1833] D5 forwarded it to Steve.[1834]

P3.143 D6 paid £18,109 to Media GPS.[1835] D5 told D1 that this payment had been made.[1836] Media GPS then paid a total of £18,000 to D1.[1837]

P3.144 On 05.09.16, D1 provided D5 with an invoice (invoice #0004) from Media GPS to D6 for "*professional services*" in the sum of £21,078.[1838] D5 forwarded it to Steve.[1839] D6 paid £21,078 to Media GPS.[1840] Media GPS then paid £21,000 to D1.[1841]

P3.145 On 04.10.16, D1 provided D5 with an invoice (invoice #0005) from Media GPS to D6 for "*professional services*" in the sum of £17,521.[1842] D5 forwarded it to Steve.[1843] D6 paid £17,521 to Media GPS.[1844] Media GPS then paid £12,500 to D1.[1845]

1830 MDR00221776 page 38

1831 SUR00029823-0001

1832 MDR00088779 page 21; MDR00220286 page 226

1833 MDR00053077; SUR00134870-0001; SUR00134872-0001; SUR00134876-0001; SUR00134877-0001

1834 SUR00134873-0001; SUR00134874-0001; SUR00134876-0001; SUR00134877-0001

1835 MDR00221776 page 73

1836 SUR00134891-0001; SUR00134892-0001; SUR00134894-0001

1837 MDR00088779 page 27; MDR00220286 page 232

1838 MDR00056834; SUR00041473-0001

1839 SUR00041493-0001

1840 MDR00221776 page 102

1841 MDR00088777 page 3; MDR00220286 page 239

1842 MDR00060434; SUR00047035-0001

1843 SUR00047044-0001

1844 MDR00221776 page 131

1845 MDR00088777 page 8; MDR00220286 page 244

Source: Mouseinthecourt.co.uk

P3.146 On 02.11.16, D1 provided D5 with an invoice (invoice #0006) from Media GPS to D6 for "*professional services*" in the sum of £21,011.[1846] D5 forwarded it to Steve.[1847] D6 paid £21,011 to Media GPS.[1848] Media GPS then paid £16,000 to D1.[1849]

P3.147 On 05.12.16, D1 provided D5 with an invoice (invoice #0007) from Media GPS to D6 for "*professional services*" in the sum of £23,494.[1850] D5 sent it to Steve, "*Check and pay please*".[1851] D6 paid £23,494 to Media GPS.[1852] Media GPS paid £18,500 to D1.[1853]

P3.148 On 09.01.17, D1 provided D5 with an invoice (invoice #0008) from Media GPS to D6 for "*professional services*" in the sum of £12,778.[1854] D5 forwarded it to Steve.[1855] D6 paid £12,778 to Media GPS.[1856]

P3.149 On 07.02.17, D1 provided D5 with an invoice (invoice #0009) from Media GPS to D6 for "*professional services*" in the sum of £29,719.[1857]

P3.150 The covering email confirmed that D1 was requiring D6 to pay 0.5% of LCF's receipts from new bondholders to Media GPS: D1 said in the email, "*Record collections month last month with £5.9m cash coming through the bank, fantastic start to the year*".[1858] D5 forwarded this to Steve for payment.[1859] (Steve remarked, "*We are mad paying him*".)

1846 MDR00063909; SUR00052383-0001; SUR00052384-0001

1847 SUR00052385-0001; SUR00052386-0001

1848 MDR00221776 page 162

1849 MDR00088777 page 12; MDR00220286 page 248

1850 MDR00067320; SUR00056698-0001; SUR00056699-0001

1851 SUR00056700-0001

1852 MDR00221777 page 20

1853 MDR00088777 page 20; MDR00220286 page 256

1854 MDR00070417; SUR00059936-0001; SUR00059937-0001

1855 SUR00059938-0001

1856 MDR00221777 page 47

1857 MDR00073939; SUR00063736-0001; SUR00063737-0001

1858 SUR00063736-0001

1859 SUR00063738-0001; SUR00063744-0001; SUR00063747-0001; SUR00063752-0001; SUR00063852-0001

Source: Mouseinthecourt.co.uk

P3.151 D6 paid £29,719 to Media GPS.[1860] Media GPS paid a total of £20,000 to D1 on 07.02.17[1861] with a further £10,000 on 09.02.17.[1862]

P3.152 On 06.03.17, D1 provided D5 with an invoice (invoice #0010) from Media GPS to D6 for "*professional services*" in the sum of £30,789.[1863] D5 forwarded it to Steve.[1864] D6 paid £30,789 to Media GPS.[1865] Media GPS then paid a total of £31,000 to D1.[1866]

P3.153 On 03.04.17, D1 provided D5 with an invoice (invoice #0010 in typescript, but later marked #0011 in manuscript) from Media GPS to D6 for "*professional services*" in the sum of £35,930.[1867] The covering email again confirmed that D1 was requiring D6 to pay 0.5% of LCF's receipts from new bondholders to Media GPS: D1 explained in the email, "*March was a record month seeing £7,186,000 go through the account, a stunning performance*".[1868] D5 sent it to Steve.[1869] On 05.04.17, D6 paid £35,930 to Media GPS.[1870] Media GPS paid a total of £36,000 to D1.[1871]

P3.154 On 08.05.17, D1 provided D5 with an invoice (invoice #0010 in typescript, but later marked #0012 in manuscript) from Media GPS to D6 for "*professional services*" in the sum of £26,736.[1872] D5 sent it to Steve.[1873] D6 paid £26,736 to Media GPS.[1874]

1860 MDR00221777 page 85

1861 MDR00088777 page 33; MDR00220286 page 268

1862 MDR00088777 page 33; MDR00220286 page 268

1863 MDR00077672; SUR00067183-0001; SUR00067184-0001

1864 SUR00067351-0001

1865 MDR00221777 page 119

1866 MDR00088777 page 38; D1-0003802 page 1; MDR00220286 page 273

1867 MDR00082482; SUR00070309-0001; SUR00070310-0001; MDR00222797

1868 SUR00070309-0001

1869 SUR00070516-0001; SUR00070517-0001

1870 MDR00221777 page 157

1871 MDR00088777 page 40; MDR00220286 page 279

1872 MDR00086469; SUR00073142-0001; SUR00073143-0001; SUR00123886-0001

1873 SUR00073153-0001; SUR00073154-0001

1874 MDR00221778 page 14

Source: Mouseinthecourt.co.uk

P3.155 On 07.06.17, D1 provided D5 with an invoice (invoice #0013) from Media GPS to D6 for "*professional services*" in the sum of £28,349.[1875] D5 forwarded it to Steve.[1876] D6 paid £28,349 to Media GPS.[1877]

P3.156 On 10.07.17, D1 provided D5 with an invoice (invoice #00113 in typescript but later marked #0014 in manuscript) from Media GPS to D6 for "*professional services*" in the sum of £25,288.[1878] D5 sent it to Steve,[1879] who asked, "*Pay immediately I presume?*" D5 replied in the affirmative.[1880] D6 paid £25,288 to Media GPS.[1881] On 11.07.17, Media GPS paid a total of £24,000 to D1.[1882]

P3.157 On 01.08.17, D1 provided D5 with an invoice (invoice #00115) from Media GPS to D6 for "*professional services*" in the sum of £48,668.[1883]

P3.158 His covering email again confirmed that D1 was still requiring D6 to pay 0.5% of LCF's receipts from new bondholders to Media GPS: D1 said in the email, "*great month last month, with the June deals that completed in July the collection through the account smashed through the £9m mark!!!*"[1884] D5 forwarded this to Steve.[1885] D6 paid £48,668 to Media GPS.[1886] Media GPS then paid a total of £48,000 to D1.[1887]

P3.159 On 06.09.17, D1 provided D5 with an invoice (invoice #00116) from Media GPS to D6 for "*professional services*" in the sum of £41,902.[1888]

1875 MDR00089774; SUR00076640-0001; SUR00076641-0001

1876 SUR00076642-0001; SUR00076643-0001

1877 MDR00221778 page 54

1878 MDR00093298; SUR00079245-0001; SUR00079246-0001; MDR00222798

1879 SUR00079248-0001

1880 SUR00079256-0001

1881 MDR00221778 page 130

1882 MDR00220286 page 296

1883 MDR00095856; SUR00080418-0001; SUR00080419-0001; SUR00059868-0001

1884 SUR00080418-0001

1885 SUR00080435-0001; SUR00080436-0001

1886 MDR00221778 page 181

1887 MDR00220286 page 300

1888 MDR00100225; SUR00082797-0001; SUR00082798-0001

Source: Mouseinthecourt.co.uk

P3.160 D5 forwarded it to Steve, adding, "*Pay and confirm when done please*".[1889] D6 paid £41,902 to Media GPS.[1890] Media GPS then paid a total of £40,500 to D1.[1891]

P3.161 On 09.10.17, D1 provided D5 with an invoice (invoice #00117) from Media GPS to D6 for "*professional services*" in the sum of £38,870.[1892]

P3.162 This was not paid. The arrangement involving the payment of 0.5% of bondholder monies to D1 was to be replaced by a new arrangement involving the payment of 1% of bondholder monies to D4, as explained below.

P3.163 D1's explanation for these payments was wholly implausible and should be rejected. In summary, D1 said that he was carrying out work for Blackmore and "*upskilling Surge's people. I was working with them on other fundraisings that didn't derive any income or funding. So the only way we could recognise that, in terms of a metric, was what was coming through the door*."[1893] This does not explain why the fees D1 was paid by D6 were a percentage of funds raised by D6 for LCF rather than an hourly rate or a day rate or even a percentage of funds raised by D6 for Blackmore.

P3.164 D5 also could not explain why D1 was paid a percentage of LCF's revenue for work he was supposedly carrying out for Blackmore.[1894] Nor could he explain why D6 could possibly have wanted to engage the services of a man whom D5 agreed was "*inefficient or ineffective at getting things done*"[1895], whom a lot of his team did not trust[1896]; a man who was regarded as "*difficult or bloody minded*"[1897]; whom D5 thought "*had an issue*

1889 SUR00082799-0001

1890 MDR00221779 page 32

1891 MDR00220286 page 311

1892 MDR00106006; SUR00084335-0001; SUR00084336-0001

1893 Day 26/page 158/line 1 – page 160/line 22 **[A5/26/40]**.

1894 Day 30/page 62/line 11 – page 65/line 5 **[A5/30/16]**; Day 30/page 83/line 17 – page 84/line 10 **[A5/30/21]**.

1895 Day 30/page 53/lines 4-6 **[A5/30/14]**.

1896 Day 30/page 53/lines 22-24 **[A5/30/14]**.

1897 SUR00003797-0001; SUR00005315-0001; SUR00007101-0001; Day 30/page 54/lines 12-14 **[A5/30/14]**.

Source: Mouseinthecourt.co.uk

with women"[1898]; who had "*zero people skills*"[1899]; whom D5 thought was capable of acting irresponsibly[1900]; and whom D5 and members of D5's team thought was a "*twat*," a "*cock*" and a "*dick*".[1901] D5's suggestion that he was impressed by D1's ability to engage PwC and Lewis Silkin was unconvincing (particularly in circumstances where the payments to Media GPS commenced before the PwC audit of LCF)[1902]; and, in any event, Blackmore could easily have engaged those or similar firms without D6 having to pay 0.5% of LCF's gross income to D1's company. Further, as is clear from the contemporaneous documents, D1 repeatedly showed himself to be unwilling to help Blackmore, a firm which D1 considered to be a competitor.[1903] D5 also contradicted D1's evidence that D1 had been involved in "*upskilling*" D6's staff.[1904]

5 Q. Can we look at <SUR00143410-0001>, please, at page 5.
6 Sorry, I've got the wrong -- oh, no, it is the right
7 one. It is Kerry's email to Mark Holleran. He was
8 working with Blackmore on Blackmore's ISA, wasn't he?
9 **A. Yes, he's a lawyer.**
10 Q. She copies in Pat and says:
11 "Hi it is not my lawyers that have created this. It
12 is LCF's (Lewis Silkin) and they won't let me into the
13 secret because they know I will immediately exploit it
14 for Blackmore."
15 Andy was never willing to assist Blackmore because
16 he saw them as a competitor?
17 **A. Andy did assist Blackmore. Can we just look at the date**
18 **of that, please, Mr Robins, because I presume this was**
19 **at the end of -- when it stopped.**
20 Q. It's the -- yes, it's a point at which you'd paid him
21 over £400,000 for helping Blackmore, according to your
22 evidence?
23 **A. Yes. So -- sorry, can I just see the date on it?**
24 Q. Sure.
25 **A. Right. Okay. So, I presume this was when the deal**

1 **stopped. So, I think what had happened around this**
2 **period of time is that, from recollection, they had made**
3 **their application, and so on -- I'm talking about**
4 **Blackmore here -- and the deal had stopped with Andy,**
5 **and this would -- if that timeline stacks up, that would**
6 **make some sense.**
7 **But, yeah, I mean, even afterwards, he wasn't**

[1898] Day 30/page 56/lines 1-10 **[A5/30/14]**.

[1899] SUR00019490-0001; Day 30/page 57/lines 2-7 **[A5/30/15]**.

[1900] Day 30/page 57/lines 8-10 **[A5/30/15]**.

[1901] Day 30/page 56/lines 11-23 **[A5/30/14]**.

[1902] Day 30/page 58/line 25 – page 60/line 1 **[A5/30/15]**.

[1903] SUR00057304-0001; MDR00067769; MDR00115338; SUR00159951-0001; SUR00143410-0001; Day 30/page 89/line 14 – page 90/line 7 **[A5/30/23]**.

[1904] Day 30/page 90/line 16 – page 92/line 23 **[A5/30/23]**.

Source: Mouseinthecourt.co.uk

particularly helpful. He was quite difficult, you know, and that's why I tried to get him to do it. I mean, could we see the email where I set the terms -- sorry, I don't get to dictate that, do I? But, look, looking at the dates, it looks like it's come to an end; that's how I sort of read that.

Q. If everything you say about this was true, then why on earth wouldn't you have gone to Andy to say, "Come on, we have paid you over £400,000 from our commissions to help Blackmore. You need to share this information with us. You have overcome your objection to helping a competitor. We have given you a lot of money. Come on, give us the information"? Why couldn't you have said that?

A. I mean, that's, you know, quite fair. It had finished. I don't understand why he's being so difficult here. I mean, it obviously was generally difficult. Who is that to? Kerry. There could be an element of that. He would write things which were difficult. I mean, I think it's come to an end and I think he's being difficult. I mean, I could have written to him, you know, in answer to your question -- not written to him; I could have rung him up and said, "Listen, what are you doing? Help them", and I don't think I did that, no.

Q. So, despite everything we have been through, you stick to what you say in your witness statement, do you: he was consulting for Blackmore?

A. Yes, sir.

Q. This wasn't you giving him an economic incentive to maximise your commission so that he'd stop trying to reduce them?

A. No, he was always trying to reduce my commissions.

Q. This wasn't, then, anything to do with him upskilling your back-office system?

A. He might say that, I presume, but, no, I don't believe so.

P3.165 D5 acknowledged that his story on the payments to D1 had changed from the evidence he gave in his private examination in 2020.[1905] Further, D5 had said in the private examination that he would be able to substantiate his explanation by providing invoices from D6 to Blackmore in which D6 passed on the cost of D1's work to Blackmore. However, D5 and D6 have disclosed no such invoices[1906] and, in cross-examination, D5 changed his story by saying that D6 did not pass on the cost to Blackmore and that no such invoices ever existed.[1907] The result is that there is nothing – not even the invoices which D5 previously said existed – to support D5's explanation.

[1905] Day 30/page 68/lines 7-21 **[A5/30/17]**.

[1906] Day 30/page 67/lines 2-24 **[A5/30/17]**.

[1907] Day 30/page 67/line 25 – page 68/line 6 **[A5/30/17]**.

Source: Mouseinthecourt.co.uk

P3.166 Further, the email to which D5 repeatedly referred in oral evidence (which related to the proposed, but ultimately abortive, joint Blackmore-LCF bond) did not, on closer examination, support D5's position, because, contrary to D5's repeated assertion that D1 was working for Blackmore, it actually referred to the very different idea of D1 working for D6 (which D5 agreed was not consistent with his evidence):

10 Q. I'm going to show you, because you're so keen to see it,
11 the email you're referring to, <MDR00041828>. This is
12 the email you're referring to, isn't it?
13 **A. I think so, yes.**
14 Q. In the second paragraph, the second line:
15 "One of the reasons I have asked Andy to consult for
16 me ..."
17 **A. Yes.**
18 Q. It is not your evidence now that Andy was consulting for
19 Surge, is it?
20 **A. Right. Sorry, could you ask that question again?**
21 Q. It is not your evidence now that Andy was consulting for
22 Surge, is it?
23 **A. It is not my evidence that he was consulting for Surge?**
24 Q. You said he was consulting for Blackmore?
25 **A. Right, okay, yes.**

1 Q. At the end of this, you're talking about a new bond that
2 will have Andy consult in it:
3 "The cost for Andy's consulting will be met by us."
4 **A. Right.**
5 Q. The reason these explanations keep changing is because
6 no-one was really quite sure what the cover story was.
7 You just needed to give Mr Thomson an economic stake in
8 maximising your commission so that he'd stop talking
9 about trying to reduce it?
10 **A. No, it's just not true. It is not true. He talked**
11 **about reducing my commissions from the moment --**
12 **you know, all the way through until the end; even during**
13 **this he would have done that. He had ambitions to,**
14 **you know, use discretionary fund managers, financial**
15 **advisors, and so on.**
16 **Look, "no" is the answer.**

P3.167 D1 and D5 are unable to provide any credible explanations for these payments because they have no legitimate commercial basis.

P3.168 To the contrary, the payments by D6 to Media GPS seem more likely than not to have been a backhander paid by D6 to give D1 an economic incentive in maximising D6's commission. D5 gave evidence that D1 was always trying to reduce D6's commission, which D1 considered to be too high. Further, it is significant that the payments to Media GPS ceased immediately as soon as the shot-caller, D4, decided that he wanted to be

Source: Mouseinthecourt.co.uk

paid part of D6's commission (as explained below). D5 accepted the logic of the propositions but not the conclusion to which they inexorably lead:

11 Q. One of the features of this is that, as you hit your
12 ever-increasing targets, the amount of money coming into
13 LCF each month would increase, the commissions would
14 increase, the amount of money you were paying to
15 Mr Thomson would also increase, wouldn't it?
16 **A. Yes, it was a negotiation for him to help. It was**
17 **a short-term thing so that I could help out Blackmore.**
18 **I mean, it's just -- you know, I just don't see it as --**
19 **I know now, in hindsight, it looks terrible that I paid**
20 **Andy because you're pointing it out, but he did a job**
21 **and it was set out in terms on an email. Precisely what**
22 **I just said I asked him to do.**
23 Q. You have given him an economic incentive to maximise
24 your commissions, haven't you?
25 **A. An economic –**

1 Q. As you get more commissions, he gets more on his
2 Media GPS invoices?
3 **A. I was trying to do it in a way -- he negotiated it with**
4 **me in an office. I was trying to do it in a way which,**
5 **you know, sort of kept us aligned so I wasn't paying too**
6 **much or too little, and I was happy to accommodate that.**
7 **You have to look at the end result. What I am trying to**
8 **do -- you talk about incentive. I am trying to get**
9 **Blackmore, which was doing a million a month, to do**
10 **5 million a month. The outcome of that was I would make**
11 **an extra 20 per cent, 800,000 a month --**
12 Q. But you didn't tie it to any of that, did you? You
13 didn't tie it to anything to do with Blackmore's results
14 or Blackmore's commission paid to Surge?
15 **A. No.**
16 Q. You gave him an economic incentive in maximising your
17 commission, didn't you?
18 **A. Yes.**
19 Q. Had he --
20 **A. I just don't see anything wrong with that.**

…

22 Q. So Mr Thomson gets paid more when LCF does better and
23 when Surge gets more commission, doesn't he?
24 **A. He gets paid what we agreed.**
25 Q. There is no correlation between any work done by him for

Blackmore and any increase in LCF's bond sales or any
2 increase in your commission from LCF, is there?
3 **A. No.**

P3.169 The contemporaneous documents indicate that, shortly before the commencement of the payments to Media GPS, Pat McCreesh of Blackmore gave D1 and D5 the idea that D1 could be receiving 0.5% of monies from new bondholders. On 12.04.16, on a visit to a strip club in London, D5 and D7 introduced D1 to Pat McCreesh. Later that evening, D5 commented, "*On my way home. Train to Gatwick. Left pat, JRM and Andy T in platinum*

Source: Mouseinthecourt.co.uk

lace. I swerved the beers and am going home".[1908] D1 and Pat McCreesh discussed the possibility of a joint venture to launch a bond for a pension company called Westbury.[1909] D5 suggested that D1 should work for D6 in a consultancy role in connection with the new bond.[1910] Ultimately, however, the proposed joint bond was never launched. In the meantime, Pat McCreesh was hoping that LCF might be able to help to provide £1 million per month in funding for some other projects.[1911] On 24.05.16, Pat explained to D5 that he was going to make a proposal to D1 involving 6.5% per annum to LCF and "*0.5% to him*".[1912] D5 said that this looked good.[1913] Shortly afterwards, Pat emailed D1 (bcc D5) to set out his proposal for LCF to provide £1 million per month to Blackmore at a rate of 6.5% per annum to LCF with "*0.5% comm to you*" – i.e. a commission of 0.5% for D1 on each of the loans to Blackmore.[1914] D5 sent this to D7, Steve and Kerry.[1915] Kerry thought that interest of 6.5% would make it uneconomic: "*6.5% p.a. on 2 year money? We pay 6.5% interest so there is absolutely no profit in it for LC&F. He will definitely be looking for a back end deal and possibly high 'in' and 'out' fees*".[1916] Kerry's assessment was correct. Loans paying interest at a rate of 6.5% per annum would not make any financial sense for LCF, given the very high rates of interest that LCF had promised to pay to its bondholders. LCF did not make any loans to Blackmore. However, the idea of a commission of 0.5% for D1 personally seems to have had some attraction. On 14.06.16, D1 sent the first Media GPS invoice to D6 in the sum of £8,909.48,[1917] being precisely 0.5% of the sum of £1,781,895 which LCF had received from new bondholders in the previous month.[1918]

1908 SUR00014800-0001

1909 SUR00015077-0001; SUR00015099-0001; SUR00015165-0001; SUR00015167-0001; SUR00015862-0001; SUR00016009-0001; SUR00016338-0001; SUR00016345-0001

1910 MDR00041828; SUR00022431-0001

1911 MDR00041832

1912 SUR00022461-0001

1913 SUR00022465-0001

1914 SUR00022478-0001

1915 SUR00022488-0001

1916 SUR00022496-0001

1917 SUR00026165-0001; SUR00056792-0001

1918 SUR00029112-0001

Source: Mouseinthecourt.co.uk

D1's lies about LCF's accounts

P3.170 A further occasion on which D1 was revealed to be lying soon occurred, this time in connection with the delay to LCF's accounts.

P3.171 D6's sales people encountered questions from members of the public who had looked at LCF's most recent accounts on the Companies House website. The most recent accounts available on the Companies House website covered the period to 30.04.15. They disclosed net assets of £40,944. Prospective bondholders raised concerns about the position. D6's sales people sought to reassure them that LCF's accounts for the subsequent year, to 30.04.16, would show a far stronger position. But those accounts were not available yet. Initially, D1 said that they "*would be submitted late April and available early May*".[1919] On 19.04.16, D1 said that this had been delayed to June.[1920]

P3.172 Scott Allen, one of D6's sales people, emailed D5 and D7 on that day to complain:[1921]

> "*I have a client who went on GCEN late March for £120,000. All she wants before transferring funds is sight of the LCF accounts. Her name is Debra Mann. Andy informed us on his last visit (about three weeks ago) that the accounts would be submitted late April and available early May. Today he tells us it is now June. This has put us all in a bit of a position as we have all told numerous clients that we will provide accounts early May. These are mainly the savvy/high net worth investors who understandably want to see the figures. Having looked at my 'activities' on GCEN, I have around 50 clients to send the accounts to, with roughly £3m of funds to invest. What do I say to Debra Mann? Is there any way we can have something credible to show these clients? We are in danger of losing credibility to a degree*".

P3.173 D5 forwarded Scott's email to D1, who told him that "*the company accounts will be completed in May and the audited accounts will be available in June*".[1922]

[1919] MDR00036428

[1920] MDR00036428

[1921] MDR00036428

[1922] MDR00036461

Source: Mouseinthecourt.co.uk

P3.174 But this did not happen. On 11.06.16, a prospective bondholder, Mr Rudkin, chased Scott for a copy of LCF's latest accounts.[1923]

P3.175 On 27.06.16, another prospective bondholder, Mr Shah, chased Scott for a copy of LCF's latest accounts.[1924] On the basis of information from D1, Scott replied to Mr Shah to say that he "[expected] *to be emailing you our accounts later this week*".[1925]

P3.176 But still LCF's new accounts did not become available. Scott chased D1 on 11.07.16.[1926] But still there was no sign of them.

P3.177 On 18.07.16, Mr Shah emailed Scott to ask again if there was any update regarding LCF's accounts ("*It's 2 weeks now. Any update?*").[1927]

P3.178 Scott forwarded Mr Shah's email to D7, who sent it to D1, adding, "*Based on what you had previously told us we emailed him and said the accounts would be available last month. We would like to go back to him today with a revised timescale. Please can you let me know what the latest situation is*".[1928]

P3.179 D1 replied to D7 (cc D5), "*The position with the accounts is that we are having to wait for guidance from HMRC re a technical point on how to represent the balance sheet. PWC and our accountants are chasing HMRC on a regular basis but I cannot give you a timescale. As soon as the accounts are finalised, I will let you know*".[1929]

P3.180 D7 did not accept this explanation. He replied to D1 (cc D5), "*Guidance on a technical point should come from PWC, the HMRC accept the accounts anyway you present???*"

[1923] MDR00044329

[1924] MDR00046580

[1925] MDR00050071

[1926] MDR00048994

[1927] MDR00050071

[1928] MDR00050071

[1929] MDR00050076

Source: Mouseinthecourt.co.uk

P3.181 D1 replied, "*With respect I don't want to go through the detail you, you will just have to accept the position as is and that I am doing what is right for my company*".[1930] D5 thought that this was a "*Good reply*" and told D1 so.[1931]

P3.182 D7 was not prepared to let it lie there. He replied to D1 (cc D5):[1932]

> "*The problem I have is back in April you addressed the account management team and said the accounts would be finalised at the end of April and would be available shortly thereafter. The AM's passed this information on to investors who enquired about the bond.*
> *You then said in May the accounts were being finalised and would be available that month. You then said the account would be available in June and so on.*
> *I have to manage the AM's expectations, they are the ones on the front line dealing with clients on a daily basis. Why don't you share with me the real position, that way we can set realistic timescales and deal with AM's and clients accordingly*".

P3.183 D5 forwarded the email chain to Kerry, who replied, "*Oh dear*".[1933]

P3.184 D5 also forwarded the email chain to Mark Partridge, presumably to see if Mark could shed any light on D1's comment about "*having to wait for guidance from HMRC re a technical point on how to represent the balance sheet*".[1934]

P3.185 Mark advised D5:[1935]

> "***<u>This is almost certainly crap</u>. HMRC do not give opinion unless there is uncertainty with regard to the law i.e. tax law***.
> *This would appear to be accounting treatment and so not likely to get an opinion. And anyway HMRC are interested in the P&L, rarely are they interested in the balance sheet unless someone is hiding profits there – that isn't something you would ask HMRC's opinion on…*
> *PWC would know this – I am not so sure what PWC have to do with this anyway*" (emphasis added).

1930 MDR00050078

1931 MDR00050083

1932 MDR00050090

1933 SUR00032237-0001

1934 SUR00134155-0001

1935 SUR00134155-0001

Source: Mouseinthecourt.co.uk

P3.186 D5 forwarded Mark's email to D7.[1936] In his oral evidence, D5 said that he would have accepted that D1 was "*speaking crap*" on this issue.[1937] D5 then edited Mark Partridge's email , amending the first line to "*I know you won't want to hear this but this is almost certainly untrue*" and adding a final line which read "*These accounts are long over due and the excuse holds no water can we talk in the morning*." He then sent it to D1 under cover of an email in which he wrote "*it would help me if you could give me a steer on when we could get the accounts please.*"[1938] D5 accepted in his oral evidence that his amendments to Mark Partridge's email reflected his own views.[1939]

Knowledge of LCF's payments to D4 and others

P3.187 D5 and Steve Jones also knew that LCF was making payments to D4 and others. On 22.07.16, Katy Eaves of LCF emailed Jo Baldock (cc Steve Jones) to say that LCF would pay the remainder of D6's invoices for commissions on the following day, because LCF had "*hit our limit on our bank account to send payments, hence why they are being paid tomorrow*".[1940] Steve forwarded this to D5, commenting, "*Ha, love that!*"[1941] D5 asked him, "*What's their limit?*"[1942] Steve replied, "***No idea. Would include payments to spencer etc as well, not just our comms***" (emphasis added).[1943]

P3.188 The "*payments to spencer etc*" which LCF had made on 22.07.16 (which, when combined with the payment of some of D6's invoices, resulted in LCF hitting its bank payment limit for that day) comprised £51,250 to D4, £33,750 to D10, £7,500 to D3 and £7,500 to D1, funded by a payment of £246,500 from LCF to L&TD.[1944]

1936 SUR00032247-0001; SUR00134156-0001

1937 Day 30/page 98/line 3 – page 99/line 3 **[A5/30/25]**.

1938 MDR00050122

1939 Day 30/page 101/lines 16-21 **[A5/30/26]**.

1940 SUR00032895-0001

1941 SUR00032895-0001

1942 SUR00032895-0001

1943 SUR00032895-0001

1944 MDR00007263 pages 1-5; MDR00058502 pages 1-3; MDR00215810 pages 31-32; MDR00051159 rows 12-21; MDR00220286 page 228; MDR00088779 page 23; MDR00215810 page 31; MDR00055328 page 17; MDR00072440 row 29

Source: Mouseinthecourt.co.uk

P3.189 Although there were 21 business days in June 2016, there were only 6 days on which LCF funded payments to D4, D2, D3 and/or D1. The fact that Steve Jones made this remark on one of those 6 days is unlikely to be a coincidence.

P3.190 D5's explanation was that Steve was using the term "spencer etc" as a shorthand way of referring to companies controlled by D4 and D2:[1945]

> … **I mean, yes is the answer, it must have been a coincidence. "Spencer et cetera" is a generic term. He is referring to the sort of borrowing companies, I'm certain of it.**
> Q. When you say in your fourth witness statement, "Spencer's businesses, Simon's businesses", you are talking about the tourism and development businesses and the oil and gas businesses, aren't you?
> **A. I'm not entirely sure -- when are we talking here? In 2016 or more generally.**
> Q. In July 2016, the period you are addressing in your fourth witness statement. Do you want to look at your fourth witness statement? We can go to it. <C2/6> at page 2. We were looking at paragraph 4, line 8:
> "I found nothing suspicious in this. Steve and I both knew that LCF had lent money to Spencer's businesses."
> Then paragraph 6:
> "I was not aware of any payments by LCF to Simon personally. As with Spencer, I knew that LCF had lent money to his businesses ..."
> You are talking about the businesses and you are referring to the tourism and development businesses and the oil and gas business, aren't you?
> **A. Yes, I think so, at that period of time.**

P3.191 However, Steve had not referred to any borrowing companies – he had referred to the individuals ("*spencer etc*"). But in any event, D5's explanation merely confirms that D5 had actual knowledge that LCF was being sold to the public on a false basis: [1946]

> Q. Let's go through it one more time. You thought an oil bond would be too speculative and risky for the public to invest in. You thought Cape Verde is not really what the retail public want to invest in, too high risk. You know LCF is talking about SME lending. In fact, all the money is going to things which you said are too high-risk, too speculative and risky. You know the public are not being told about that, they are being told a different story. Would you accept that you knew LCF was being presented to the public in a seriously

[1945] Day 30/page 105/line 6 – page 106/line 5 **[A5/30/27]**.

[1946] Day 30/page 113/line 12 – page 1114/line 19 **[A5/30/29]**.

Source: Mouseinthecourt.co.uk

22 misleading way?
23 **A. No, I don't agree with that, Mr Robins. I mean, now, in**
24 **hindsight, with all the information you have at hand, of**
25 **course that's -- but, at the time, it just didn't –**

1 **you're talking about LOG. I told you this previously.**
2 **I'm sat in Goldman Sachs with Simon Hume-Kendall with 20**
3 **Goldman Sachs people, talking about hundreds of millions**
4 **of pounds. I'm seeing audits from EY and two of**
5 **the largest four. I can't equate --**
6 Q. Are you saying that happened at some point before
7 22 July 2016?
8 **A. That what happened?**
9 Q. At some point before 22 July 2016, you're sat in
10 Goldman Sachs with Simon Hume-Kendall, are you? When
11 did that happen?
12 **A. I'm afraid I couldn't tell you.**
13 Q. It didn't happen at any point before the email we were
14 just looking at, did it?
15 **A. I couldn't tell you.**
16 Q. This is, again, your reconstruction, isn't it? You're
17 grasping for things that enable you to say you thought
18 it was legitimate and not giving your honest evidence?
19 **A. That's not true, Mr Robins.**

P3.192 D5's attempt to say that LCF was not being sold to the public in a seriously misleading way was a non sequitur but in any event the matters to which he referred, such as the visit to Goldman Sachs and the Ernst & Young audit, had not yet happened and could therefore not have had any bearing on his knowledge of the position as at July 2016.

Concerns about adequate security

P3.193 D6's sales team continued to encounter difficulties due to the lack of information. Prospective bondholders asked for the number of borrowers and their names.[1947] D6's sales team said that they were unable to disclose names of borrowers "*due to data protection*".[1948] The absence of recent accounts also continued to be problematic. D7 emailed D1 (cc D5) to ask for an update.[1949] D1 said he was "*working on it*".[1950]

P3.194 But still the accounts did not become available. On 05.09.16, D7 emailed D3 to complain about this: "*The accounts are long overdue, this is highlighted every week by potential*

[1947] MDR00052882

[1948] MDR00053999

[1949] MDR00052179

[1950] SUR00034392-0001

Source: Mouseinthecourt.co.uk

new investors, this needs to be actioned asap. We also have an ever increasing amount of investors not willing to make a decision until the accounts are published. We are keep going back to these people and extending the timeframe which doesn't look good".[1951]

P3.195 Eventually, on 13.09.16, Steve Jones's son, Ashleigh Newman-Jones, received LCF's draft accounts for the year ended 30.04.16 and forwarded them to D7, who forwarded them to D6's sales team.[1952] They disclosed a profit of £148,550, which was obviously modest, particularly in comparison to the position of D6, which was now in the process of making a post-tax profit of £2,440,680 in a twelve-month period.[1953]

P3.196 LCF's draft accounts also disclosed net assets of only £7,226 as at 30.04.16. They contained an assertion by D1 (in his 'strategic report') that LCF held security over assets worth £60,752,482, but they contained no other information about those assets, and the draft auditor's report (which was to be signed in due course by PwC) made clear that D1's strategic report fell outside the scope of the audit.

P3.197 The final version of LCF's accounts for the year ended 30.04.16 contained slightly different figures: the final net profit figure was £166,916 and the final net assets figure was £25,592.[1954] But the wording of the auditor's report from PwC continued to make clear that PWC had not audited D1's strategic report, which contained the assertion about LCF having security over assets worth £60,752,482.

P3.198 In his oral evidence, D5 was keen to portray the production of these accounts as a watershed moment which resolved all of his previous suspicions and concerns about LCF.[1955] However, this was undermined by D5's admission that he was "*very unlikely*" to have actually looked at the audited accounts.[1956]

1951 EB0028616

1952 MDR00057894; MDR00057895; MDR00057901

1953 MDR00224028

1954 MDR00004388

1955 See, for example, Day 30/page 135/line 19 – page 136/line 20 **[A5/30/34]**.

1956 Day 30/page 117/line 4 – page 129/line 21 **[A5/30/30]**.

Source: Mouseinthecourt.co.uk

P3.199 But even if he had looked at them, they self-evidently did not erase his prior knowledge of LCF or eliminate any suspicions. D5 did not know what information D1 had provided to PwC. What D5 did know was that D1 was a dishonest and untrustworthy individual ("*someone who talks out of his arse*" [1957]) and that D1 frequently provided unreliable information. D5 also knew that information that was being supplied to investors was false (as explained above) and that D1 had been trying to get D5 and Kerry Venn to sign a backdated agreement to mislead PwC.[1958] (D5 and Kerry Venn had no qualms with the backdating; Kerry sent an amended version to D1, signed, with 2015 on the front page.)

P3.200 The fact that a set of accounts had been produced did not alter the matters that concerned D5 and his team, such as the fact that all the loans were made to connected parties.[1959] D5 accepted that D1 was unlikely to have revealed the truth about LCF to PwC.

P3.201 The contents of the accounts themselves were also a cause for concern. For example, LCF's profit was notably modest compared to the profits that D6 was making. What D5 was really concerned about was the money he could make, and he believed that the provision of a set of audited accounts would turbo-charge sales.[1960]

P3.202 Mark Partridge's concern was that even security of £60,752,482 seemed inadequate to cover the total amount of LCF bonds in issue on a 75% loan-to-value ratio.

P3.203 Mark wanted to have something on file to show that D6 had made appropriate enquiries with LCF about this. So he drafted a suitable letter addressed to LCF.[1961] D5 approved it.[1962] Mark sent it to D1 on 06.02.17.[1963] Mark's letter to D1 said: [1964]

> "*As at 30 April 2016, the last audited accounts stated that LCF held a lien on assets valued circa £60m. That gives implied security for up to £45m worth of*

[1957] Day 30/page 124/lines 5-8 **[A5/30/31]**.

[1958] Day 30/page 132/line 22 – page 133/line 1 **[A5/30/33]**.

[1959] Day 30/page 140/line 24 – page 141/line 8 **[A5/30/35]**.

[1960] Day 30/page 140/lines 13-16 **[A5/30/35]**.

[1961] SUR00137316-0001; SUR00137317-0001

[1962] SUR00137367-0001; SUR00137368-0001

[1963] MDR00073895

[1964] MDR00073897

Source: Mouseinthecourt.co.uk

bonds. As LCF is virtually at that figure of £45m, in terms of bond notes issued, could you give us an indication of the fair value of assets you currently hold as security against the bonds".

P3.204 On 09.02.17, D1 replied to Mark's letter (cc D5 and Steve Jones) to say that LCF's loan book stood at c.£43 million whilst the "*verified security value*" had risen to £215 million, giving a loan-to-value ratio of 20%.[1965] This was inherently suspicious as there is no reason why borrowers would willingly grant so much security to LCF.

P3.205 Mark was immediately sceptical about this. He emailed D5 to say, "*The Banana Republic must have found some black gold*".[1966]

P3.206 Mark also pointed out that D1's willingness to provide such information was new ("*He wasn't always happy back in the day providing any information*").[1967]

P3.207 D5 replied, "*Well, he's* [sic] *neck on the line. I'm happy enough*".[1968] D5 did not care whether it was true or not. He recognised that D1 was taking a risk by saying something that was likely to be untrue; but that was D1's problem. All that D5 needed was for D1 to provide something in writing. Whether or not it was true was irrelevant. If D1 provided the information, that provided a fig-leaf for D6 to carry on selling even though D5 and his team knew that D1 was a liar and that the information he was providing was inherently implausible and probably false. In his oral evidence, D5 did not properly address this issue but just made repeated references to Lewis Silkin:[1969]

20 Q. Your position was, "Look, if he is happy to say it, then
21 although it's almost certainly crap, we can rely on it,
22 we can tell people we relied on it, we can justify our
23 behaviour". That was your view, wasn't it?
24 A. You're using quite difficult parlance, "behaviour".
25 I did believe we could rely on it, I did. I believed he

1 had great oversight. I keep mentioning them,
2 Lewis Silkin, I'm sure they won't forgive me. But they
3 had great oversight. There were great people involved,
4 way above my pay --

[1965] MDR00074462; MDR00224094

[1966] SUR00137486-0001

[1967] SUR00137486-0001

[1968] SUR00137487-0001

[1969] Day 30/page 148/line 20 – page 149/line 16 **[A5/30/37]**.

Source: Mouseinthecourt.co.uk

5 Q. You didn't think Lewis Silkin had verified the security
6 value, did you? Why on earth would you have thought
7 that? That's plainly not what you thought, is it?
8 A. Well, no, that's true. I didn't think they did. But,
9 you know, Lewis Silkin were there -- he mentions -- we
10 haven't seen much of it here, but he mentions
11 Lewis Silkin all the time. They were clearly working
12 together. They were coming to my office. I just can't
13 see -- I didn't look at that and think it was an issue
14 at the time. Obviously, now, I can see he's just
15 writing it. But, at the time, I didn't believe --
16 I thought that was good.

P3.208 If Mark's comment about "*black gold*" had been intended to suggest that the new security might have something to do with LOG's investments in two oil exploration companies, Kerry was quick to dispel this suggestion.

P3.209 Kerry had been liaising with D2, D3 and D8 about a possible oil bond[1970] and explained to D5 and D7 that there had not yet been any independent valuations of the oil assets: "*They have said that they do not have the assets independently valued. To do this they need competent persons reports at each site and it will take a minimum of 5 months to get this done (geological studies take time) and actually they might not be able to get it fully complete at some sites where more in depth tests need to happen*".[1971]

P3.210 D5 took no steps to ask how the security had been "*verified*".[1972]

17 Q. You accept, when you saw "verified security value", you
18 didn't go back to him and say, "Who has verified it?
19 How have they verified it? Give us copies of
20 the verification"? You didn't ask any of these
21 questions, did you?
22 **A. I didn't, no.**

…
20 Q. You accepted earlier you could have gone back to him and
21 said, "Look, you talked about verified security value.
22 Who verified it? When did they verify it? Can you give
23 us the verification?" You were happier to have his
24 statement, even though it was probably untrue, than to
25 pick away at it, weren't you?

1 **A. I mean, I -- in hindsight, I would have gone back and,**
2 **you know, asked that -- that the documents were sent.**

[1970] SUR00061869-0001; SUR00061870-0001; D2D10-00024262; D2D10-00024263; D2D10-00024268; SUR00061880-0001

[1971] SUR00137494-0001

[1972] Day 30/page 150/lines 17-22 **[A5/30/38]**; page 155/line 20 – page 156/line 4 **[A5/30/39]**.

Source: Mouseinthecourt.co.uk

> 3 **But I just genuinely thought that these people have**
> 4 **looked at it and that was good. In hindsight, yes.**

P3.211 The nature of the new security remained a mystery. But that did not stop D6's sales team from deploying the figure of £215 million in their efforts to sell LCF bonds: D5 was happy for them to use that figure immediately to increase conversions.[1973]

P3.212 As explained above, LCF advertised the security figure of £215 million in *The Times*, *The Financial Times* and *The Telegraph*.[1974]

P3.213 Subsequently, the FCA complained about one particular aspect of the advertisement. D1 emailed D5 and D7 to tell them to remove any references to the fact that LCF was regulated by the FCA from future advertising materials.[1975]

P3.214 D5 forwarded this to D7 and Kerry, commenting, "*I knew that was a bad idea. Can of worms will be opened*".[1976] (As explained above, D5 thought it was preferable for LCF to "*stay under the radar*" and that it should not go "*above the parapet*".[1977])

Concerns raised on the MSE forum

P3.215 Money Saving Expert ("**MSE**") is a website for consumers who are looking for a good deal on investments, insurance, utilities and so on. It has a forum (or message board) on which members of the public can post messages and comments.

P3.216 In early February 2017, someone posted a new comment about LCF. They criticised the BSR website, explaining that "*L&C are paying them for promoting the product and the RPDigitalServices Ltd site is little more than a referral links site to a selection of*

1973 MDR00074758; MDR00074801; MDR00074822; MDR00075997; Day 30/page 159/lines 25 – page 160/line 4 **[A5/30/40]**.

1974 D7D9-0009136; MDR00087050; MDR00087051; MDR00087052; SUR00073529-0001; SUR00073530-0001

1975 MDR00089120

1976 SUR00075979-0001

1977 SUR00004685-0001

Source: Mouseinthecourt.co.uk

products. Anyone using this site should stop doing so".[1978] They had also made "*links to Cape Verde, International Resorts Group etc*".[1979]

P3.217 At the direction of D5[1980], Jo Baldock drew this to the attention of D1,[1981] who replied, "*Thanks for sending this over, the IRG loan isn't public information so someone who knows us has posted this. I'll have to look into it*".[1982] However, having initially implied that the message contained accurate non-public information (from "*someone who knows us*"), D1 then changed his position and said that the message was factually inaccurate and libellous.[1983] From his meeting with D4 in February 2015 and from Mark Partridge's analysis of LCF's accounts that had been audited by Oliver Clive & Co, D5 knew that the information was in fact true and that D1 was lying when he said it was inaccurate.

P3.218 However, he did not provide any information to rebut the concerns about LCF that had been set out in the comment on the MSE forum.

P3.219 On 11.07.17, someone posted a very lengthy and detailed analysis of LCF on the MSE forum, which included following comments:[1984]

> "***You will find little about LC&F business operations on the website****, other than description.* ***Little about the company track record and means of interest payment to the bondholders, and repayment of capital. The website is all about marketing the mini bond, not about the loan business side of LC&F and its practical discharge of financial obligations to investors.*** *...*
> *The loan market is highly competitive.* ***One online study indicates the current average small business bank loan rate is between 6-13% per annum, from lowest to highest, much less than the loan interest rates offered by LC&F. A business loan provider online comparison website indicates rates approx. between 3.5-5.5% APR on secured business loans. An application online with Santander by an applicant with good credit standing for an unsecured one year business loan for £25,000 results in a 4.9% APR interest rate. Much less than LC&F secured business loan rates at 12-20%.***

[1978] MDR00074512

[1979] SUR00064262-0001

[1980] MDR00074542

[1981] SUR00064274-0001

[1982] SUR00064321-0001

[1983] MDR00074634

[1984] MDR00093505

Source: Mouseinthecourt.co.uk

With such low interest rates on loans now and the large number of loan companies, it is a very competitive market. The 12%-20% lending rates applied by LC&F to SME loans may not be competitive enough in the UK asset secured loan industry. But it is unlikely that lending rates below 12% would be sufficient to cover the LC&F company and minibond marketing expenses, wages, contractor fees, and profit, as well as interest payments to bondholders. No other business model has been put forward by LC&F to pay bondholder interest and secure return of principal end of bond term.

A reason a business would be required to pay a higher rate of 12-20 % APR on a loan is because the level of risk of loan default by the borrower is higher. That higher risk would not bode well for the LC&F bondholder interest payments, nor for return of the SME loan capital and bondholder principal, nor for company expenditure and profits. ...

It is difficult to find out any evidence for the marketing team claim that LC&F have lent approximately £15 million to approximately 120 small and medium sized business enterprises (SMEs) secured on £33 million asset value since public launch of the minibond. *These figures from 2016 are out of date by a few months. As of June 2017, LC&F claim in excess of £66 million has been invested with over £215 million worth of borrowers' and LC&F's assets held as security, along with a part of the bondholder capital. Up to that latter date LC&F state no borrowers have defaulted on the loans. ...*

Regarding the LC&F lending side to SMEs, the bond marketing team reveals there is a trading interface between LC&F lending team and SME borrowers. From this LC&F accounts for bondholder interest payments, company profit and expenditure including contractor fees, wages and marketing costs. However, the marketing team do not appear able to substantiate this to potential or existing investors. ***Unlike other SME business loan providers, there appears to be no available company website interface for LC&F business borrowers to apply for business loans.*** *No physical location other than the Companies House registered office in Tunbridge Wells.* ***No available names of existing SME borrowers. No names of the lending team employees. No lending team employee contact, no phone, no email address for the lending team. To apply for a SME loan you are asked to go through the bond marketing company team which is unusual. No internet searches have provided any evidence of how the bondholder interest is being paid through SME loan interest, nor is there such evidence on the LC&F website, nor can the bond marketing team provide such when asked*** *...*" (emphasis added).

P3.220 A prospective bondholder sent this to Scott Allen, who sent it to Jo Baldock, who sent it to D1. D5 also saw it.[1985] D1 said that the post was "*based on assumptions not facts*" and was "*technically incorrect on a number of issues*" but he did not identify any inaccuracies or provide any countervailing information.[1986]

[1985] MDR00093883

[1986] MDR00093505

Source: Mouseinthecourt.co.uk

P3.221 D5 in fact knew that many of the claims in this post were true.[1987] For example, he knew that there was no evidence that LCF had lent "*to approximately 120 small and medium-sized business enterprises*" because he knew that LCF had only lent to a handful of businesses connected to D4.

13 Let's go through to see if this is scurrilous
14 nonsense. We know there wasn't a lending site, don't
15 we, because you were trying to set it up but Andy never
16 progressed it; that's right?
17 **A. Yes, that's correct.**
18 Q. There were no available names of any existing SME
19 borrowers, were there, for the public? No-one could
20 find out?
21 **A. That's also true.**
22 Q. There's no names of any lending team employees, because
23 there's no lending team, it's just Andy Thomson?
24 **A. Right, yes.**
25 Q. No lending team employee contact, no phone, no email

1 address for the lending team. That wasn't publicly
2 available anywhere, was it?
3 **A. I don't think so.**
4 Q. You had seen no evidence of how bondholder interest was
5 being paid through SME loan interest, had you? That's
6 not something you had seen?
7 **A. No.**
8 Q. So this isn't just scurrilous nonsense. This is a case
9 of concerns being raised which you knew were valid?
10 **A. I think that is fair. I mean, obviously, in hindsight,**
11 **it is very fair and this person is, you know, making**
12 **very fair comment.**

P3.222 This negative commentary on the MSE forum became increasingly problematic. One of D6's sales people reported to his colleagues and D7 that it was putting people off ("*I have had a large investor put off completely by it*").[1988]

P3.223 On 16.07.17, Scott Allen told D7 and Jo Baldock, "*Andy needs to come back with a comprehensive reply … as this MSE forum is clearly a problem now*".[1989] Jo Baldock asked D1 to provide "*some answers … that are acceptable for us to reply … with*".[1990]

[1987] Day 30/page 180/line 13 – page 181/line 14 **[A5/30/45]**.

[1988] MDR00093870

[1989] MDR00093902

[1990] MDR00093914

Source: Mouseinthecourt.co.uk

P3.224 On 18.07.17, D1 provided Jo Baldock with a document containing responses to the review posted on MSE.[1991] He said, "*Please don't send it anywhere as its been written for internal purposes*". Jo forwarded it to D5 and D7;[1992] D5 forwarded it to Kerry.[1993]

P3.225 D7 reviewed D1's draft responses and commented (cc D5, Kerry and Jo Baldock), "*He hasn't responded particularly well*".[1994] That assessment was correct: D1 had not provided any useable information to rebut the criticisms of LCF on the MSE forum.

P3.226 Over a month later, there was still talk of D1 providing "*content ... to use to rebuttal* [sic] *specific threads and comments*",[1995] but he never actually did so.[1996]

Continued absence of information about LCF's position

P3.227 D1's failure to provide even the most basic information about LCF's lending operations continued to cause problems. Jo Baldock wanted to send out a newsletter containing success stories and an overview of what investors' funds had achieved for UK SMEs during the year. She asked D1 for this information,[1997] but, as explained below, he failed to provide it. Prospective bondholders continued to ask questions about LCF's loan portfolio. Jo Baldock sent such questions to D1, but he did not respond.[1998]

P3.228 On 10.03.17, D1 provided D5 and D7 with LCF's management accounts for the period ended 30.11.16.[1999] D5 sent them to Mark Partridge,[2000] who replied, "*Probably worth Jack. No accountants name to it, also some of the figures just look wrong which makes*

1991 MDR00094237; MDR00094239

1992 SUR00140129-0001

1993 SUR00140132-0001

1994 MDR00094248

1995 SUR00082749-0001

1996 SUR00082751-0001

1997 SUR00057349-0001

1998 MDR00076826

1999 MDR00079552; MDR00079553

2000 SUR00137938-0001

Source: Mouseinthecourt.co.uk

you wonder who prepared. Technically short term insolvent which doesn't look right either".[2001] D5 shared this with D7 and Steve Jones.[2002]

P3.229 On 31.05.17, D1 told D7 that LCF's draft accounts would be ready by the end of the week and that he would provide them when they had been finalised, although it would then take a further three to four weeks for them to be audited. D7 conveyed this to D5, Kerry, Steve, Jo Baldock and Ashleigh.[2003]

P3.230 However, D1 did not provide the draft accounts and therefore Mark Partridge sent a letter to him on 06.06.17 asking him to state "*the current levels of both loan book and the fair value of assets that you currently hold as security against the bonds*".[2004] Mark also asked D1 when LCF's audited accounts to 30.04.17 were likely to be published.

P3.231 Almost two weeks later, on 19.06.17, D1 provided D7 with LCF's management accounts for the year ended 30.04.17, saying, "*I am still waiting on the valuation so I think we should just use the draft set we have*".[2005] These management accounts disclosed a profit of £164,260 for the year and net assets of £189,853 as at 30.04.17.[2006] The value of the security recorded was £189,450,000, which was markedly different from the £215 million which D1 had said was the value of the security in February 2017. D7 sent these to D5 and Mark Partridge, adding, "*Andy has asked me not to share this with anyone at the moment*".[2007] D5 forwarded them to Steve.[2008]

P3.232 Mark Partridge was unimpressed. LCF's profits were modest. By comparison, D6 had made profits of £2,440,680 in the year to 31.01.17.[2009] In his oral evidence, D5 admitted

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2001 SUR00137948-0001

2002 SUR00137961-0001

2003 MDR00089032

2004 MDR00224095

2005 MDR00091091

2006 MDR00091092

2007 SUR00126207-0001

2008 SUR00139659-0001

2009 MDR00224028

Source: Mouseinthecourt.co.uk

that D6 was making more than LCF's annual profit every 25 days.[2010] Among other things, Mark was aware that D1 had just bought a helicopter. He emailed D5 and D7 to say, "*Not sure how he can afford a helicopter out of these accounts*".[2011] D5 knew how much helicopters cost, because he was looking to purchase one himself.[2012] He must have known that the only way that D1 could afford a helicopter was by using LCF's monies i.e. moneys provided by bondholders, for that purpose.

P3.233 Mark Partridge was also unable to understand the LCF business model and told D5 that he thought the accounts looked wrong.[2013]

P3.234 On 27.07.17, Mark Partridge asked D1 for an update on the value of LCF's security, which D1 had indicated he would provide in June 2017 and on the progress of LCF's audit.[2014] This was not a genuine enquiry, because Mark did not trust D1 and was highly unlikely to give any credence to D1's response. Rather, it was part of a continuing attempt to create a paper trail to ensure that there were superficial enquiries on file on which D5 could rely if anything went wrong.

P3.235 When D1 finally replied on 29.08.17 it was simply to say, "*The current value of assets we hold charges over as security totals £247.6m.*" D1 did not provide any information on the progress of the audit. Kerry Venn was sceptical, writing to D5 "*I am really interested to know what the security comprises and how many loans are currently issued*."[2015] In his oral evidence, D5 accepted that no one at D6 knew the answer to these questions at this time.[2016] However, this was the information that Kerry Venn had thought was essential to provide the "*the missing piece of the 'is it a ponzi' jigsaw*"[2017] back in January 2016. D5 did not want to accept the obvious truth that LCF was a scam; he was making too much money.

[2010] Day 31/page 3/lines 1-12 **[A5/31/1]**.

[2011] SUR00127978-0001

[2012] Day 31/page 4/lines 15-25 **[A5/31/1]**.

[2013] SUR00127978-0001

[2014] MDR00098992

[2015] SUR00141030-0001

[2016] Day 31/page 10/lines 6-17 **[A5/31/3]**.

[2017] SUR00158422-0001

Source: Mouseinthecourt.co.uk

P3.236 There also continued to be an absence of information about LCF's lending business from D1. Jo Baldock continued to push him for information for a newsletter, explaining in an email dated 22.08.17:[2018]

> "*We are looking to add a bit of a newsletter… would like a little info on the lending side, it would be good to be able to say, look what your investment has done, what SMEs you have helped progress etc, can you give us some examples please, we don't need specific borrowers names just something like, we lent £100k to a property company in Sussex who have used the funds to improve a school, if I could have these asap that would be great so the email marketing team can get to work on the design*".

P3.237 But no such information was forthcoming from D1. On 01.09.17, Jo Baldock emailed D1 to point out that he had not replied to her email about the newsletter.[2019]

P3.238 D1 was not even prepared to provide the number of loans,[2020] even in general terms.[2021] He emailed Jo Baldock on 06.09.17 to say that "*this will not have a good impact as the volume of loans is not huge (sub 20) for the amount of debt out there*".[2022] Jo Baldock forwarded his reply to D5[2023] and D7.[2024]

P3.239 D1 seemed to have something to hide. On 23.08.17, Kerry emailed D5, D7 and Jo Baldock to say, "*I doubt Andy has started the process to get an ISA. To have an ISA you must have first a retail prospectus bond. You place the retail bond in an ISA wrapper. I don't know why he hasn't done this yet because it's the next obvious step.* ***I suspect that the validation process required to get through the UKLA, might scrutinise his loan book and possibly that's why he hasn't done it yet***" (emphasis added).[2025] D5 knew that

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2018 MDR00098081

2019 MDR00099583

2020 MDR00100222

2021 MDR00100241

2022 MDR00100263

2023 SUR00082808-0001

2024 SUR00082809-0001

2025 SUR00127756-0001

Source: Mouseinthecourt.co.uk

D1 did not want anyone to scrutinise his loan book because he knew that LCF was just lending to companies connected to D4.

P3.240 On 27.09.17, LCF was featured in *The Daily Mail*. Mark Partridge asked D5, "*Is it good sticking head above the parapet??????*"[2026] D5 replied, "*We didn't ask to do it….*"[2027] He knew that scrutiny of LCF would result in regulatory action and cause D6's commission payments to be shut off.[2028]

P3.241 Information about LCF's borrowers was still not forthcoming. On 26.10.17, Neil of D6 sent an email (cc Kerry) to say, "*We've been asking LCF for some of their success stories for a while now, for some reason they're loath to give any details*".[2029]

P3.242 On 08.11.17, Jo Baldock reiterated her idea for a newsletter to "*show how the investment funds have assisted UK businesses, nothing client specific but a simple strapline / case study … as clients love to see what their funds are doing*".[2030] D1 failed to provide this. D7 reported on 15.02.18 that D1 "*wasn't keen to give a case study of a client loan*".[2031]

P3.243 Kerry discovered something interesting. On 07.12.17, the finance website *Citywire* published an article about the FSCS having to pay compensation due to a collapsed investment firm which had promoted LUKI.[2032] Kerry saw this article and sent it to D5 and D7.[2033] She commented, "*One of the failed investments in this payout was Lakeview UK investments. That's Spencer's firm. I checked at companies house and Roger (Spencer's in house, drunk, solicitor)* [i.e., D8, who she mistakenly called Roger] *is the director*".[2034] D5 replied, "*Hmmm*". This raised obvious questions for D6, including whether the Lakeview site formed part of LCF's security. D5 did not want to ask these

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2026 SUR00141994-0001

2027 SUR00141995-0001

2028 Day 31/page 19/line 10 – page 20/line 2 **[A5/31/5]**.

2029 SUR00085053-0001

2030 MDR00110217

2031 SUR00092959-0001

2032 MDR00226934

2033 SUR00088188-0001; D7D9-0010491

2034 SUR00088188-0001; D7D9-0010495

Source: Mouseinthecourt.co.uk

questions because he did not want his suspicions confirmed. He did not want to do anything that would stop the cash flowing into D6.

Payments by D6 to D4

P3.244 As mentioned above, on 06.09.17, D6 paid £41,902 to Media GPS, being 0.5% of LCF's receipts during August 2017.

P3.245 At some point after 07.09.17, D4 visited D6's offices in Brighton.[2035] He was impressed and clearly felt that if D6 were making so much money, he should be getting a larger share. Subsequently, D7 approached D5 with D4's request to be paid 1% of the funds flowing into LCF i.e. 4% of D6's commission.[2036] D5 agreed that, with effect from 01.09.17, D6 would instead pay 1% of LCF's receipts to D4.[2037] In his oral evidence, D5 agreed that D6 was under no contractual obligation to pay this sum to D4.[2038] He was unable to provide any real explanation as to why he had nonetheless agreed to pay a substantial chunk of D6's income to D4. He simply said that he felt "*a bit pressed into it*."[2039] D5's suggestion that this was an "*introduction fee*" is also preposterous. D5 knew that D4 was ultimately in control of LCF so the fee would have been payable to D4 in return for D4 introducing himself. Further, there is no reason why an introduction fee would have been relevant some 18 months after the introduction was made and with no prior agreement. The real reason that D5 agreed to the arrangement is that it was the *quid pro quo* for D4 agreeing to maintain D6's commission at 25%.

P3.246 D4 thought that the payments should be back-dated to 01.06.17. He sent a text message to D3 on 20.09.17, "*Invoice Surge Financial, just need a basic invoice for commissions … 19A Portland Street; Brighton; BN1 1RN; England … June £5,211,119. July £8,521,624; August £8,289,673*".[2040]

2035 Careless 1 ¶105 **[C2/3/21]**.

2036 SUR00082940-0001

2037 SUR00084183-0001

2038 Day 31/page 24/lines 2-6 **[A5/31/6]**.

2039 Day 31/page 24/lines 9-16 **[A5/31/6]**.

2040 EB0058557

Source: Mouseinthecourt.co.uk

P3.247 D3 prepared an invoice from "*SG Golding Consulting*" to D6 for "*Fundraising Consultancy*" with the reference JRM in the sum of £52,111.19 for June 2017 "*based on a £5,211,119.00 raise*"; £85,216.62 for July 2017 "*based on a £8,521,624.00 raise*"; and £82,896.73 for August 2017 "*based on a £8,289,673.00 raise*".[2041]

P3.248 Thus, D4 was seeking payment of a sum equal to 1% of LCF's gross receipts with effect from 01.06.17. These came to a total of £220,224.54.

P3.249 D3 then applied VAT of 20% to give a grand total of £264,269.45. The VAT number on the invoice was that of Home Farm Equestrian Centre.[2042]

P3.250 On 02.10.17, D3 sent this invoice to D4,[2043] who sent it to D7.[2044]

P3.251 D7 sent it to D5 and Steve, commenting, "*Just received this from Spencer, he has back dated the invoice to June!!! Give me a call when you're free*".[2045]

P3.252 Steve emailed D5, explaining, "*The invoice is from SG Golding Consulting, however it is not a limited company. He has quoted a valid vat number for Spencer Golding Home Farm Equestrian Centre. His invoice is for Jun-Aug (£264k inc. VAT)*".[2046]

P3.253 Steve forwarded the invoice to Kerry (cc D5), asking, "*How can we justify paying c£80k per month to an equestrian centre*".[2047]

P3.254 D7 tried to call D4 to say that this was not what they had agreed.[2048] The invoice should have been for 1% of LCF's receipts with effect from 01.09.17, not 01.06.17. And it should have been for 1% of LCF's receipts, not 1% of LCF's receipts plus VAT.

2041 MDR00224031; EB0058695; EB0058697; EB0058698

2042 SUR00084115-0001

2043 EB0059563; EB0059564

2044 SUR00084106-0001; SUR00084107-0001

2045 SUR00084106-0001; SUR00084107-0001

2046 SUR00084115-0001

2047 SUR00084118-0001

2048 SUR00084183-0001

Source: Mouseinthecourt.co.uk

P3.255 D4 did not answer D7's call.[2049]

P3.256 On the next day, D7 tried to call D4 again, but again D4 did not answer.[2050] D7 sent a text message to D5 saying, "*Spencer didn't answer my call again??*"[2051]

P3.257 D5 replied to D7:[2052]

> "*Text him, try something like this?:-*
> *Hi Spencer,*
> *Been trying to get hold of you regarding your invoice. You agreed with Paul in the meeting it would be back dated to the beginning of September only. You also agreed it would be 1% gross.*
> *The number can be £80k. Can you re-invoice please? ...*"

P3.258 D7 said, "*Ok will do*".[2053] No such text message has been disclosed by any party, but it is clear that D7 and/or D5 did raise these issues with D4, as explained further below.

P3.259 In the meantime, on 05.10.17, D5 sent a message to Kerry saying that he was worried about her and had never seen her unwell.[2054]

P3.260 She replied to say that she was stressed because D1 had asked if they would agree to the appointment of D6 as the appointed representative of LCF: "*I'm sensitive to stress but I don't usually experience it. Andy has tipped me over the edge*".

P3.261 D5 commented, "*The spencer thing is* [sic] *also got to be sorted properly*".[2055]

P3.262 Kerry responded, "*I want us to be part of something to be proud of. I can justify a little clever marketing but* ***I can't justify breaking the briberies act for Spencer*** *...*"

[2049] SUR00084183-0001

[2050] SUR00084183-0001

[2051] SUR00084183-0001

[2052] SUR00084183-0001

[2053] SUR00084183-0001

[2054] SUR00084244-0001

[2055] SUR00084244-0001

Source: Mouseinthecourt.co.uk

(emphasis added).[2056] The reference to the Bribery Act is very specific. Kerry clearly believed that D4 was demanding a payment in return for a benefit to D6.

P3.263 The negotiation regarding D4's invoice appears to have resulted in a compromise: D4 would be permitted to back-date the invoice to 01.07.17, but the total amount (including VAT) would be equal to 1% of LCF's receipts. The VAT-exclusive amount would therefore be 0.833% of LCF's receipts, which would produce a sum equal to 1% of LCF's receipts when VAT of 20% was added.

P3.264 On 06.11.17, D3 provided D4 with a revised invoice from "*SG Golding Consulting*" to D6 for "*Fundraising Consultancy*" with the reference JRM in the sum of £71,013.53 for July 2017 "*based on a £8,521,624.00 raise*"; £69,080.61 for August 2017 "*based on a £8,289,673.00 raise*"; £64,362.14 for September 2017 "*based on a £7,723,457.00 raise*"; and £46,375.43 for October 2017 "*based on a £5,565,052 raise*".[2057]

P3.265 The VAT-exclusive total of these sums was £250,831.71. With the addition of VAT this came to £300,998.05, which was 1% of LCF's receipts during July, August, September and October 2017 (as set out in the invoice).

P3.266 The invoice was dated 01.11.17 and was numbered SF 001.

P3.267 The issue of VAT would have been important to D6, which was not charging VAT to LCF and therefore could not have recovered any VAT charged by D4. 1% of LCF's receipts equated to 4% of D6's commissions from LCF, whereas 1.2% of LCF's receipts would have amounted to 4.8% of D6's commissions from LCF.

P3.268 On 08.11.17, D4 sent the revised invoice to D7,[2058] who replied, "*Give me a call when you're free and I will get this organised*".[2059] However, it was not paid immediately.

2056 SUR00084244-0001

2057 D7D9-0007017; EB0063477; EB0063478

2058 D7D9-0007022

2059 D7D9-0007022

Source: Mouseinthecourt.co.uk

P3.269 On 23.11.17, D7 emailed Steve Jones (cc D5) stating, "*Spencer has sent through his outstanding invoice, please can we discuss this with Paul this afternoon*".[2060]

P3.270 On the same day, D6 paid £300,998.05 to D4.[2061] There was therefore a period of overlap: 0.5% of LCF's receipts for July and August 2017 had already been paid to D1; 1% of LCF's receipts for those two months was also paid to D4.

P3.271 D5 confirmed that the reason why D6 did not pay D1's final Media GPS invoice was that D4 was seeking payment of 1% of new monies.[2062]

> **A. It was probably the last one and we probably stopped it.**
> Q. You stopped it because it's his fee for September, but you'd agreed with Spencer that the arrangement to pay half a per cent of new monies to Andy was going to be replaced by a new arrangement to pay 1 per cent of new monies to Spencer from the beginning of September. That's what you'd agreed with Spencer at the meeting, isn't it?
> **A. Well, yes, I believe so.**

P3.272 On 12.01.18, D4 provided D7 with his second invoice to D6 (SF002) for "*Fundraising Consultancy for November 2017 based on a £6,050,422.00 raise*" in the sum of £50,420.18.[2063] With VAT, this came to £60,504.22, or 1% of the amount of the "*raise*".

P3.273 On 15.01.18, D7 forwarded it to Steve (cc D5) saying, "*Spencer has sent through his invoice for November, please can you arrange for this to be paid*".[2064] D5 added, "*Today please*".[2065] D7 emailed D4 to say, "*I have passed your invoice on to Steve for him to make a payment today for you*".[2066]

2060 SUR00086593-0001; SUR00086594-0001

2061 MDR00221779 page 157; MDR00113573

2062 Day 31/page 40/lines 4-13 **[A5/31/10]**.

2063 MDR00224032; SUR00090249-0001; SUR00090250-0001

2064 SUR00090378-0001; SUR00090379-0001

2065 SUR00090381-0001

2066 SUR00090383-0001

Source: Mouseinthecourt.co.uk

P3.274 D6 paid £60,504.22 to D4 on the same day.[2067] Steve told D5 and D7 that this had been paid.[2068] D7 thanked him for telling him about the payment.[2069]

P3.275 On 15.01.18, D7 also told D4, "*The final figure for December was 7,883,068*".[2070] On the same day, D7 told D5 and Steve, "*His December invoice will be £78,830.68*".[2071]

P3.276 On 24.01.18, D4 provided D7 with his third invoice to D6 (SF003) for "*Fundraising Consultancy for December 2017 based on a £7,883,068.00 raise*" in the sum of £65,692.23 excluding VAT and £78,830.68 including VAT.[2072]

P3.277 D7 forwarded it to Steve (cc D5), adding, "*Spencer has emailed his invoice for December, please can you arrange a payment tomorrow*".[2073]

P3.278 On 25.01.18, D6 paid £78,830.68 to D4.[2074]

P3.279 On 15.02.18, D7 emailed D3 saying, "*Spencer has asked me to confirm the figure for invoicing for the month of January, cleared funds in were £12,071,743*".[2075]

P3.280 On 19.02.18, D4 provided D7 with his fourth invoice to D6 (SF004) for "*Fundraising Consultancy Fees for January 2018 based on a £12,071,743.00 raise*" in the sum of £100,597.86 excluding VAT and £120,717.43 including VAT.[2076] D7 forwarded it to Steve (cc D5) saying, "*Steve, I have just received Spencer's latest invoice, please can*

2067 MDR00221780 page 30

2068 SUR00090393-0001

2069 SUR00090394-0001

2070 SUR00090383-0001

2071 SUR00090384-0001

2072 SUR00091155-0001; SUR00091157-0001; MDR00224033-0001

2073 SUR00091174-0001

2074 MDR00221780 page 43

2075 D7D9-0007133

2076 D7D9-0007140; D7D9-0007141

Source: Mouseinthecourt.co.uk

you organise a payment".[2077] On the same day, D6 paid £120,717.43 to D4.[2078] Steve told D7 that this had been paid.[2079] D7 emailed D4 to say, "*All paid for you*".[2080]

P3.281 On 08.03.18, D3 asked D7, "*Can I have the final figure for Feb for his invoice?*"[2081]

P3.282 D7 replied, "*Just got this from Jo, this was for the month of February. GCEN: Available cash ISA £4,361,757. Available cash bond £2,796.833. Cleared ISA transfer chqs £1,719,900. Total £8,878,490*".[2082]

P3.283 On the same day, D4 provided D7 with his fifth invoice to D6 (SF005) for "*Fundraising Consultancy Fees for February 2018 based on a £8,878,490.00 raise*" in the sum of £73,987.42 excluding VAT and £88,784.90 including VAT.[2083] D7 forwarded it to Steve (cc D5), adding, "*Steve, please can you arrange the invoice from Spencer to be paid*".[2084]

P3.284 D5 instructed Steve, "*Pay*".[2085] D6 paid £88,784.90 to D4.[2086] Steve told D5 and D7, "*Its Paid Chaps*".[2087] D7 said, "*Thanks Steve I will let him know*".[2088]

P3.285 On 06.04.18, Jo Baldock sent a text message to D3 stating, "*Hi Elten; March cleared funds figures; ISA gcen £6,357,932; ISA cleared cheques £2,075,400; Bond £ 3,158,817; Total £11,592,149*".[2089]

2077 SUR00093284-0001

2078 MDR00221780 page 72

2079 SUR00093293-0001

2080 D7D9-0007143

2081 D7D9-0008069

2082 D7D9-0008069

2083 SUR00094427-0001; SUR00094428-0001

2084 SUR00094453-0001

2085 SUR00094461-0001

2086 MDR00221780 page 93

2087 SUR00094475-0001

2088 SUR00094477-0001

2089 EB0087973

Source: Mouseinthecourt.co.uk

P3.286 On 06.04.18, D4 provided D7 with his sixth invoice to D6 (SF006) for "*Fundraising Consultancy Fees for March 2018 based on a £11,592,149 raise*" in the sum of £96,601.24 excluding VAT and £115,921.49 including VAT.[2090] D7 sent it to D5's assistant, Vicki Bennet (cc D5), asking Vicki to pay it.[2091]

P3.287 Vicki replied, "*Just to let you know £99,999.00 has been sent to Spencer today and the balance of £16,922.49 will be sent tomorrow. Unfortunately I do not have the necessary permissions to send more than £99,999.00 in one go*".[2092] On 06.04.18, D6 paid £99,999.00 to D4.[2093] Then, on 10.04.18, D6 paid the balance of £16,922.49 to D4.[2094]

P3.288 On 04.05.18, D4 provided D7 with his seventh invoice to D6 (SF007) for "*Fundraising Consultancy Fees for April 2018 based on a £17,400,000.00 raise*" in the sum of £141,866.67 excluding VAT and £170,240 including VAT.[2095] D7 asked Steve (cc D5) to pay it.[2096] D6 paid £170,240 to D4.[2097]

P3.289 As explained above, there was discussion about D6 becoming the appointed representative of LCF within section 39 of FSMA. On 17.05.18, D7 discussed this with D1. After the meeting, D7 sent a report to D5 and Kerry in the following terms:[2098]

> "***We discussed the SG invoicing and Andy wants to get everything out in the open***. *One of the requirements of our AR status with them, will be to provide our financials to LCF. Andy and Kobus will see the payment going to SG and will ask further questions. Andy said he was willing to make a 1% interest reduction on the loans to SG if we reduced our commissions to 24%. I said we will discuss this with SG and will let Andy know*" (emphasis added).

2090 MDR00140870; MDR00140872; MDR00224036

2091 SUR00096560-0001; SUR00096561-0001

2092 MDR00140870

2093 MDR00220266 row 142

2094 MDR00220266 row 143

2095 SUR00098355-0001; SUR00098356-0001; MDR00224037

2096 SUR00098653-0001

2097 MDR00220266 row 355; SUR00098675-0001

2098 SUR00099143-0001

Source: Mouseinthecourt.co.uk

P3.290 What was clearly being discussed here was a way to provide the same economic benefit to D4 as the 1% fee but in a way which would prevent Kobus investigating it. D5 could not provide a coherent explanation to this in his oral evidence:[2099]

> 13 Q. What was being proposed was, "If we don't want Kobus
> 14 finding out about Surge paying 1 per cent to Spencer
> 15 directly, then we need to achieve the same economic
> 16 effect in a different way, by reducing the commission
> 17 and passing some other benefit to Spencer". You
> 18 understood that was the proposal?
> **19 A. Yeah, I mean, I don't recognise that, Mr Robins, and**
> **20 I can't really --**
> 21 Q. You didn't think that was a good idea?
> **22 A. I mean, Kobus -- I was -- I liked Kobus. Kobus was**
> **23 a good guy. I've subsequently met Kobus multiple times.**
> **24 I don't see me -- I wouldn't have hid much -- we would**
> **25 have tried to be our own business. Kobus was the**
>
> **1 compliant guy and he was quite a tough compliant guy.**
> **2 I don't recognise this, I'm afraid, Mr Robins.**

P3.291 Kerry told D7 that what he had said about "*fixing the Spencer payment*" sounded "*very positive*".[2100] D5 himself said it was "All good".

P3.292 On 20.06.18, D3 asked D7 for "*the figures for May for SG's invoice*".[2101] D7 replied on 04.07.18, "*The figure for May was 14,201,573.00*".[2102] In light of his recent discussion with D1, D7 added, "*from June onwards we are looking at paying the invoice a different way. I will let you know once a process has been finalised. In the meantime send me the May invoice and I will arrange a payment*".[2103]

P3.293 On 06.07.18, D4 provided D7 with his eighth invoice to D6 (SF008) for "*Fundraising Consultancy Fees for May 2018 based on a £14,201,573.00 raise*" in the sum of £118,346.44 excluding VAT and £142,015.73 including VAT.[2104] D7 replied, "*Thanks,*

2099 Day 31/page 48/line 13 – page 49/line 2 **[A5/31/12]**.

2100 SUR00099145-0001

2101 D7D9-0008959

2102 D7D9-0008959

2103 D7D9-0008959

2104 D7D9-0007494; D7D9-0007495; SUR00103284-0001; SUR00103285-0001

Source: Mouseinthecourt.co.uk

will sort this out now".[2105] D7 sent it to Steve (cc D5), adding, "*Please can you pay the attached invoice for SG*".[2106] D6 paid £142,015.73 to D4.[2107]

P3.294 The new process for paying D4's invoices was going to involve payments via a company which D1 was setting up.[2108] On 21.08.18, D4 called D7 for an update. D7 told him about the plan to pay him via this new company.[2109] D4 said that he did not want to do that.[2110] He also said that he did not want D1 to know about the change of plan. D7 added, "*Don't mention anything at the moment. I will discuss a different solution with Paul*".[2111]

P3.295 However, no "*different solution*" was implemented at this time. Instead, on 06.09.18, D7 sent a message to D3 saying, "*Hi Elten, can you email me an invoice for Spencer covering the last 3 months, figures are June 14,523,807 July 12,639,904 Aug 12,667,400. Total £398,311.11*".[2112] The new invoice was going to have to cover three months before the last one (SF008), which went up to the end of May 2018.

P3.296 On 06.09.18, D4 provided D7 with an invoice (SF009) in the VAT-inclusive sum of £398,311.[2113] D7 sent it to Steve and D5.[2114] D6 paid £398,311 to D4.[2115]

P3.297 There was still a desire to 'fix' the payments to D4 (as Kerry had put it). On 12.09.18, D7 told D5, Kerry, Steve and Jo, "*I will discuss payments to SG and the solution with Paul tomorrow*".[2116]

2105 D7D9-0007497

2106 SUR00103290-0001

2107 MDR00220266 row 791

2108 D7D9-0010862

2109 D7D9-0010862

2110 D7D9-0010862

2111 D7D9-0010862

2112 D7D9-0008959; D7D9-0008968

2113 D7D9-0007657; D7D9-0007658

2114 SUR00108710-0001; SUR00108711-0001

2115 MDR00220266 row 1157

2116 D7D9-0007687

Source: Mouseinthecourt.co.uk

P3.298 However, things carried on as before. On 19.10.18, D4 provided D7 with a further invoice to D6 (SF010) for "*Fundraising Consultancy Fees for September 2018 based on a £9,222,400.00 raise*" in the sum of £76,853.33 excluding VAT and £92,224 including VAT.[2117] D7 replied to D4, "*Passed to Steve for payment*".[2118] D7 asked Steve to pay it on 06.11.18.[2119] D6 paid £92,224 to D4.[2120]

P3.299 On 06.11.18, D4 provided D7 with another invoice to D6 (SF011) for "*Fundraising Consultancy Fees for October 2018 based on a £10,378,800.00 raise*" in the sum of £86,490 excluding VAT and £103,788 including VAT.[2121] D7 sent it to Steve.[2122] D6 paid £103,788 to D4.[2123]

P3.300 On 11.12.18, the day after the LCF raid, D4 provided D7 with another invoice to D6 (SF012) for "*Fundraising Consultancy Fees for November 2018 based on a £10,519,700.00 raise*" in the sum of £87,644.17 excluding VAT and £105,197 including VAT.[2124] D7 sent it to D5, commenting, "*I think we should hold of* [sic] *from paying this for the moment*".[2125] D5 replied, "*We have lost 90% of revenues. We should cut our cloth accordingly*".[2126] This final invoice from D4 was never paid.

P3.301 In his oral evidence, D5 could provide no real explanation for the payments to D4. [2127]

4 Q. 1 per cent of new monies into LCF is 4 per cent of your
5 commission from LCF, isn't it?
6 **A. Yes.**
7 Q. So, you had no pre-existing contractual obligation to
8 pay 4 per cent of your commission to Spencer, did you?
9 He couldn't have sued you in a court of law and won?
10 **A. No, but it's a commercial thing. We're not --**

[2117] D7D9-0007829; D7D9-0007830; MDR00222795

[2118] D7D9-0007832

[2119] SUR00113036-0001

[2120] MDR00220266 row 1535

[2121] D7D9-0007911; D7D9-0007912; MDR00222796

[2122] MDR00184558; MDR00184559; SUR00113168-0001; SUR00113169-0001

[2123] MDR00220266 row 1551

[2124] D7D9-0008189; D7D9-0008190

[2125] D7D9-0008189

[2126] SUR00115356-0001

[2127] Day 31/page 26/lines 4 – page 27/line 15 **[A5/31/7]**.

Source: Mouseinthecourt.co.uk

11 Q. But your evidence is you felt pressured by him in some
12 way to agree to give him 4 per cent of your commission
13 from -- your gross commission from LCF?
14 **A. Well, if you look at it, perhaps, in this way,**
15 **Mr Robins, we had a partner in LCF who was the best bond**
16 **in the industry at that time, of which there were a lot,**
17 **and it was growing well, it's -- the quality of its**
18 **third parties were first class. The security was first**
19 **class, we thought it was.**
20 Q. Sorry, we are back to your talking point. My question
21 was, is it your evidence that you felt pressured by
22 Spencer in some way to agree to give him 4 per cent of
23 your gross commission from LCF even though you were
24 under no binding, legal obligation to do so?
25 **A. Yes, but not in a sort of, you know, nefarious way.**
1 Q. But yes?
2 **A. He introduced LCF and they were a good client, and he**
3 **was introducing other businesses and we thought he would**
4 **be a good route -- you know, he was rich, he was**
5 **successful, he was connecting us to all these other**
6 **bonds and other products and we thought, you know, it**
7 **wasn't --**
8 Q. You say in your witness statement it was in return for
9 the introduction that he'd made to LCF in,
10 what, February 2015. So, he'd done the thing he was
11 getting paid for. You were under no binding obligation
12 to pay him for it. And your evidence is that you came
13 to agree to give him 4 per cent of your gross
14 commissions from LCF, is it?
15 **A. Well, yes, it's what happened. It's the truth.**

P3.302 D5's explanation is undermined by the fact that he has previously provided a different (and inconsistent) explanation on oath: [2128]

21 Q. Can we look at <M1/9> at page 18, please. This is what
22 you told Mr Shaw when he examined you in court. At line
23 13, just below line 13, you said?
24 "Answer: He would do general consultancy.
25 "Question: What is general consultancy?

1 "Answer: He would give his view on the way in which
2 we conducted our business, Surge, for example, the core
3 monitoring and other such.
4 "Question: He was giving you advice on how you
5 should meet your compliance obligations?
6 "Answer: No, it was more general in its tone; it
7 was nothing to do with compliance. It was more of
8 a business guidance style consultancy."
9 Then, at the bottom of the page, two lines from the
10 bottom, you said:
11 "Answer: ... when we first met Spencer, Spencer was
12 a man of means, he obviously was very successful,
13 wealthy, and he took on a kind of role that he knew how
14 to do business and so on and so forth, so his
15 consultancy was around that general business."

[2128] Day 31/page 41/line 21 – page 44/line 23 **[A5/31/11]**.

Source: Mouseinthecourt.co.uk

16 You accept, in light of your answers earlier, that
17 that wasn't true?
18 **A. No, what I've said here is true.**
19 Q. But what you said then was untrue; yes?
20 **A. What have I said which is untrue, please, Mr Robins?**
21 Q. Well, you said earlier today that there was no agreement
22 about Spencer doing general consultancy. So, let me ask
23 you: was there an agreement that Spencer would get
24 1 per cent of new monies into LCF for giving you
25 consultancy on the core monitoring?

1 **A. I might be able to clear this up for you. So, what**
2 **I say here about him giving us advice about core**
3 **monitoring and stuff like that, this is true, and he was**
4 **always trying to give us advice.**
5 Q. Mr Shaw was asking what the 1 per cent was for, what was
6 the quid pro quo, what did Spencer have to give you in
7 return, and you said it was general consultancy about
8 the way you conducted your business, core monitoring and
9 other such, business guidance style consultancy and
10 consultancy around general business. That was not, on
11 your evidence now, what you agreed to pay the 1 per cent
12 for, was it?
13 MR JUSTICE MILES: Sorry, can you go to the bottom of
14 the previous page?
15 MR ROBINS: Sure.
16 MR JUSTICE MILES: I just want to look at the answer that he
17 gave at line 23.
18 MR ROBINS: Yes, you said there were two things,
19 introduction fee and consultancy. You said that was the
20 quid pro quo for the 1 per cent. But you have told us
21 today it was nothing to do with consultancy, haven't
22 you?
23 **A. Could I just refer you to line 11 on the one on my left.**
24 Q. Does that answer my question?
25 **A. Sorry, I'm just trying to look. I can recollect what he**

1 **did. I mean, the request was for an introducer fee.**
2 **That was the request. He did, it is also true to say,**
3 **try to give us advice on various things. I mean, as**
4 **I say here somewhere in one of those things earlier, he**
5 **was very successful and he obviously wanted to have, you**
6 **know, an input. But the actual -- the ask that was made**
7 **in whenever it was, September 2017, was for an**
8 **introducer fee. He did do these things. These are**
9 **true. If I have conflated them during this in some way**
10 **which is confusing, then I'm sorry, but, you know,**
11 **I just remember that it was, you know, for an introducer**
12 **fee, as JRM pitched it.**
13 Q. But you agree that the deal you had with Spencer wasn't
14 1 per cent for -- your evidence is not that it was
15 1 per cent for consultancy on core monitoring or
16 business guidance style consultancy or general business?
17 **A. He did do that. I think the 1 per cent was for -- the**
18 **original ask was for it being an introducer fee.**
19 Q. So not for the things I just said?
20 **A. Well, I'm not sure if he's conflating it. I'm just**
21 **telling you as I recall, Mr Robins.**
22 MR JUSTICE MILES: Sorry, who is conflating it?
23 **A. Sorry, my own evidence conflating it, my Lord.**

Source: Mouseinthecourt.co.uk

P3.303 In light of the evidence, it is overwhelmingly more likely than not that D4 decided that he wanted to receive 1% of new monies into LCF, or 4% of D6's commissions, as the price for maintaining D6's commission at 25%. D5 went along with this. It may be that he went along with it somewhat reluctantly, but he went along with it nonetheless.

Kerry's concerns about D6 becoming LCF's AR

P3.304 In early October 2017, D1 raised the idea of D6 becoming an appointed representative ("**AR**") of LCF within section 39 of FSMA. Kerry was deeply troubled by this idea.

P3.305 On 05.10.17, D5 sent a WhatsApp message to Kerry to say, "*Hey, you need some time to relax. I'm worried about you. I've never seen you unwell*".[2129]

P3.306 She replied, "*Andy hasn't asked us to be an AR before. I'm very sensitive to stress but I don't usually experience it. Andy has tipped me over the edge. It's just a bad headache … The issue is that being an AR of Andy could be a permanent headache*".

P3.307 She added, "***I've never felt stronger about any decision than this: it's simply wrong to be an AR of your own customer. A company that we don't trust***" (emphasis added).

P3.308 Kerry decided to investigate the possibility of becoming the AR of a different company, Alexander David Securities.[2130] She emailed Angus Rose of Alexander David Securities on 17.01.18 to report that that D6 would not be appointed as the AR of LCF.[2131]

Knowledge of the truth about LCF's so-called ISA bond

P3.309 As explained above, LCF decided to proceed with an ISA bond. On 20.11.17, D1 told D7 that HMRC had given the necessary approval in respect of the ISA bond and that Lewis Silkin had finalised the ISA bond documentation.[2132]

2129 SUR00084244-0001

2130 SUR00084397-0001

2131 SUR00090585-0001

2132 SUR00086365-0001

Source: Mouseinthecourt.co.uk

P3.310 There were two particular legal rules of relevance to ISA bonds at the time. First, in order to qualify for tax-free status under the ISA Regulations 1998, the bonds had to be transferable: Regulation 8A of the ISA Regulations 1998. Secondly, any person issuing *transferable* bonds for a total consideration of more than €8 million over a period of 12 months had to publish a prospectus: see Articles 2 and 3 of the Prospectus Regulation 2017/1129. (That limit was previously €5 million under the Prospectus Directive, implemented in the UK through the Financial Services and Markets Act 2000 ("**FSMA**"), but was raised to €8 million in the UK under the Prospectus Regulation.)

P3.311 Accordingly, if an issuer of bonds of more than €8 million over a period of 12 months were to issue *non-transferable* bonds, to avoid having to publish a prospectus, those bonds would not qualify for tax-free status under the ISA Regulations and could not accurately be marketed as ISA bonds.

P3.312 The so-called ISA bonds issued by LCF were expressly non-transferable. It was decided that they should be non-transferable in order to avoid having to publish a prospectus. However, this had the effect of preventing those bonds from having tax-free status under the ISA Regulations 1998. As a result, they could not accurately be described as ISA bonds. Any representation to the effect that LCF's ISA bonds enabled investors to earn interest on a tax-free basis was therefore inaccurate.

P3.313 As explained above, that was the reason given by the FCA in the first supervisory notice for requiring LCF to withdraw the ISA bond.[2133] The FCA explained:

> "*In order for bonds to be qualifying investments for an innovative finance ISA they have to meet certain conditions, including that they are transferable (Regulation 8A(2) and (4) of the Individual Savings Account Regulations 1998/1870). LCF's website makes clear that its Bonds are non-transferable. It therefore appears that LCF's Bonds to not qualify to be held in an ISA account and that investors are being misled by being told the interest they earn will be tax free*".

[2133] MDR00195123

Source: Mouseinthecourt.co.uk

P3.314 As explained below, D5, D6, D7 and Kerry knew that LCF's so-called ISA bonds were not eligible for tax-free status and that the claims made by LCF (and by D6's sales team on LCF's behalf) about "tax free" status were untrue. D1 had always known this.[2134]

P3.315 This part of the story begins on 20.11.17 when D7 told D5, Kerry and others that HMRC had approved LCF as an ISA manager.[2135] D5 said, "*That is good news*".[2136]

P3.316 Kerry said, "*I'm impressed. Blackmore's lawyers told us that it was necessary to have a retail prospectus but Andy has obviously found another route. Great news!*"[2137]

P3.317 D1 emailed D5, Kerry, Jo Baldock and others to say, "*See below from HMRC, another chapter in LCF fundraising is beginning*".[2138] D5 said, "*Brilliant news*".[2139]

P3.318 Kerry asked Kobus (who dealt with compliance for LCF) how LCF had managed to avoid the requirement for a prospectus. He told her that LCF's ISA bond was not transferable and that the requirement for a prospectus did not apply.[2140]

P3.319 Roger Blears of RW Blears LLP had been advising Blackmore on its retail prospectus.[2141] Kerry looked back at her notes of her discussions with Roger Blears and found that bonds must be transferable to be tax-free under the ISA Regulations 1998 and that this was the effect of Regulation 8A(4) of the ISA Regulations 1998.[2142]

P3.320 If LCF's ISA bond was non-transferable, to avoid the requirement for a prospectus, then this meant that it did not qualify for tax-free status under the ISA Regulations 1998.

2134 MDR00024974

2135 SUR00086365-0001

2136 SUR00086370-0001

2137 SUR00086380-0001

2138 MDR00112765

2139 SUR00142769-0001

2140 MDR00115449

2141 MDR00115449

2142 MDR00115449

Source: Mouseinthecourt.co.uk

P3.321 Kerry spoke to Roger Blears to check this point with him. He was adamant that a bond had to be transferrable to qualify for tax-free status under the ISA Regulations 1998.[2143]

P3.322 Kerry emailed Kobus on 01.12.17:[2144]

> "*When you mentioned that the bonds are not transferable and this is how you have been able to offer £50m and not just up to the s.21 exemption of EUR 5m; I just looked back at my notes to double check and I found that our solicitor had given us contradictory advice: ISA Regulations 8A(4a) state that bonds must be transferable to be offered as an IF ISA. The only exemption being to issue under the EUR 5m exemption. I have just got off the phone to Roger Blears who has been advising Blackmore on their retail prospectus to double check my understanding and he was adamant that this is the case. I thought I should let you know …*"

P3.323 Kobus disagreed (cc D1). Kerry emailed Jo Baldock, D5 and D7 to say:[2145]

> "*I could quote the legislation back at him explaining why (as 3 separate solicitors explained to me) he isn't exempt from the EUR 5m limit. However, it's not appropriate for me to push it and ultimately we did our job by double checking. So as directed by Kobus and Andy we do have a £50m limit which is really fantastic news. Is there a risk that this cause a big issue down the line having to repay bondholders over the EUR 5m and possibly having to write to all to explain? Possibly but I suspect this risk is low because he is nearly ready with his retail prospectus and once he submits that in two months' time he could have a new ISA offering anyway*".

P3.324 D5 said, "*It's great news!*"[2146]

P3.325 Kerry replied, "*Yes in a strange way this is fantastic news!*"

P3.326 Jo Baldock drafted an email about the LCF ISA bond to be sent to existing LCF bondholders.[2147] As well as stating that the ISA bonds were tax free, Jo's draft email

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[2143] MDR00115449

[2144] MDR00115449

[2145] MDR00115449

[2146] MDR00115449

[2147] SUR00087339-0001

Source: Mouseinthecourt.co.uk

said, "*Please be aware that this initial offer is limited to £50 million total investment and we're expecting a high demand*".[2148]

P3.327 D7 asked Jo Baldock, "*Isn't the limit 5m not 50 on this one?*"[2149] D7 then saw another version referring to *"£50 million total investment*" and said to Jo, "*Again, 5m raise*".[2150]

P3.328 Jo Baldock responded to D7, "*All been checked out with Kobus and questioned by Kerry and apparently this is correct. Just as well as the phones have been ringing off the hook since 10am!*"[2151] D7 replied, "*They've got it wrong, you have to issue a full prospectus to do 50m. What does the IM say?*"[2152]

P3.329 Jo Baldock provided D7 with the email chain containing the exchanges between Kerry and Kobus.[2153] D7 responded, "*Thanks jo, it's there* [sic] *problem*". Jo Baldock replied, "*Exactly, we have evidenced that we have challenged it that's all we can do*".

P3.330 Kerry also sought to check the point with a solicitor called Mark Holleran, who decided to consult Roger Blears. On 10.12.17, Roger Blears replied:[2154]

> "*There are two offers: (1) Non-transferable securities – series 1 ISA, 3-year 8% Bonds; and (2) Non-transferable securities – series 2 ISA, 2-year 6.5% Bonds*
> ***Both IMs have been approved as financial promotions pursuant to section 21 FSMA. The target raise is £50 million in each case. They are not prospectuses. There is no need that they should be because the bonds being issued are not transferable and the Prospectus Rules only apply to transferable securities.***
> ***On page 7 of each IM there is a statement that investors are able to hold the Bonds in a LC&F innovative Finance ISA. However, the ISA Regulations provide that debentures (i.e. bonds) may only be held in an innovative ISA account if the conditions in Regulation 8A(4) are met and the first condition is that the debenture is a transferable security. See page 54 on the attached document which is a consolidated version of the ISA regs which I printed off in April when we were first instructed.***

2148 SUR00087339-0001

2149 SUR00087339-0001

2150 SUR00087341-0001

2151 SUR00087341-0001; MDR00115377

2152 MDR00115381

2153 MDR00115449

2154 SUR00143410-0001

Source: Mouseinthecourt.co.uk

Jake is the ISA expert and so in case there has been a recent amendment to the ISA regs which enables bonds to be held in an IFISA account even where they are not transferable I am copying Jake into this email with the request that he confirms whether or not he knows of any rule change which dispenses with the need for IFISA bonds to be transferable.
This tax point aside, if IFISA bonds are transferable then a company can issue up to €5million in any rolling period of 12 months without the need to publish a prospectus.
I have confirmed this advice to Kerry on several occasions in the last few weeks.
If LC&F are doing something clever which we have missed then we should learn what it is and copy them. I have not as yet read the IMs from cover to cover. If you would like me to do so I gladly will but I think this preliminary point needs to be addressed first.
Jake, please can you opine on the ISA regs".

P3.331 On 11.12.17, Jake sent an email to Mark Holleran and Roger Blears to confirm that it was necessary for the bonds to be transferrable.[2155] He added: [2156]

"*Ineligible securities being held within an ISA can result in the ISA manager receiving penalties, and the tax saved being charged to the ISA manager; the aggregate of these can create a large potential liability for the ISA manager*".

P3.332 Mark Holleran forwarded the email chain to Kerry, explaining that "*the bonds are clearly stated in the IM on page 2 to be non-transferrable which both Jake and Roger are telling us is not allowed for ISAs*".[2157]

P3.333 Kerry told Mark Holleran that Lewis Silkin had been advising LCF in connection with LCF's ISA bonds. She said, "*Perhaps LCF have got this wrong but this surprises me because Lewis Silkin are a great firm*". Mark Holleran commented (cc Kerry) that Lewis Silkin were "*not specialists in this area*".

P3.334 Mark Holleran forwarded Kerry's email to Roger Blears, who replied (cc Kerry), "*the reality is that LC&F may simply have missed the point about transferability under the IFISA Regs … I am inclined to think LC&F have simply missed the point on transferability and/or that their offer documents are a sham attempt to sidestep the*

[2155] SUR00143410-0001

[2156] SUR00143410-0001

[2157] SUR00143410-0001

Source: Mouseinthecourt.co.uk

prospectus directive". Mark agreed, adding in a message to Pat McCreesh, "*I really do think that they have missed the point here*". Mark forwarded this email chain to Kerry.

P3.335 On 20.02.18, Kerry raised the point again with Kobus, who told her (cc D1 and D5), "*We don't need a prospectus, because our securities are not transferable … The ISA is only a tax break on top of the underlying security. The ISA is not the security and does not have any bearing on the structure of the underlying security*".[2158]

P3.336 Kerry was not satisfied with this response, so she checked the point again with Roger Blears, who confirmed his advice, explaining on 20.02.18: "*LCF seem to be selling non-transferable bonds in order to avoid the prospectus directive and yet claiming they qualify for holding in an IFISA notwithstanding that IFISA eligibility requires bonds to be transferable!!*"[2159] Roger suggested that Kerry email Kobus in these terms and tell him expressly that there was "*a serious problem here*".

P3.337 D6's sales people sold the LCF ISA bond to members of the public in large numbers. The main selling point in respect of the LCF ISA bond was always that the interest paid by LCF to bondholders would be **tax free**. It is extraordinary that D5, D6, D7 and Kerry allowed D6 to continue to sell the LCF ISA bond. They knew that this central claim was not true and that the so-called ISA bond was in fact no such thing. That the FCA ultimately shut LCF down on this basis must have come as no surprise to them.

LCF 2, part 1

P3.338 At around this time, D5, D7, Kerry and Jo Baldock were engaged in another project involving D2 and D4 which came to be known as "LCF 2".

P3.339 The motivation for LCF 2 was the concern that LCF might collapse at some point in the future. In his oral evidence D5 accepted that he was concerned that LCF might be shut down by the FCA or might become insolvent.[2160] They wanted to have a back-up bond

[2158] MDR00130647

[2159] SUR00093452-0001

[2160] Day 31/page 56/lines 9-14 **[A5/31/14]**.

Source: Mouseinthecourt.co.uk

operation ready and waiting to seamlessly replace LCF in such a scenario in order to ensure that the flow of monies to D2, D4 and D6 was not interrupted. In D5's words, LCF 2 would be the "*LCF back-up bond*".[2161]

P3.340 The process began in late 2017. They incorporated a new company, Countrywide Corporate Finance plc (company number 11055513), on 09.11.17. Paul Sayers was appointed as a director. In or around mid-November 2017, D5 and D7 had a meeting with D2 and D4 to discuss this project. D7 typed up his notes of the meeting and sent them to D5 on 24.11.17.[2162] D7 made clear in his notes that "*CCF will be a back-up in the event of LCF having any issues in the future*".[2163] D7 also mentioned that he was not convinced on the name 'Countrywide' and thought that they could do better.

P3.341 On 11.12.17, D7 and D2 spoke several times about the LCF 2 project.[2164] D7 reported this to D5.[2165] D7 also told D5 that he was "*researching various corporate lenders online to get a feel of the content and look of what other companies are doing*".

P3.342 He also said, "*Spencer is seeing Andy this afternoon and will be in touch afterwards to let us know how Andy responded to the new company being set up*".

P3.343 D7 seems to have anticipated that D1 might not respond well to this news. At this time, D1 was not going to be involved with LCF 2. It was proposed that D5's former colleague, Mike Tovell, would head up the new operation. D5's meeting notes of 02.01.18 stated: "*LCF 2 (currently Countrywide Corporate Finance) in development with Mike proposed to head up. New name required to replace Countrywide*".[2166]

P3.344 On 09.01.18, D5 and D4 discussed the choice of name and the non-involvement of D1. D7 reported back to D5 and Kerry afterwards:[2167]

2161 SUR00090053-0001

2162 SUR00086628-0001; SUR00086629-0001

2163 SUR00086629-0001

2164 SUR00088439-0001

2165 SUR00088439-0001

2166 SUR00089456-0001

2167 SUR00090042-0001

Source: Mouseinthecourt.co.uk

> "*I met Spencer earlier but unfortunately Simon HK wasn't available. Spencer said he was not bothered about the name 'Countrywide' and said we can rebrand the company anyway we like. He also said it makes sense to have a clear divide between the new co and LCF, with this in mind we will not be using Andy to approved* [sic] *the marketing material …*
> *He was not aware of a business plan for the new company and suggested I call Simon in the morning which I will do. I suspect there is no plan in place and we will need to build this from scratch. I will send another email once I have spoken with Simon*".

P3.345 Subsequently there was some discussion about using the name Portland Corporate Finance plc,[2168] but ultimately the name Westminster Corporate Finance plc was chosen.[2169] D5 commented, "*I love the new name*";[2170] "*It's perfect!!!*"[2171]

P3.346 There was continuing discussion about the identity of the CEO of this new company. There was initially discussion about using Neil Harris[2172] or John Lutterloch.[2173]

P3.347 On 29.01.18, Kerry suggested to D5 and D7 that a man called Dave Woodcock would be a good choice, adding, "*I believe he has the balls for the risks involved*".[2174]

P3.348 D7 replied to Kerry (cc D5), "*Thanks Kerry but they won't agree. They want their own man, so funds get utilised their way*".[2175] D5 agreed, saying, "*Yes, precisely what John says*".[2176] D7 reiterated to Kerry, "*They won't agree, will explain why face to face*".[2177] D5 did not want to accept in his oral evidence that Westminster Corporate Finance was

[2168] MDR00123295; SUR00091490-0001

[2169] SUR00091490-0001; SUR00091574-0001; SUR00091590-0001

[2170] SUR00091492-0001

[2171] SUR00091497-0001

[2172] MDR00123295

[2173] SUR00091490-0001

[2174] SUR00091509-0001

[2175] SUR00091510-0001

[2176] SUR00091511-0001

[2177] SUR00091514-0001

Source: Mouseinthecourt.co.uk

going to be raising funds for D2 and D4 but reluctantly admitted that it was possible that he did know that this was the case:[2178]

9 Q. You knew that Westminster Corporate Finance was going to
10 raise monies for Simon and Spencer, didn't you?
11 A. I'm not quite sure how the connections lined up. What
12 I was sure about, and what I can definitely see from
13 here, is, we were hoping for another product. But, as
14 you will see, and you will see in further communication
15 here, although we were offered the opportunity to get
16 involved and help build them one from the start, from
17 the ground up, we were trying to make this a better
18 product, because that's what attracts funds, better
19 products. Obviously, with your fraud optics on, you
20 know, various things here, you know, about, you know,
21 these people were trying to put in place, and everything
22 else, that's just Kerry with her banking background
23 trying to recommend someone --
24 Q. Yes, and --
25 MR JUSTICE MILES: Sorry, Mr Careless, again, could you try

1 and focus on the question and answer that, and then, of
2 course, if you want to add anything, do so. But just
3 focus on counsel's question. Do you want to ask it
4 again, Mr Robins?
5 MR ROBINS: Yes, my Lord. You knew Westminster Corporate
6 Finance was going to raise monies for Simon and Spencer,
7 didn't you?
8 A. Possibly.
9 Q. Well, when John said:
10 "They want their own man so funds get utilised their
11 own way", that's what you understood him to mean, isn't
12 it?
13 A. I think so.

P3.349 D7 seems to have been concerned not to say any more in writing. D5 shared this concern, adding, "*Can we stop the emailing and discuss in the morning please*".[2179] D5 did not accept in oral evidence that he was concerned about there being a written explanation of D7's comments but it is obvious why he asked to "*stop the emailing*": [2180]

14 Q. That's why you didn't want it to be explained in
15 writing, isn't it?
16 **A. No.**
17 Q. John, you would agree, isn't prepared to put the
18 explanation in writing. He says "Will explain why face
19 to face", doesn't he?
20 **A. I think you might be reading too much into that,**

[2178] Day 31/page 59/line 9 – page 60/line 13 **[A5/31/15]**.

[2179] SUR00091516-0001

[2180] Day 31/page 60/line 14 – page 61/line 19 **[A5/31/15]**.

Source: Mouseinthecourt.co.uk

21 **Mr Robins.**
22 Q. You say, "Can we stop the emailing" because you agree
23 you don't want it to be put in writing?
24 **A. No, you will see plenty of writing about this in various**
25 **other ways. That's just not true.**

1 Q. Well, you knew that --
2 **A. That email is at quarter past 5 at night. I would like**
3 **some peace and quiet and I'd be happy to discuss it in**
4 **the morning. Obviously, with fraud optics, it looks**
5 **like I'm looking ahead.**
6 Q. How many hours a day did you tell us that you work?
7 **A. Well, I did a lot of hours, Mr Robins, yes, that is**
8 **true.**
9 Q. You wouldn't have had any problem whatsoever with
10 someone emailing you at 13 minutes past 5, would you?
11 **A. I would have much preferred -- by reading it, it looks**
12 **like I wanted to speak about it in the morning with**
13 **everyone there, but okay.**
14 Q. You're trying to come up with some explanation when the
15 real explanation is staring you in the face: you didn't
16 want it to be explained in writing what John meant when
17 he said "They want their own man so funds get utilised
18 their way"?
19 **A. No, I don't agree with that.**

P3.350 On 08.02.18, D5 sent an email stating, "*Westminster: This need setting up quickly and holding in reserve a backup to LCF*".[2181] Jo Baldock said she would help.[2182]

P3.351 Subsequently there was some concern about using Paul Sayers as a director of the new company. He had previously been a director of LCF. This connection was not ideal. D7 said to Kerry on 01.02.18, "*Hold off on including Paul Sayers, I don't want to use him as he was noted as a director with LCF. I will speak with Simon regarding this*".[2183]

P3.352 There was also a concern about mentioning D4's name in this context. On 16.02.18, D7 emailed D5 and Kerry with the subject "*WCF*" to say, "*Simon has called regarding the meeting on Tuesday, he said can we not mention SG to any of the board members, his name will not be involved in the company*".[2184] (D2 also told D7 that one of LCF's borrowers, Prime RDL, had been "*buying assets from Simon/Spencer's company*".[2185])

[2181] SUR00092350-0001

[2182] SUR00092352-0001

[2183] SUR00144351-0001

[2184] SUR00144610-0001

[2185] SUR00144610-0001

Source: Mouseinthecourt.co.uk

Further concerns on the MSE forum

P3.353 At around this time, there was another post about LCF and D6 on the MSE forum:[2186]

> "*I mentioned Surge Financial Ltd in an earlier London Capital and Finance post above. This company is responsible for the marketing and administration of the LC&F mini-bond investment. It mans the LC&F 0800 number. According to Companies House Annual Return, Surge has two officers, Paul Careless and Kerry Jane Graham. The company has on average 10-15 employees according to LinkedIn, although more than this number is said to be involved with LC&F. Surge, based in Brighton, has been in existence for three years and according to Companies House Annual Accounts has made in the last financial year most of the 1.5 million pounds income since formation. Perhaps that has mostly come from its employer, LC&F. Credit where due, good performance for a start-up company by the officers and staff.*
> ***We have all heard of the adage: don't bite the hand that feeds you. However, you would think the officers and staff of Surge would want to know something about how LC&F, a commercial lender, a very small start-up with debts and no previous track record of SME lending is making the money to pay Surge, company expenses and profits, and the investor interest, especially as that is not clear at all. Yet staff in Surge appear to have no information about the bond related commercial lending business of LC&F, even basics such as how many lending team employees, who they are and where they are based**. In fact there are only two employees in LC&F, both students according to LinkedIn.*
> *I can understand Surge Financial not pursuing it, but it should be careful. If LC&F does fail and any wrongdoing or negligence is shown in the receivership process then for sure the daily newspapers will jump on it, as in the case of recent mini-bond failures (Secured Energy Bond and Providence Financial), and Surge could end up being a casualty in the media fallout.*
> ***If I was an officer in Surge Financial that would make me a little concerned. Why? For the same reason investors and prospective investors in LC&F should be concerned. Everything depends on the success of this vague commercial lending business: company profits, wages, contractor payments, tax payments, investor periodic interest and repayment of capital.***
> ***Yet LC&F have not disclosed evidence of the* [SME] *lending business existence** … ***Data protection is a lame excuse as data protection laws in the UK only apply to live individuals not to companies.***
> ***Many companies like to showcase their trading clients names on their websites**, including the company website of one former director of LC&F. **You see many invited investor Feefo reviews on the LC&F website. Do you see any names of the hundreds of companies LC&F is lending investor capital to on the LC&F bond website? No, only numbers, how many and how much and not a single loan failure, even though the LC&F loan interest rate as high as 12 to 20 per cent, well above average, would indicate a greater lending risk.***
> *It is true that employees and directors are bound re disclosure by their employment contracts, but **we are here talking about disclosure of the basic***

[2186] MDR000129338

Source: Mouseinthecourt.co.uk

> ***fundamentals of the very existence of a business which is supposedly the only source of LC&F income and bond interest payments***. *But what if a company had no choice but to not provide or disclose evidence of a commercial business because the business actually did not exist?* ***The only business that can be really seen to exist in the case of LC&F is the bond marketing business exclusively dealt with by the LC&F website run by the contracted Surge Financial. Millions of pounds of bondholder capital brought in by Surge for LC&F with no proof of what it is actually being used for and no proof where the company earnings and capital interest payments are coming from.*** *...*
> *If I invest in a company especially a start-up I expect honesty, openness, disclosure, verified trading facts and figures, and so on from the beginning. Like others I get very concerned not just for me but for other potential investors if legitimate questions are answered evasively and there is no proof of trading. If I ask what is one plus one, I expect the answer to be two not three or whatever evasiveness or excuse as an answer. Never rely on just a company statement as to what are its business doings. Never assume it is true. Always seek verification, third party preferably. Due diligence is essential. Otherwise you may be risking all your investment returns and capital on a promise. Investment is not the same thing as gambling*" (emphasis added).

P3.354 D7 reviewed this and commented to D5, "*It mentions that there is very little evidence that LCF lends to SMEs as there is no lending site. Not sure if this is an issue or not*".[2187]

P3.355 D7 then added, "*It does bring up a good point about the lending site, this is why I have been pushing for WCF to have a strong lending element to their website*".[2188]

P3.356 D5 responded (cc Kerry and Jo Baldock), "*How long have I been saying that LCF needed a client site for lending????*"[2189] Jo Baldock replied, "*I know! FOREVER!!!*"[2190]

P3.357 Kerry reviewed the new MSE post. She commented to D5 and D7:[2191]

> "*One negative criticism was that Surge could be turning a blind eye to get fees for marketing a bad asset. The criticism is all about speculation that LCF could be a sham, mostly based on the fact that there is no evidence of who LCF lend to which the writers consider to be strange. They don't like the fact that account managers*

[2187] MDR00129284

[2188] MDR00129289

[2189] MDR00129319

[2190] MDR00129319

[2191] MDR00129307

Source: Mouseinthecourt.co.uk

will not answer even the most basic questions about who many companies have been lent to".

P3.358 Ashleigh Newman-Jones circulated a link. D5 could not open it and asked, "*What is it?*"[2192] Ashleigh explained (cc D5, D7, Kerry and Jo Baldock), "*It's a lending site that Andy half set up but never completed*". Kerry said, "*I know we don't want call to actions that take investors away from the bond website but possibly we need a link to this corporate website in some place? … Would this tick a box? More importantly, we must have a case study, surely we can press to get just one case study, JRM?*"

P3.359 D7 replied, "*Yes, I'm sure we can get a case study, I will ask Andy … A lending site should have one clear message – LCF wants to lend money to businesses, that's it*". D7's confidence was misplaced. LCF never disclosed the name of a single borrowing company and never provided any case studies. D5 knew that LCF was lending to connected parties and so would have understood D1's reticence in providing this information.

P3.360 On 14.02.18, D7 emailed D5 (cc Kerry):[2193]

> "***Paul, I've just been talking to Kerry about how to protect ourselves better following the blog that was on MSE.***
> *We need to create a role for an individual who has the responsibility of ongoing due diligence on our clients – LCF and BB.*
> *The information that we should be collecting is quarterly management accounts, company responses to any bad press or blogs, recording of minutes when meeting our clients etc.. This should be collated and put in a shared management file.*
> ***If one of our client bonds fail in the future, we could then show a history of ongoing DD. This won't help the investors but will help protect our reputation and soften the blow if a bond does fail***" (emphasis added).

P3.361 D5 replied, "*We already do what we can. For example I have Mark Partridge request accounts, underlying security reports from both bonds. I have been running this for two years*".[2194] In other words, Mark Partridge's questions to D1 were never about getting to the truth; rather, they were about creating a paper trail to protect themselves in the event

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[2192] MDR00129319

[2193] SUR00092845-0001

[2194] SUR00092850-0001

Source: Mouseinthecourt.co.uk

of LCF failing. They thought that there was such a real risk of LCF's collapse as to justify the effort of creating such a paper trial.

P3.362 D5 explained to Kerry that it could be helpful in future to be able to show that they had asked D1 for information about LCF's position. Accordingly, Kerry emailed D1 (cc D5, D7 and Mark Partridge):[2195]

> "*Paul is away at the moment but has asked me to contact you …* ***Can you please confirm when the audited accounts will be ready? In the interim, please can you give us information about current performance and the security, ideally management accounts and a summary of the loan book? We are processing large amounts of investor funds and need to be assured of the current position as a duty of care to your investors***" (emphasis added).

Concerns about LCF's accounts

P3.363 LCF's audited accounts had again been delayed. On 30.10.17, Mark had told D5 and Steve, "*Accounts were due for filing tomorrow. But on 16th October they changed their accounting reference date by 1 day to 29th April. The change gives them an extra 3 months' grace. New filing date 16 January 2018*".[2196]

P3.364 On 11.01.18, D5 was told that "*LCF have changed their year-end date again to get another 3 months grace before filing*".[2197] On 18.01.18, D7 told a colleague, "*I don't think we will get the accounts anytime soon, Andy has altered his filing date by 3 months*".[2198] On 13.02.18, Katie Maddock of LCF had told Jo that LCF's accounts would be signed "*this week*".[2199] D5 commented to Jo, "*This week, let's see*".

P3.365 On 14.02.18, D1 signed LCF's annual report and financial statements for the year ended 30.04.17 disclosing a profit of £273,234 for the year and net assets of £298,827 as at 30.04.17. [2200] LCF was said to have six employees (including directors), up from two in

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2195 MDR00129373

2196 SUR00142491-0001

2197 D7D9-0007083

2198 SUR00090663-0001

2199 SUR00092670-0001

2200 MDR00004384; MDR00130367; SUR00144675-0001

Source: Mouseinthecourt.co.uk

the previous year. It had a wages and salaries bill of £87,869 and had paid a sum of £8,790 in respect of social security, with directors' remuneration being nil.

P3.366 D1 asserted in the strategic report that LCF had a total of 11 corporate borrowers (up from five in the previous year) and held security worth £284,725,329 as at 30.04.17. The auditor's statement made clear that the strategic report had not been audited.

P3.367 D7 emailed D5 and Kerry (cc Jo Baldock) on 19.02.18 to say, "*I have just spoken with Andy, he said the LCF accounts have now been fully audited and are available at companies house. I have checked, they are not on there at the moment. He said the revised security figure is 287 million with a loan to value percentage of 21. I asked about a case study for the website and he said he is struggling to find a suitable example*".[2201]

P3.368 Jo Baldock emailed sales@lcaf.co.uk to say, "*We have now had confirmation from Andy that the current security figure is £287m. The accounts have now been signed off and submitted to companies house they should be available to view in the next 48 hours*".[2202]

P3.369 D5 and Kerry each asked Mark Partridge to "*take a look at LCF's accounts which have allegedly been filed yesterday*".[2203] D5 did not even believe D1 when the latter said that he had filed his accounts. He knew that D1 was completely untrustworthy. In his oral evidence on this issue, D5 said:[2204]

> 22 Q. You say "allegedly" because you don't trust Mr Thomson;
> 23 right?
> **24 A. I mean, I -- I -- even if Mr Thomson had -- you know,**
> **25 had other issues, he at least had the sort of mind-set**
>
> **1 to get the very best -- two of the very best auditors in**
> **2 the world, the very best lawyers. You know, it is very**
> **3 difficult for me to sort of -- I can't sit here and just**
> **4 say that this -- you know, without retrofitting things.**
> **5 At the time, I thought, despite some of his personality**
> **6 issues, I thought he was outsourcing to the best and,**
> **7 therefore, I took some comfort from that.**

2201 SUR00093302-0001

2202 MDR00130309

2203 SUR00093339-0001; MDR00224100; SUR00144674-0001

2204 Day 31/page 94/line 22 – page 95/line 7 **[A5/31/24]**.

Source: Mouseinthecourt.co.uk

In this part of his oral evidence, D5 was repeating his prepared cover story but his language was telling. He had to "*take comfort*" from things because he was inherently uncomfortable with LCF from the outset. He knew from the outset that there was a real risk it was a "*rinse*" or a Ponzi scheme and over D6's engagement by LCF, he learnt more and more which confirmed his suspicions. He "*took comfort*" from the use of auditors because they provided a useful fig-leaf and gave him an excuse to avert his eyes from the facts that he knew and which the engagement of auditors did not alter.

P3.370 Mark Partridge emailed D5 and Kerry to say: [2205]

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

P3.371 D5 sought to say that he remembered seeing this email but it became apparent that it had been specifically drawn to his attention by Kerry Venn after LCF's collapse and D5's arrest as part of an attempt to find exonerating materials. Significantly, whilst claiming that he could remember receiving Mark's email, D5 could not remember receiving any of the subsequent emails on that day to which reference is made below. [2206]

P3.372 Shortly after the time of Mark's email, Jo Baldock emailed Mark (cc D5) to draw his attention to five items that she thought would concern prospective bondholders.[2207]

P3.373 Jo Baldock had spotted major inconsistencies in D1's assertions.

P3.374 For example, D1 had been saying throughout April and May 2017 that LCF had security over assets worth £215 million (and, indeed, LCF had advertised the figure of £215 million in *The Times*, *The Telegraph* and *The Financial Times*).[2208]

[2205] MDR00224100

[2206] Day 31/page 96/line 14 – page 101/line 14; page 108/line 25 – page 109/line 16 **[A5/31/24]**.

[2207] MDR00130465

[2208] MDR00082474; MDR00085731; MDR00085733; MDR00085742; MDR00085746; MDR00085766; MDR00085773; MDR00085774; MDR00085780; MDR00085781; MDR00085804; MDR00085807; MDR00087050; MDR00087051; MDR00087052; SUR00073529-0001; SUR00073530-0001

Source: Mouseinthecourt.co.uk

P3.375 Now, however, D1 was saying in the accounts that LCF had held security over assets worth £284,725,329 as at 30.04.17.

P3.376 Jo drew this to the attention of Mark and D5, saying, "*The asset figure quoted was only confirmed to us the recent up to date figure yesterday by Andy , back in April 2017 we were quoting an asset figure of £215m as confirmed by Andy at the time?*"[2209]

P3.377 Jo also knew that D1 confirmed on numerous occasions that LCF had a large number of borrowers. Among other things, D1 had said, "*As at the beginning of May 2016 LCF has made 121 loans … to all sectors*" with an "*average loan size of c.£75,000*".[2210]

P3.378 D1 had also confirmed to D7 on 03.08.16 that there were "*around 120 loans currently issued*".[2211] And D1 had apparently told D6's sales people in or around June 2017 that LCF was lending to around 150 companies.[2212]

P3.379 Now, however, D1 was asserting there that had been "*a total of 11 corporate borrowers*" in the year ended 30.04.17 and only five in the previous year.

P3.380 Jo drew this to the attention of Mark and D5, saying, "*Page 1 states that LCF only lent to 11 companies , we are quoting many more than this to our clients (100's) – is there any further explanation to this?*"

P3.381 Jo also pointed out, "*The accounts quote there are 6 employees with salaries of £87k but the directors took no funds – clients will ask how the directors made an income*".

P3.382 Other sales people working for D6 became concerned about the apparent uncertainty concerning the basic facts of LCF's lending and security.

2209 MDR00130465

2210 MDR00041314; MDR00041257; SUR00021583-0001

2211 MDR00052599

2212 SUR00144764-0001

Source: Mouseinthecourt.co.uk

P3.383 Aaron Phillips collated the sales team's questions, including: "*How many companies do we currently lend to? We were told ~150 companies in June 2017*"; "*Why would a company borrow from LC&F at our high rates?*"; "*with less active loans over longer periods of time, and a fee paid to surge, how do LC&F make a profit after paying high interest rates to bondholders?*"[2213] Clearly, far from being reassuring as D5 sought to claim, the EY accounts had put the cat amongst the pigeons by revealing that what D1 had said to D6's sales people – and what they had in turn said to members of the public to persuade them to buy LCF bonds – was completely untrue. Further, these were important details. The number of borrowers is a highly material fact because it has a significant bearing on the diversification of the portfolio and the concentration of risk. What the EY accounts therefore revealed was deeply troubling, not reassuring at all.

P3.384 Aaron sent his questions to Jo Baldock, who sent them to Kerry.[2214] On 21.02.18, Kerry sent an email to D1 raising these questions.[2215] Later, on 07.03.19, Kerry said that she had become aware of "*key inconsistencies from the 2016 communication and the 2018 audit*" and that she had raised these inconsistencies in her email to D1 on 21.02.18.[2216]

P3.385 Significantly, Kerry's email omitted the final question from Aaron's list, asking how LCF's business could possibly be sustainable, because D5 had told her to delete it. [2217]

10 Q. Then a number of questions. The final one:
11 "Due to the detail in the new accounts, a few
12 questions may arise recording the business model
13 itself -- with less active loans over longer periods of
14 time and a fee paid to Surge, how do LC&F make a profit
15 after paying high interest rates to [borrowers]?"
16 You agree that's a pertinent question?
17 **A. Yes, sir.**
18 Q. You understand what the questioner is getting at, don't
19 you?
20 **A. Yes.**
21 Q. You understand the questioner is concerned about the
22 fact that LCF's business model doesn't seem to make any
23 sense; yes?
24 **A. Well, I mean, he's asking for clarity to Andy and Jo on**
25 **the detail, yes.**

2213 SUR00144764-0001

2214 SUR00144763-0001

2215 MDR00131073; MDR00131077

2216 SUR00154633-0001

2217 Day 31/page 116/lines 10-25 **[A5/31/29]**; page 120/line 2 – page 123/line 11 **[A5/31/30]**.

Source: Mouseinthecourt.co.uk

…
Q. Let's look at the list of questions that Kerry sends. <MDR00131073>. It is an email that you are not copied into. Do you think you would have seen it?
A. Can I have one second just to read it, please? I don't know.
Q. Do you think you would have discussed it with Kerry?
A. Quite possibly.
Q. At the bottom, do you see a list of questions based on the document we saw earlier from the account managers, 1 to 5?
A. Yes, sir.
Q. Are you able to spot what's missing, or shall we have them up side by side?
A. Side by side, please. Or just tell me and -- I can't --
Q. Okay. The thing that's missing is the question you agreed is a pertinent question:
"Due to the detail in the new accounts, a few questions may arise regarding the business model itself -- with less active loans over longer periods of time, and a fee paid to Surge, how do LC&F make a profit after paying high interest rates to [borrowers]."
That's not there. Do you see?
A. Right, okay.
Q. So a question that's been raised by the account managers, but Kerry has left it out of her email. Do you have any ideas as to why she might have done that?
A. I'm afraid I'm at a loss, Mr Robins. I'm not sure.
Q. Do you think you told her not to ask that question because it was too contentious?
A. I can't recall.
Q. Can we look at <SUR00144774-0001>, please. Kerry explains to Jo, at the top of the page:
"I had to water down the AMs questions slightly as Paul thought my original email was too contentious, particularly this question:
"Due to the detail in the new accounts, a few questions may arise regarding the business model itself -- with less active loans over longer periods of time, and a fee paid to Surge, how do LC&F make a profit after paying high interest rates to bondholders?"
Kerry says, essentially, she is going to have to try to work out the answer for herself. Do you accept you told her that that question was too contentious and that it shouldn't be asked?
A. I may have asked her to water it down slightly because of the nature of their relationship, yes.
Q. What, Kobus and Kerry's relationship?
A. Andy and Kerry's relationship.
Q. She's sending -- oh, yes, she sent the email to Andy. So you say it was because of the nature of their relationship rather than the nature of the question? Is that what you're asking us to accept?
A. I'm not quite sure why she's put that there. If I have asked her to water it down, it would have been because of the tone of -- her and Andy were just water and oil, Mr Robins, and that's how I see it.
Q. It is not just water it down, is it; you asked her to delete a very pertinent question. "How on earth does this all make sense?", that's the gist of the question. You told her to delete that question, didn't you, not to

Source: Mouseinthecourt.co.uk

12 ask it?
13 **A. Yeah, I can't recall it, I'm not sure why. I don't**
14 **think it would have been a case of -- I think we would**
15 **have tried to water it down, frankly.**
16 Q. You didn't want her to ask that question because --
17 well, there are various possibilities: you would find
18 out that LCF's business model just didn't make sense and
19 you'd have to stop selling bonds; or maybe Andy and
20 Spencer would have got annoyed with you for asking
21 difficult questions and jeopardise your 25 per cent
22 commission. You just didn't want to rock the boat by
23 pointing out the obvious problem, did you?
24 **A. Mr Robins, when you meet Kerry yourself next week, you**
25 **will understand yourself why I would have asked her to**
do that. She is no wallflower and she would have -- it
2 **could have been more contentious than it needed to be.**
3 **I'm not sure I specifically told her, you know, other**
4 **than to water it down, dilute it slightly, and that's**
5 **something I would have been -- that would have been**
6 **a running theme, frankly. Part of a CEO's job is to try**
7 **and navigate that position between difficult**
8 **personalities and, as you have described earlier,**
9 **certain people, including Kerry, thought he was a twat.**
10 **So I tried to control the sort of -- you know, the sort**
11 **of atmosphere around it.**

P3.386 D1 failed to respond to Kerry's email in writing. In Kerry's words, D1 "*didn't reply, he was always reluctant to put anything in writing*".[2218] As explained below, he wanted to speak by telephone instead. After LCF's collapse, commenting on D1's reluctance to respond in writing, Kerry said that D1's conduct "*seems evasive in the extreme*".[2219]

P3.387 Kerry had other reasons to be unhappy. On 20.02.18 she had told Kobus that D6 wanted to perform more due diligence on LCF and asked for the provision of quarterly management accounts or a breakdown of LCF's loan book and a statement of assets and liabilities. These requests were refused. Kerry told D5 and D7.[2220]

P3.388 Kerry went back to Kobus the following day.[2221] She wrote:

> "*…On the subject of on going monitoring, we are keen to have a formal process in place but this should not in any way be onerous or invasive. If our suggestion of a quarterly P&L and Balance Sheet is not your preference how about a quarterly statement of assets and liabilities as a more streamlined / light touch compromise?*

[2218] SUR00154633-0001

[2219] SUR00154633-0001

[2220] SUR00093402-0001

[2221] MDR00130961

Source: Mouseinthecourt.co.uk

Why am I asking for this when we have the audited accounts signed off by Grant Thornton and you are FCA regulated? It is a best practice / safeguarding measure, we are now 9 months forward from the period the accounts document, we are averaging £10 to £12 million funds in to LCF on a monthly basis, the trend is showing that this can increase to circa £20 million a month. If our only update is on an annual basis, the business will have grown by more than 100% and the circumstances will have changed substantially. We are assisting this large volume of people to invest so we feel a moral obligation to make sure that the underlying investment continues to perform at an appropriate level to sustain LCFs obligation to investors…"

P3.389 In his oral evidence, D5 tacitly admitted that it was incorrect to say that the Ernst & Young accounts reassured D6. He said "*I mean, it was – I think it is because it was growing quite quickly at this stage, so there was more necessity to sort of have more information, I think, is the answer to that question.*"[2222]

9 Q. Mark says, "Well, good news". Jo says, "Hang on, what
10 about all these questions?". And then Kerry speaks to
11 Kobus and says, "We want to perform more due diligence".
12 That's probably what happened, isn't it?
13 **A. Probably.**
14 Q. You knew she was going to him, did you?
15 **A. Not Kobus, I'm not sure. I can't remember, Mr Robins.**
16 Q. Basically, he says no. He says he's not comfortable
17 providing such information to anyone. Do you remember
18 Kerry telling you she wasn't happy?
19 **A. I'm just reading it. Okay. I saw it in the previous**
20 **picture, yes.**
21 Q. At the top of the page, she says:
22 "A polite push back on my request for quarterly MI.
23 Not happy."
24 You would agree it is not correct to say you got the
25 Ernst & Young accounts, thought, "We can breathe a big

1 sigh of relief, cynicism goes out the window, no need?
2 For anything further"? That's not what happened, is it?
3 **A. I can't remember what happened at this stage, sorry.**
4 Q. You can see what's happened. Jo's read the questions,
5 Kerry's asked for further DD, Kobus has refused, she's
6 not happy?
7 **A. I don't recall what happened after this, Mr Robins.**
8 Q. Do you accept what I have just described is what
9 happened?
10 **A. Yes, sir.**

[2222] Day 31/page 117/lines 14-20 **[A5/31/30]**.

Source: Mouseinthecourt.co.uk

A "believability issue" about LCF's security

P3.390 In the absence of a written reply from D1 in respect of these questions and concerns, Kerry and D7 spoke to him on the telephone on 22.02.18.[2223] Kerry and D7 seem to have made this call from D6's offices: it was recorded; and there is a transcript.

P3.391 As regards the amount of the loans and the number of borrowers, D1 told them, "*Our loan book is 117 million off seven companies*".[2224]

P3.392 As regards the value of the security held by LCF in respect of these loans, D1 said:[2225]

> "*ANDY THOMSON:* ***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----***
> *JOHN RUSSELL-MURPHY: Yeah.*
> *ANDY THOMSON:* ***-- the security – the valuation of the security that we hold is a billion pounds.***
> *JOHN RUSSELL-MURPHY:* ***Is a billion?***
> *ANDY THOMSON: And going to take that – yeah.*
> *JOHN RUSSELL-MURPHY: Okay.*
> *ANDY THOMSON: And it takes that loan to value----*
> *JOHN RUSSELL-MURPHY: What, 11 per cent.*
> *ANDY THOMSON: -- down to----*
> *JOHN RUSSELL-MURPHY: 11.7.*
> *ANDY THOMSON: -- it – it's not a lot.* ***So then you've – then you've got – then – then you've got that – "that's too good to be true" questions****. So----*
> *JOHN RUSSELL-MURPHY: Well, yeah, that is from----*
> *ANDY THOMSON: -- so I'm trying to----*
> *JOHN RUSSELL-MURPHY: Yeah.*
> *ANDY THOMSON:* ***-- I'm trying to – to – to structure – restructure things, because I think in – in the – in the mid to high thirties is a nice comfortable level.***
> *KERRY VENN: Yeah.*
> *ANDY THOMSON:* ***And it's----***
> *JOHN RUSSELL-MURPHY: Yeah, definitely.*
> *ANDY THOMSON:* ***-- nice and believable.***
> *JOHN RUSSELL-MURPHY: It's – certainly.*
> *ANDY THOMSON:* ***You turn round a 117 million loan book and say our loan to value is 10 per cent, everyone's going to go, "Fuck off"****."*

[2223] SUR00125394-0001

[2224] SUR00125394-0001 page 28

[2225] SUR00125394-0001 pages 20-21

Source: Mouseinthecourt.co.uk

P3.393 On the day after the call, Kerry emailed Mark Partridge (cc D5 and D7) to say:[2226]

> "*Just to keep you in the loop, we had a call with Andy yesterday where we quizzed him ... He is going to put this in writing but on the phone he said: Current loans out: £117m;* ***Security: £1b (yes billion, not a typo)***" (emphasis added).

P3.394 D5 accepted that he was "*taken aback*" by the supposed security value of £1 billion and that it was a topic of conversation between him, D7 and Kerry.[2227] In cross-examination, D5 declined to say whether he believed it or did not believe it (notwithstanding the question being put to him repeatedly, including by the Judge), saying instead, "*I kindly submit that my answer is: I can't recall quite the specifics*".[2228]

P3.395 This information was soon contradicted. On 20.03.18, Kobus sent an email to D7, Jo Baldock and Kerry Graham (cc D1), the attachment to which stated, "*The secured asset values as at the end February 2018 was c.£300m*".[2229]

P3.396 The risk of LCF's collapse still loomed large in D5's mind.[2230]

> 24 Q. What you were particularly concerned about was that LCF
> 25 might go wrong in a way that gave rise to liability for
>
> 1 Surge?
> 2 **A. Yes, I would say that's fair.**
> 3 Q. That was still a real concern in your mind, even after
> 4 you'd seen the E&Y accounts on which you tell us you
> 5 placed so much reliance?
> 6 **A. I think it would have been an ongoing concern, yes.**
>
> …
>
> 18 MR ROBINS: Can we look at <SUR00164326-0001>. Is there
> 19 a previous page? Thanks. Mark emails Vicki, copying
> 20 you. This is the 6th, so just a couple of weeks after
> 21 the Ernst & Young accounts. He says:
> 22 "The thing that springs to mind is Surge's potential
> 23 liability should LCF go wrong. Whilst there is less
> 24 imminency as they have filed audited accounts I think it
> 25 is still worth looking at. I have spoken to some

2226 SUR00093580-0001

2227 Day 31/page 124/lines 1-5 **[A5/31/31]**.

2228 Day 31/page 124/line 6 – page 126/line 24 **[A5/31/31]**.

2229 MDR00136622; MDR00136624

2230 Day 31/page 128/line 24 – page 130/line 7 **[A5/31/32]**.

Source: Mouseinthecourt.co.uk

1 lawyers who raised some relevant points -- we can
2 discuss taking to the next stage."
3 When you saw this, you would have thought, "Yes,
4 he's making a very good point. I agree"?
5 **A. I'm not sure I would. It is Mark Partridge and --**
6 Q. Sorry, but your answers earlier were that --
7 **A. Okay, yes, then. Yes.**

Concerns about LCF's solvency

P3.397 The document circulated by Kobus on 20.03.18 also stated, "*We charge 1.75% on top of the bond interests and a 2% facilitation fee*".[2231]

P3.398 This must have been another major cause for concern. First, it was inconsistent with LCF's marketing materials, which said that LCF charged interest of 12% to 20% per annum on loans. Secondly, if true, it meant that LCF was inevitably insolvent.

P3.399 The business model as described by Kobus was completely unsustainable. Take a simple example of a bondholder investing £100,000 with LCF for three years at 8% per annum. 25% is paid to Surge immediately. The remaining £75,000 is lent to a borrower for (say) three years. According to Kobus, LCF charges a facilitation fee of £1,500. The borrower also pays interest on the sum borrowed of 9.75% per annum in the total sum of almost £22,000over the term of the loan. On maturity, the loan is repaid. LCF has now received a total of £98,500 from the borrower. But, at the same time, LCF is liable to pay £124,000 to the bondholder in principal and interest, leaving it £25,500 short.

P3.400 The only way in which LCF's business model could have made sense even in theory would have been for LCF to require the borrowers to pay D6's commission as well. But that would have resulted in a total one-off fee of 35.3% of the amount of the loan, in addition to interest on the loan. And there had been nothing in any of LCF's materials or in D1's explanations or elsewhere to suggest that this is what was happening.

P3.401 After LCF had collapsed and gone into administration, Kerry stated that she had been completely unaware that LCF was in fact requiring LCF's borrowers to pay D6's

[2231] MDR00136622; MDR00136624

Source: Mouseinthecourt.co.uk

commissions.[2232] But if she thought that LCF's borrowers were *not* paying D6's commissions, she must have thought that LCF was inevitably doomed to insolvency.

P3.402 An exchange between Kerry and D7 in mid-2018 suggests that the prospect of LCF's insolvency loomed large in their minds in this period.

P3.403 On 07.06.18, Kerry told D7 that a sale of D6 to D4 for £30 million was "*currently floating around as a good plan*".[2233] She said that it would be good to sell D6 before regulation prevented LCF from paying such high commissions to D6. She added, "***If they go bust we want to be well out of it. Leave now on a high***. *Put the money into all of the other businesses and grow them. The staff stay on and carry on as usual. They aren't exposed to the risks that directors are so they will be fine*" (emphasis added).[2234]

D6's audit by Thistle

P3.404 D5/D6 place some reliance on the fact that D6 was audited in 2018 by Thistle, who Kerry Venn agreed was a "*market leader in assessing FCA compliance*".[2235]

P3.405 Prior to the audit, in an email dated 30.05.18, Alex Paschalis of Thistle emphasised the serious criminal consequences of carrying out a regulated activity when not authorised to do so.[2236] This information was helpful to Kerry in helping her overcome some internal resistance to the audit.[2237]

P3.406 The report, when it arrived, was concerning.[2238] The overall grading for the audit was red and the report made clear that D6 was carrying out regulated activity without authorisation.

[2232] SUR00122130-0001

[2233] D7D9-0007347; D7D9-0010490

[2234] D7D9-0007347; D7D9-0010490

[2235] Day 33/page 22/lines 17-19 **[A5/33/6]**.

[2236] SUR00099995-0001

[2237] SUR00100027-0001; Day 33/page 23/lines 9-23 **[A5/33/6]**.

[2238] MDR00154926

Source: Mouseinthecourt.co.uk

P3.407 On 18.06.18, Kerry Venn emailed D1 and Kobus (cc D7 and D5) to explain that D6 was carrying out regulated activities and that it should cease those activities until D6 had become an AR.[2239]

P3.408 However, Kobus responded on 19.06.18 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 that you're not in breach of regulations.*"[2240] Kobus followed up on the same day with a slightly more detailed email setting out in short form why he believed D6 was not carrying out regulated activity.[2241] Kerry found this "*most reassuring*" and replied on 20.06.18 to say "*Based on this we will carry on as we are*."

P3.409 On its face, it is somewhat surprising that D6 was willing to ignore a detailed report from FCA compliance experts in favour of a couple of brief emails from Kobus which he had drafted at Kerry's request. However, given the amounts of money at stake, D6 never had any intention of stopping raising money. The emails between Kerry Venn and Kobus were generated simply for D6 to have an "audit trail" to justify its continued activity. Kerry Venn had in fact primed Kobus to send the emails via D7.[2242]

LCF's claims were internally inconsistent

P3.410 As explained above, a post on the MSE forum had pointed out that interest rates being charged by banks were substantially lower than the rates mentioned in LCF's marketing materials and had asked why any companies would borrow from LCF in those circumstances.[2243] D6's sales people had asked the same question. A prospective bondholder, Mr Chow, also raised this with one of D6's sales people, Dan Blunden:[2244]

2239 MDR00154892

2240 MDR00155053

2241 MDR00155397

2242 D7D9-0007394; D7D9-0007397; D7D9-0007399; MDR00002213; D7D9-0009137; Day 33/page 32/line 2 - page 43/line 25 **[A5/33/8]**.

2243 MDR00093505

2244 MDR00145520

Source: Mouseinthecourt.co.uk

"*My query is how LCF would remain to be competitive when other funding companies are offering from 3% to 5% lending rate to their borrowers when LCF is asking from 12% to 20% lending rate from their clients which is 3 times higher than the market rate and yet LCF doesn't need to advertise which is a common practice even for a well know funding firm or a commercial bank*".

P3.411 Dan Blunden was unable to answer this question, so Mr Chow sent it to Katie Maddock of LCF.[2245] She replied (cc Dan Blunden and Jo Baldock) to say, "*I believe that the rates of other funding companies that you are referring to are more mainstream banking and if a UK business is able to secure lending from them then they are not a target client of ours*".[2246] Mr Chow replied, "*When you said those companies are not accepting by the mainstream financiers will be your company's clients, so are referring to those companies which having bad credit records and for that reason these companies or individuals are will to pay much higher lending rate to LCF in order to get funding?*"[2247]

P3.412 Mr Chow's questions drew attention to another peculiar inconsistency at the heart of LCF's claims. If the only companies prepared to borrow at the high rates charged by LCF were companies who were unable to access mainstream funding at far lower rates, then, by definition, those companies must have been bad credit risks, with a high risk of default. Yet, at the same time, LCF was claiming that it had never experienced any defaults. D1 had said repeatedly that no borrower had ever defaulted.[2248]

P3.413 How could it be that the only likely candidates for loans from LCF would be bad credit risks, and yet they never defaulted in the performance of their obligations to LCF?

P3.414 The inconsistencies and illogicalities in LCF's position were obvious, and the lack of any reliable information remained concerning.

P3.415 The experience of dealing with LCF was markedly different from D6's dealings with its other client, Blackmore. On 29.06.18, Blackmore provided an update in respect of their

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[2245] MDR00145520

[2246] MDR00145520

[2247] MDR00145596

[2248] SUR00131168-0001; SUR00007459-0001; MDR00052599; MDR00138426

Source: Mouseinthecourt.co.uk

financial affairs. Kerry commented to D7, "*the transparency they grant us is fantastic. LCF won't even say who the 11 borrowers are and Blackmore let us see their bank account and are happy to breakdown all of their costs for us. This is one reason why I feel very keen to support Blackmore*".[2249]

P3.416 D7 replied, "*You're right, they are very transparent compared to LCF*".[2250]

P3.417 Kerry also provided D5 and D7 with information about a lender called Hadrian's Wall Capital, explaining that they "*show transaction examples (without naming clients)*" .[2251] The question was obvious. Why was LCF was so unwilling to do the same?

LCF 2, part 2

P3.418 The concerns about the sustainability of LCF drove the continued work on LCF 2, which was going to be called Westminster Corporate Finance plc.

P3.419 On 19.07.18, D7 emailed D5 and Kerry (with the subject, "*Update from SHK and Elten*") saying, "*They are keen to get WCF up and running asap*".[2252]

P3.420 D7 emailed Jo Baldock and D5 on 14.08.18 to say:

> "***WCF needs to issue a loan to SHK/SG prior to going live*** *and take on some decent security. This way the AM's can talk about XXXX amount of security protecting the investors*" (emphasis added).[2253]

P3.421 In his oral evidence, D5 accepted that he knew that the same individuals would on the lender and borrower side with Westminster Corporate Finance, as was the case with LCF.[2254] So that while in its marketing materials, Westminster Corporate Finance would

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[2249] SUR00102482-0001

[2250] SUR00102483-0001

[2251] D7D9-0007450

[2252] D7D9-0007523

[2253] SUR00106992-0001

[2254] Day 31/page 67/line 16 – page 73/lines 24 **[A5/31/17]**.

Source: Mouseinthecourt.co.uk

represent that it was lending to a diversified portfolio of SMEs it would actually be providing funds for D2 and D4.

16 So you knew that the basic idea was that Westminster
17 Corporate Finance would be lending to SMEs that were
18 finding it difficult to obtain funding from big banks?
19 **A. I honestly would probably very unlikely have read**
20 **this --**
21 Q. But --
22 **A. -- and my knowledge of this bond would have been**
23 **secondary to Kerry, who would have led the sort of --**
24 Q. Yeah, yeah, but you'd have -- whether you read this or
25 not, your understanding would have been that Westminster

1 Corporate Finance was going to be lending to these SMEs
2 that were struggling to obtain funding from banks?
3 **A. Yes, I think so.**
4 Q. At the bottom, it says:
5 "How are smaller lending houses such as Westminster
6 able to compete with high street banks?"
7 Over on the next page, it says about the outcomes of
8 the credit crunch, banks have to carry more capital,
9 et cetera. Then there's a heading "How does this assist
10 SMEs?", and there's more about SMEs. Whether you'd
11 actually read the detail of this or not, you would have
12 known from your discussions with Kerry and John and
13 Simon that this was the basic thrust of how Westminster
14 Corporate Finance was going to be marketed?
15 **A. Yes, I presume so. I presume I did know that then.**
16 Q. Can we look at <SUR00106992-0001>, please. It's an
17 email from John Russell-Murphy to Jo Baldock and you,
18 and then, three paragraphs up from the end of the email,
19 he says:
20 "WCF needs to issue a loan to SHK/SG prior to going
21 live and take on some decent security. This way the AMs
22 can talk about XXXX amount of security protecting the
23 investors."
24 You knew that WCF was going to be another front,
25 didn't you?

1 **A. No, Mr Robins. I was, at this stage -- sorry, I can't**
2 **see the date, but I presume it's sometime in 2018. This**
3 **is just not true. I mean, I believed in -- when is**
4 **that, August 2018. You know, Ernst & Young had had an**
5 **audit then, which was about £260 million, I seem to**
6 **remember.**
7 Q. Was my question, had --
8 **A. No, sorry, I beg your pardon.**
9 Q. You knew that WCF was going to be another front. Let me
10 explain what I mean by that. It was going to be talking
11 to the public about lending to SMEs but, in reality,
12 making loans to Simon and Spencer?
13 **A. I mean, the way -- no, I don't think that's quite a fair**
14 **representation. I mean, we are -- by saying things like**
15 **that, you are sort of dismissing an enormous amount of**
16 **very significant facts.**
17 Q. It was a back-up. You knew it was a back-up, in case of
18 LCF being shut down, to enable the same individuals to
19 carry on doing the same thing?

Source: Mouseinthecourt.co.uk

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

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

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

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

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

Q. Okay, would it help if I --

A. -- Spencer, quite specifically.

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

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

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

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

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

A. Right.

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

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

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

Source: Mouseinthecourt.co.uk

A. I think their plan -- this is just from memory -- was to roll up lots of these listed gas and oil companies in the North Sea which could not remove gas out of the ground because the cost was too expensive.
Q. Who was going to run that?
A. I don't know, whoever --
Q. Simon Hume-Kendall?
A. He would have appointed someone, I presume, to --
Q. So someone appointed by Simon Hume-Kendall?
A. Well, I don't know.
Q. You knew that when WCF was launched, it was going to be launched telling the public about lending to a diversified portfolio of SMEs but, in reality, making loans to Simon and Spencer's companies?
A. Connected to Simon and Spencer with security -- that IM you just showed me there, for example, I presume that's written by the law firm, the City law firm, I mean?
Q. You knew that when WCF was launched, it was going to be launched telling the public about lending to a diversified portfolio of SMEs but, in reality, making loans to Simon and Spencer's companies?
A. It was their plan, their introduction. We would never have launched anything unless it was proper, and that means the lawyers were involved and there was -- so all of the work -- and we would have been paid for it, of course.
Q. But is the answer "Yes" or "No"? It is a yes or no question, you see.
A. Sorry.
Q. You knew, when WCF was launched, it was going to be launched telling the public about lending to a diversified portfolio of SMEs but, in reality, making loans to Simon and Spencer's companies?
A. I didn't specifically read the IM, so I can't specifically say yes, I'm afraid.
Q. You said you knew the general basis on which it would be sold to members of the public?
A. It was introduced to us by Simon, so of course that --
Q. You knew it was going to issue a loan to SHK/SG prior to going live, didn't you?
A. Reading this, yes, but I presume that's because the structure is, you need to have something -- some form of security to start a bond.
Q. Come on, is the answer to my question "Yes" or "No", and then we can move on from this?
A. I'm going to go with "Possibly".

P3.422 Subsequently, D7 became concerned about the links between LCF and Westminster Corporate Finance plc (including the appointment of Ian Sands as a director of the latter), which (in his eyes) undermined the whole project.

P3.423 D7 drew this concern to D1's attention on 29.08.18,[2255] saying:

[2255] SUR00108013-0001

Source: Mouseinthecourt.co.uk

"***The original reason for setting WCF up was to have a back up to LCF in the event of the company having any type of fund raising issue in the future***. *The structure of LCF and the business model links the two companies too closely together*" (emphasis added).

P3.424 D7 also explained this concern to D5 and Kerry on 29.08.18:[2256]

"***The original reason for setting up WCF was to have a back up to LCF and a second pot for collecting funds*** *... I have sent an email to Andy and Spencer with my concerns ...*
The main problem is WCF is pretty much an exact copy of LCF ... ***Ian Sands has 17 appointments with other companies which are mainly linked to LCF and have borrowed money from them – Lakeview, Waterside, Prime Resort development etc. If LCF was to run into problems in the future, WCF is so closely linked I can't see how it will not be effected***" (emphasis added).

The Isle of Wight deal

P3.425 A further topic which casts light on D5's and D7's knowledge of the use of monies from bondholders relates to a proposed deal in respect of a property on the Isle of Wight. In summary, D5 and D7 were both embroiled in a plan to buy a property for £2.5 million before selling it to Prime RDL for £5 million, giving rise to a profit of £2.5 million, which would then be split between D4 on the one hand and D5 and D7 on the other. D5 and D7 were both aware that Prime RDL would borrow the purchase monies of £5 million from LCF. In other words, D5 and D7 would be receiving £1.25 million of bondholder monies from the immediate re-sale of the property at an inflated price.

P3.426 In around July 2018, View Property Group Limited ("**View Property**"), a company owned by D5, had an opportunity to buy a property on the Isle of Wight.[2257] The property was at Brading Marsh and planning permission for 60 lodges was in the pipeline.

[2256] SUR00149321-0001

[2257] SUR00119305-0001

Source: Mouseinthecourt.co.uk

P3.427 View Property decided not to pursue this deal but D7 took it to D4.[2258] D4 proposed to buy the property before re-selling it at a profit to Prime RDL in late August 2018.[2259] D5 knew that Prime RDL was connected to D4.[2260] It is to be inferred that D7 also knew this.

P3.428 D4 agreed to split the profit with D5 and D7. D5 was excited: he thought that the profits from the Isle of Wight deal could enable him to buy a helicopter. [2261]

P3.429 The property was held by a company, IOW Eco Reserve Limited ("**IOW Eco**"); the owners of IOW Eco were prepared to sell the company for £2.5 million.[2262]

P3.430 The plan was to buy IOW Eco in the name of View Property SPV5 Limited ("**View SPV5**") and then to sell View SPV5 to a company owned by Prime RDL at a profit.[2263]

P3.431 On 10.10.18, D7 messaged D5 on WhatsApp to report that the sale price to Prime RDL would be £5 million,[2264] giving rise to a profit of £2.5 million, which would be divided between D4 on the one hand and D5/D7 on the other.

P3.432 D5 replied immediately to say, "*YES … YES!!!!!*"

P3.433 The shares in View SPV5 were transferred to D3 (50 shares), D5 (25 shares) and D7 (25 shares) to facilitate the profit share (with D3 holding his shares on trust for D4).[2265]

> 7 Q. This was to enable the profit split, wasn't it? We have
> 8 discussed that before. It is 1.25 for Spencer so that
> 9 goes out to the 50 per cent shareholding in
> 10 Elten Barker's name. It is 1.25 between you and John,
> 11 a quarter each. So you get a quarter of the shares
> 12 each. That's all this is. It is a profit split

2258 SUR00119305-0001

2259 D7D9-0007627

2260 Day 31/page 164/line 16 – page 165/line 16 **[A5/31/41]**.

2261 SUR00119305-0001; D7D9-0007753

2262 D7D9-0007646; D7D9-0007663; D7D9-0007645; D7D9-0007796

2263 SUR00114868-0001

2264 D7D9-0007803

2265 Day 31/page 146/lines 7-18 **[A5/31/37]**.

Source: Mouseinthecourt.co.uk

13 mechanism, isn't it?
14 **A. Yes, it does look like this.**
15 Q. This is how you get the money to make the downpayment on
16 your helicopter, isn't it? It comes out through the
17 shares as a dividend?
18 **A. I presume so.**

P3.434 LCF was going to be lending the purchase monies to Prime RDL.[2266] D7 commented to D5 that they would have to "*give LCF a big push*" to raise the monies.[2267] In his oral evidence, D5 admitted that he knew the "*big push*" was required to raise the extra money for LCF to lend to Prime RDL so that Prime RDL could complete the IoW deal.[2268]

8 Q. So you knew that the deal wouldn't happen unless LCF
9 could lend the 5 million purchase money to Prime?
10 **A. Obviously, we are cantering along. VPG was a property**
11 **company. It was doing lots of flips. I didn't see it**
12 **as an issue until I was -- the brakes were pulled on by**
13 **Kerry. Of course, I regret sort of even considering it.**
14 **But at the time -- obviously I didn't do it, but at the**
15 **time, yes, I got carried away and thought it was**
16 **completely fine to do this.**

P3.435 D5 made clear that the Isle of Wight deal was a priority.[2269] Towards the end of October 2018, D5 made clear that if LCF's fundraising did not pick up, D6 would need to move LCF to the top of its Best Interest Rates website in place of Blackmore for a few days (although nothing was to be said about this to Pat McCreesh of Blackmore).[2270]

P3.436 Throughout this period, D5 and D7 were liaising closely with D4 and all were members of an IoW WhatsApp group; although, most of the messages between them have not been disclosed.[2271]

P3.437 In late November 2018, D7 endorsed a suggestion from Jo Baldock that LCF be "*switched back to the top of BIR until the end of November*".[2272]

2266 MDR00192564

2267 D7D9-0007803

2268 Day 31/page 138/lines 21-25 **[A5/31/35]**; page 140/lines 8-16 **[A5/31/35]**.

2269 SUR00114440-0001; D7D9-0007753; SUR00112146-0001

2270 SUR00112146-0001; Day 31/page 139/lines 18-22 **[A5/31/35]**.

2271 SUR00164572-0001; SUR00164568-0001; SUR00164570-0001; Day 31/page 141/line 14 – page 142/line 15 **[A5/31/36]**.

2272 D7D9-0008032

Source: Mouseinthecourt.co.uk

P3.438 The deal was proceeding towards an exchange of contracts in December 2018.[2273]

P3.439 D5 admitted in his oral evidence that he knew by this point that the basis of how LCF worked was that money would be siphoned off for the personal benefit of D4:[2274]

> 23 Q. So, you buy an asset for 2.5, sell it on for 5. The
> 24 borrowing company gets the 5 from LCF, you make
> 25 a profit: 1.25 for you and John, 1.25 for Spencer.
>
> 1 That's money that's come from the LCF bondholders. You
> 2 had first-hand knowledge of how LCF worked, didn't you?
> **3 A. Yes, I did.**
> 4 Q. Money will be siphoned off for the personal benefit of
> 5 Mr Golding. That's how it worked?
> **6 A. I mean, Mr Robins, obviously, the brilliant way in which**
> **7 you have asked your questions gives this a view which --**
> **8 it doesn't give the true characterisation of actually**
> **9 what happened. But, yes, at that point, what you have**
> **10 just said there is true.**

P3.440 However, the intervention of the FCA and the subsequent entry of LCF into administration meant that LCF could no longer provide the purchase monies to Prime RDL. The collapse of LCF also had a dire effect on the finances of D5 and D7, who were desperate for the deal to proceed so they could obtain their share of the profit.[2275]

P3.441 Terry Mitchell initially hoped that Prime RDL would be able to raise the funds elsewhere so that the deal could proceed.[2276] However, the deal never completed.[2277]

P3.442 At some point in March 2019, having realised that the Isle of Wight deal was dead, D5 sought to re-write history, telling Peter Tayler, the head of compliance at Northern Provident, that he had withdrawn on discovering that "*the proposed buyer was a*

[2273] D7D9-0008034; SUR00114440-0001; D7D9-0008061; MDR00193482; D7D9-0008137; D7D9-0008138; MDR00196065; MDR00195797; MDR00196039; MDR00205268; MDR00208134; MDR00214400; MDR00215272

[2274] Day 31/page 146/line 23 – page 147/line 10 **[A5/31/37]**.

[2275] SUR00117270-0001; D7D9-0008736; D7D9-0008767; D7D9-0008849; SUR00117926-0001; SUR00117974-0001; SUR00118045-0001; SUR00118216-0001; D7D9-0009048; SUR00118626-0001; D7D9-0009127

[2276] D7D9-0008736; D7D9-0009048

[2277] D7D9-0008887; D7D9-0009027; D7D9-0009066; D7D9-0009132; D7D9-0009665; SUR00119305-0001; MDR00198766

Source: Mouseinthecourt.co.uk

borrower of LCF".[2278] The email contained statements that were untrue and which D5 would have known were untrue. In his written evidence, D5 claimed that he did not read the email which had been drafted for him by Kerry Venn before he sent it, because he was at hospital arranging his wife's C-section and "*the urgency and gravity of the situation meant that I would just have copied and pasted the email and sent it with minimal review or changes*."[2279] In his oral evidence, he admitted that, contrary to the impression given in his fifth witness statement, the appointment at hospital was a routine ante-natal appointment at which an elective C-section was scheduled for to take place in around 4 months.[2280] There is consequently no reason why he would not have read this email before sending it. Indeed, it is clear from documents disclosed during the trial that he saved Kerry's draft on his iPhone.[2281] His evidence about the email to Peter Tayler was wholly improbable and should be rejected. In reality he was trying to distance himself from an email containing untruths that he had sent: [2282]

11 Q. Is your evidence that you received the draft from Kerry
12 but didn't read it, you said thanks to Kerry but hadn't
13 read it, saved it on your iPhone but didn't read it,
14 copied it into an email, still didn't read it. Sent the
15 email, never read it. That is just not probable, is it?
16 **A. I know it probably sounds improbable to a barrister of**
17 **your standing, but I just -- I'm afraid it is quite**
18 **probable with me. I'm very casual with communication**
19 **and I -- Kerry would have drafted things. I often would**
20 **have just copied and pasted it. So I'm sorry to say**
21 **I can't guarantee I did read that.**

P3.443 D5 and D7 knew that the IoW deal involved Prime RDL purchasing an asset worth £2.5 million for £5 million using LCF's monies, with £2.5 million being extracted as pure profit by D4, D5 and D7. They also knew that Prime RDL was connected in some way to D4, so that D4 was effectively on all sides of the deal. D5 and D7 would have known in those circumstances that there was no prospect of LCF generating sufficient funds from the transaction to repay its investors. D5 had gone from being concerned in 2015

[2278] SUR00119759-0001; SUR00119305-0001; SUR00117270-0001

[2279] Careless 5 ¶13 **[C2/8/4]**.

[2280] Day 31/page 158/lines 6-14 **[A5/31/40]**.

[2281] SUR00164813-0001

[2282] Day 31/page 161/lines 11-21 **[A5/31/41]**.

Source: Mouseinthecourt.co.uk

that LCF was a "*rinse*" to knowingly participating in the rinsing of LCF's bondholders himself.

LCF's collapse

P3.444 As explained above, the FCA raided LCF's premises on 10.12.18.[2283]

P3.445 D5 heard the news and sent a message to Kerry on the same day, asking, "*What do you think has happened?*"[2284]

P3.446 She replied, "*If I was the FCA I would have a massive issue with only 11 borrowing companies … **LCF is suspicious because only 11 borrowing companies doesn't look good***" (emphasis added).[2285] The reference to 11 borrowing companies was a reference to the unwelcome revelation in the EY audited accounts, which, far from being reassuring (as D5 sought to maintain), were in fact the first item that came to Kerry's mind when wondering why the FCA might have sought to shut LCF down.

P3.447 On 12.12.18, Kerry sent a text message to D5, saying, "*No more business with people we don't 100% trust or like*".[2286] D5 said, "*100% agreed*".

[2283] MDR00001606

[2284] SUR00115269-0001

[2285] SUR00115269-0001

[2286] SUR00152773-0001

Source: Mouseinthecourt.co.uk

Q. FRAUDULENT TRADING

Q1 Introduction

Q1.1 In this section, the Claimants explain how their fraudulent trading claims are established in light of the factual findings which the Claimants have invited the Court to make.

Q1.2 The Claimants' claims for fraudulent trading are based on section 246ZA of the Insolvency Act 1986. This is because LCF is in administration. The action is materially identical to (and based on) section 213 of the Insolvency Act 1986, which applies where the company is in liquidation. The Claimants describe the law on fraudulent trading at Section A of their written opening submission on the law.[2287]

Q1.3 Section 246ZA provides:

> *"(1) If while a company is in administration it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, the following has effect.*
>
> *(2) The court, on the application of the administrator, may declare that any persons who were knowingly parties to the carrying on of the business in the manner mentioned in subsection (1) are to be liable to make such contributions (if any) to the company's assets as the court thinks proper"*

Q1.4 There are three elements to a claim for fraudulent trading, which were explained in *Morris v State Bank of India* [2003] BCC 735 at [11][2288] in the context of section 213 of the Insolvency Act 1986:

> *"There are therefore three elements to be established: (1) that the business of the company in liquidation has been carried on with intent to defraud the creditors of the company or for any other fraudulent purpose; (2) that the defendant sought to be made liable … participated in the carrying on of the business of the company in that manner; and (3) that it did so knowingly: i.e. with knowledge that the transactions it was participating in were intended to defraud the creditors of the company or were in some other way fraudulent."*

[2287] **[A/2/2]**.

[2288] **[S2/76/6]**.

Source: Mouseinthecourt.co.uk

Q1.5 The first question is therefore whether the business of LCF has been "*carried on with intent to defraud the creditors of the company or for any other fraudulent purpose*". (LCF plainly carried on a "business": indeed, it is sufficient that the company collects assets and distributes them: *Re Sarflax Ltd* [1979] Ch 592.[2289])

Q1.6 The reasons why LCF's activities amount to fraudulent trading within the meaning of section 246ZA of the Insolvency Act 1986 are set out below.

Q1.7 The second and third questions of "participation" and "knowledge" are then considered together, in order to explain why the remaining Defendants (D1, D4, D5, D6, D7, D8, D9) knowingly participated in the fraudulent trading of LCF.

Q2 <u>The three ways in which LCF carried on fraudulent trading</u>

The test of "fraudulent purpose"

Q2.1 Under section 246ZA of the Insolvency Act 1986, the business of the company must have been carried on "*with intent to defraud the creditors of the company or for any other fraudulent purpose*".

Q2.2 The concept of "fraudulent purpose" is not defined by legislation. However, the cases explain how this requirement may be satisfied.

Q2.3 **<u>First</u>**, where a company incurs debts when it knows that there is no reasonable prospect of ever repaying them, it is "*normally*" correct to infer that the company was carrying on business with intent to defraud.[2290]

[2289] **[S2/32/1]**; Claimants' written opening submissions on the law ¶¶6-7 **[A2/2/3]**.

[2290] *Re William C Leitch Bros Ltd* [1932] 2 Ch 71 at 77 **[S2/18/7]**; Claimants' written opening submissions on the law ¶9 **[A2/2/3]**.

Source: Mouseinthecourt.co.uk

Q2.4 Where the section refers to defrauding "*creditors*", this includes "*potential creditors*".[2291]

Q2.5 **Second**, a company falls within the section where it carries on business for "*any fraudulent purpose*". These words are designed to be broad.[2292]

Q2.6 For this purpose, a company's conduct is "fraudulent" where it induces, by deceit, a course of conduct in another which puts that other's economic interests in jeopardy.[2293] It is not necessary to intend another person to suffer loss. It is sufficient to put their economic interests in jeopardy by deceit.

Q2.7 As a result, a company which carries on business by deceiving others into putting their economic interests at risk is engaged in trading for a fraudulent purpose.

The Claimants' case on fraudulent purpose

Q2.8 LCF operated as a fraudulent scheme by which money was raised from the sale of bonds and misappropriated, principally by D1, D2, D3 and D4. As set out below, there were three aspects to this fraudulent scheme: (i) raising monies by false representation; (ii) operating a Ponzi scheme; and (iii) misappropriating monies invested by bondholders.

Q2.9 **First**, LCF induced bondholders to transfer monies to LCF on the basis of numerous false representations.[2294] In doing so, LCF placed the economic interests of those bondholders in jeopardy. The bondholders had been told that their investments were secure and subject to various protections, when in reality, this was not the case. LCF's representations were false, with the consequence that bondholders who invested their monies were being deceived into paying their monies over to LCF.

2291 *R v Kemp* [1988] QB 645 at 654-655 **[S2/40/10]**; Claimants' written opening submissions on the law ¶11 **[A2/2/4]**.

2292 *R v Kemp* [1988] QB 645 at 650 **[S2/40/6]**.

2293 *R v Grantham* [1984] QB 675 at 683 **[S2/35/9]**; *R v Allsop* (1976) 64 Cr App R 29 at 32 **[S2/29.1/4]**; Claimants' written opening submissions on the law ¶10 **[A2/2/4]**.

2294 RRRAPoC ¶7(1)-(8) **[B1/2.1/2]** and ¶¶20, 22 **[B1/2.1/23]**.

Source: Mouseinthecourt.co.uk

Q2.10 The picture painted by LCF's representations was vastly different from the reality. In reality, LCF lent funds exclusively to a small number of borrowers connected to D1, D2, D3, D4 and/or D8 without conducting any financial due diligence, and without putting in place any adequate security all. LCF did not carry on a genuine business, and there was no real prospect that LCF would ever be able to repay its bondholders. Instead, LCF was involved in funding payments under a series of uncommercial and illegitimate transactions which are described above (principally the Lakeview SPA, the Elysian SPA, the Prime SPA, the LPE SPA, and the LPT SPA) which were plainly contrary to its own interests.

Q2.11 **Second**, LCF operated as a Ponzi scheme.[2295] LCF used monies received from new bondholders in order to discharge the interest payments to existing bondholders. LCF had no source of income other than monies from new investors, which were often transferred through connected borrowing companies before being repaid to LCF. The borrowers did not have businesses which were generating profits (let alone any turnover) which could fund payments to LCF. As a result, there was no means by which LCF could meet the liabilities it was incurring to bondholders, and yet LCF continued to accept their investments in order to meet its obligations to existing bondholders. As with all Ponzi schemes, LCF was inherently unstable and doomed to collapse. Operating a Ponzi scheme constitutes the fraudulent carrying on of business within s.246ZA.

Q2.12 **Third**, a large part of the money from bondholders was misappropriated.[2296] As explained above, LCF was involved in funding payments under a series of uncommercial transactions (principally, the Lakeview SPA, the Elysian SPA, the Prime SPA, the LPE SPA and the LPT SPA), the purpose and effect of which was to provide an ostensible justification for the misappropriation of funds invested by bondholders into LCF, and payment of them to D1, D2, D3, and D4. The misappropriation of monies from LCF constitutes the fraudulent carrying on of business within s.246ZA.

Q2.13 Any one of the three elements set out above would be sufficient *alone* to constitute the carrying on of business with intent to defraud the creditors of the company or for any

[2295] RRRAPoC ¶21A **[B1/2.1/25]**.

[2296] RRRAPoC ¶22 **[B1/2.1/25]**.

Source: Mouseinthecourt.co.uk

other fraudulent purpose within the scope of section 246ZA. In LCF's case, however, the three elements co-existed as integral parts of the scheme. Thus, although there was only one fraudulent scheme in the present case, it had three components, each of which would be sufficient alone, and which, when combined, leave no room for any debate.

Attribution of knowledge to LCF

Q2.14 All of the knowledge of D1 is to be attributed to LCF. D1 was a *de jure* director of LCF from 15.08.13 onwards,[2297] and was held out as the CEO of LCF at all material times, including in LCF's many marketing materials which were presented to prospective bondholders.

Q2.15 The knowledge of D4 (as a *de facto* and/or shadow director) should also be attributed to LCF for the purpose of its conduct of fraudulent trading.

Q2.16 In addition, whilst this is not essential to the Claimants' case, it should be noted that the conduct and knowledge of D6 in marketing and selling LCF's bonds to members of the public is to be attributed to LCF on the basis of agency.[2298] D6 accepts and maintains that it acted at all material times as LCF's agent (and, further, that it acted within the scope of LCF's authority). In this regard, D6's knowledge includes the knowledge of Kerry Venn and D5, who were D6's directors, owners and controllers.[2299]

Q2.17 It should be added that the knowledge of both D5 and Kerry Venn is generally to be attributed to D6.[2300] D7's knowledge should be attributed to D6, on account of his central role within D6 and his involvement in D6's activities in selling LCF's bonds to members of the public.[2301]

2297 **[A1/5/70]**.

2298 *UBS AG (London Branch) v Kommunale Wasserwerke Leipzig GmbH* [2014] EWHC 3615 (Comm) at [762] **[S2/123/192]**; Claimants' written opening submissions on the law ¶88 **[A2/2/32]**.

2299 RRRAPoC at ¶¶28-29 **[B1/2.1/36]**.

2300 RRRAPoC at ¶¶44-55 **[B1/2.1/51-53]**.

2301 RRRAPoC at ¶¶28-29 **[B1/2.1/36]**.

Source: Mouseinthecourt.co.uk

Q3 Fraudulent trading 1: raising monies by false representation

Q3.1 The principal false representations to prospective bondholders and existing bondholders on which the Claimants rely can be grouped together as follows:

(1) false representations about the value of LCF's security;[2302]

(2) false representations about due diligence on LCF's borrowers;[2303]

(3) false representations about lending to numerous unconnected SMEs;[2304]

(4) false representations about LCF's loan agreements;[2305]

(5) false representations that there was an independent security trustee;[2306] and

(6) false representations about LCF's business model.[2307]

Q3.2 In order to found liability under section 246ZA, it is sufficient for the Claimants to establish that one or more of these representations were falsely made for the purpose of deceiving prospective investors in LCF.

Q3.3 These specific representations in turn underpinned more general representations by LCF and D6's sales people, which were made in order to persuade prospective bondholders that LCF's bonds were a safe and secure investment based on the genuine conduct of business, when this was plainly false ("*The risk with us is minimal and well-*

[2302] RRRAPoC ¶7(6) **[B1/2.1/3]**.

[2303] RRRAPoC ¶7(2) **[B1/2.1/3]**.

[2304] RRRAPoC ¶7(1) **[B1/2.1/2]**.

[2305] RRRAPoC ¶7(5) **[B1/2.1/3]**.

[2306] RRRAPoC ¶7(7) **[B1/2.1/3]**.

[2307] RRRAPoC ¶5, ¶7(3)-(4), 7(8) **[B1/2.1/3]**.

Source: Mouseinthecourt.co.uk

managed";[2308] "*the risk is very minimal*";[2309] "*There is a risk, but it is minimal*";[2310] "*that risk is very minimal*";[2311] "*The bonds are very secure*";[2312] "*very strong and robust asset backed protection*";[2313] "*We are very confident in our future performance*";[2314] *"no defaults to date*";[2315] "*100% track record*"'[2316] "*never had a loan default due to our strict lending criteria*",[2317] "*no one has lost a penny from us*"[2318]). The Claimants also rely on the falsity of representations of this nature, in light of the falsity of the representations below: it could not be said that LCF was a "*secure*" investment.[2319]

Q3.4 Representations were made to prospective bondholders in many different ways:[2320] (i) they are contained in LCF's brochures and information memoranda, prepared and approved by D1, which were circulated to members of the public; (ii) D6's sales people directly used LCF's marketing materials (as well as brochures and information memoranda) to sell LCF bonds to members of the public, and sent these documents to prospective bondholders by email[2321] and referred them to LCF's marketing videos;[2322] and (iii) D6's salespeople made representations to prospective bondholders through the live chat function on LCF's website ("webchats") as well as on telephone calls.

2308 MDR00028147

2309 MDR00026899

2310 MDR00026984

2311 MDR00049942

2312 MDR00026340

2313 MDR00082299

2314 MDR00070217

2315 MDR00038337

2316 MDR00032871; MDR00076763; MDR00077241

2317 MDR00059036

2318 MDR00224329 page 76

2319 RRRAPoC ¶7(8) **[B1/2.1/3]**.

2320 RRRAPoC ¶8 **[B1/2.1/3]**.

2321 MDR00033166; MDR00033167; MDR00033169; MDR00033170; SUR00132218-0001; SUR00132219-0001; SUR00132220-0001; SUR00132221-0001; MDR00034121; MDR00034122; MDR00034795; MDR00034797; MDR00062355

2322 MDR00033734; MDR00033735; MDR00033740

Source: Mouseinthecourt.co.uk

(1) False representations about the value of LCF's security

Q3.5 LCF represented that the value of security substantially exceeded the amount of its loans, which were accordingly fully secured.[2323]

Q3.6 LCF's first information memorandum stated that "*LC&F are offering to provide asset security to 150% of the value of all monies raised*".[2324] LCF also said that "*loans made by LC&F will have a maximum value of 75% of the value of the assets over which security is granted*". This representation was repeated in every information memorandum from series 3 onwards,[2325] including in all the ISA bond series.[2326] It was also contained in every LCF brochure ("*no more than 75% loan to value*").[2327]

Q3.7 D6's sales people used LCF's materials to sell LCF bonds to members of the public. They sent these documents to prospective bondholders by email[2328] and referred them to LCF's marketing videos.[2329]

Q3.8 In the course of LCF's lifetime, LCF committed publicly to extremely high security values, which were said to secure LCF's lending. For example, on 09.02.17, D1 said that LCF had security over assets worth at least £215 million.[2330] LCF's website was updated to say that LCF had security over assets worth more than £215 million ("*Total value of security held exceeds £215m*"[2331]). LCF advertised in *The Times*, stating, "*Value of*

2323 RRRAPoC ¶7(6) **[B1/2.1/3]**.

2324 MDR00207063 page 12

2325 MDR_ST_00053302 pages 9, 14 and 18; MDR_ST_00017000 pages 9, 14 and 18; MDR_ST_00090094 page 8, 13 and 18; MDR_ST_00040127 pages 9, 14 and 18; MDR_ST_00047548 pages 9, 14 and 18; MDR_ST_00033505 pages 9, 14 and 20; MDR_ST_00145654 pages 11, 16 and 22; MDR_ST_00155374 pages 10, 14 and 22.

2326 MDR_ST_00154857 pages 7, 12 and 19; MDR_ST_00154858 pages 7, 12 and 20; MDR_ST_00154959 pages 10, 14 and 23; MDR_ST_00154860 pages 7, 12 and 15)

2327 MDR_ST_00053300 page 16; MDR_ST_00032654 page 16; MDR_ST_00032653 page 16; MDR_ST_00032657 page 16; MDR_ST_00032650 page 16; MDR_ST_00033849 page 16; MDR_ST_00098654 page 16

2328 MDR00033166; MDR00033167; MDR00033169; MDR00033170; SUR00132218-0001; SUR00132219-0001; SUR00132220-0001; SUR00132221-0001; MDR00034121; MDR00034122; MDR00034795; MDR00034797; MDR00062355

2329 MDR00033734; MDR00033735; MDR00033740

2330 MDR00074462; MDR00224094

2331 MDR00077875

Source: Mouseinthecourt.co.uk

security £215m, Loan to value ratio 25.9%".[2332] D1 approved this in advance.[2333] This appeared subsequently in *The Financial Times*, *The Telegraph* and *The Times*.[2334]

Q3.9 D1 also told D6's employees that they could tell prospective bondholders that LCF had security over assets worth more than £215 million.[2335] They duly did so.[2336]

Q3.10 In line with D1's assessments of the value of LCF's security, the security figure relayed by D6 to prospective bondholders on LCF's behalf evolved over time. At first, LCF was said to have £60 million in security.[2337] This was increased to £215 million.[2338] The figure increased again, ultimately to £685 million.[2339]

Q3.11 In reality, however, the companies to which LCF made loans were unable to provide LCF with sufficient security because their assets were either worthless or worth considerably less than the loans for which they were ostensibly used as security.

Q3.12 This has been explained above in relation to the principal assets on which LCF placed ostensible reliance: The Hill and The Beach,[2340] Paradise Beach,[2341] and Lakeview.[2342] It has also been explained above in relation to LOG's interest in IOG,[2343] the value of which was consistently lower than the sum owed to LCF by LOG.[2344]

2332 D7D9-0009136

2333 MDR00085731; MDR00085733; MDR00085742; MDR00085746; MDR00085747; MDR00085766; MDR00085773; MDR00085774; MDR00085780; MDR00085804; MDR00085807

2334 MDR00087050; MDR00087051; MDR00087052; SUR00073529-0001; SUR00073530-0001

2335 MDR00082474

2336 MDR00076524; MDR00076763; MDR00077241; MDR00075616; MDR00075949; MDR00077022; MDR00079262; MDR00081044; MDR00082821; MDR00090250; MDR00092089; MDR00092139; MDR00094413

2337 MDR00065285; MDR00067074; MDR00070677

2338 MDR00076524; MDR00076763; MDR00077241; MDR00075616; MDR00075949; MDR00077022; MDR00079262; MDR00081044; MDR00082821; MDR00082299; MDR00090250; MDR00092089; MDR00092139; MDR00094413

2339 MDR00181389; MDR00182680; MDR00192945 ; MDR00224329 pages 31-33 and 50 ; MDR00186690; MDR00191794

2340 Section D4; E2.1-E2.27 above.

2341 F2.1-G2.8 above.

2342 G2.1-G2.22 above.

2343 D3.3 above.

2344 Osborne 1 ¶5.46 **[D2/1/53]**; MDR00171190 tab 1

Source: Mouseinthecourt.co.uk

Q3.13 The other security arrangements which LCF sought to put in place on paper had no value, and could not support any lending, as explained above in relation to the purported Atlantic Petroleum assignment,[2345] the debentures granted by the "support" companies[2346] and the GRP subsidiaries,[2347] and non-existent redeemable preference shares in GRP.[2348]

(2) False representations about due diligence on LCF's borrowers

Q3.14 LCF made false representations about its borrowers and how it came to lend to them. LCF represented that it was performing robust due diligence before making any loans, such that borrowers would be able to repay any loans and interest,[2349] and that LCF only lent monies to creditworthy borrowers.[2350] These representations were false: LCF never took any steps of this nature before making lending decisions.

Q3.15 The first LCF investment memorandum asserted, "*In addition to the physical security identified, LC&F will conduct a* ***full financial review of every application***" and "*if required will retain the services of Moore Stephens and Baker Tilly to provide further financial analysis prior to any decision to lend being made*" (emphasis added).[2351]

Q3.16 Subsequently it was said that full due diligence was being carried out ("*LC&F has chosen to take a more hands-on approach to its loan commitments not only by* ***conducting full due diligence prior to lending but also with the on-going monitoring of the loans it makes***", emphasis added)[2352] and that a financial review of each borrower was conducted prior to lending decisions ("*When a company is referred to LC&F,* ***its***

[2345] J2.10-J2.11 above.

[2346] J2.12-J2.13 above.

[2347] J2.23 above.

[2348] J2.13 and J2.16 above.

[2349] RRRAPoC ¶7(2) **[B1/2.1/3]**.

[2350] RRRAPoC ¶7(4) **[B1/2.1/3]**.

[2351] MDR00207063 page 12

[2352] MDR_ST_00053302 page 9; MDR_ST_00017000 page 11; MDR_ST_00090094 page 10; MDR_ST_00040127 page 11; MDR_ST_00047548 page 11; MDR_ST_00033505 page 11; MDR_ST_00145654 page 13; MDR_ST_00155374 page 11

Source: Mouseinthecourt.co.uk

borrowing application and associated financials and assets will undergo a full financial review*, lending assessment and, if required, a further financial analysis via an independent accountant and or surveyor will be undertaken prior to any decision to lend being made*", emphasis added).[2353]

Q3.17 This review process was said to include a number of elements, including a "***review of historical financial information … over the last three years***" and "*an* ***appraisal of property assets … by an independent surveyor***". LCF was said to only "*make loans to UK businesses that it considers creditworthy, that meet LC&F's lending criteria and that have realistic and robust repayment proposals*", emphasis added.[2354]

Q3.18 The investment memoranda for the so-called ISA bonds contained identical representations.[2355] The statements in LCF's brochures were much the same, stating that LCF only lent to "*creditworthy*" businesses with "***realistic and robust repayment proposals***" and that LCF "*endeavoured to create multi-layers of security and safeguards to protect Bond Holders' capital, which range from upfront and ongoing due diligence on prospective borrowers to taking charges over borrowers' assets*", emphasis added.[2356]

Q3.19 Prospective bondholders were also told directly that LCF carried out due diligence and would only lend to creditworthy borrowers: "*Every company we loan to has to go through a very strict lending criteria before we would consider loaning to them*".[2357] "*Our minimum loan amount is half a million pounds so it's quite bulky, that means we don't lend to start-up companies due to the risk.* ***They have to be established companies with a track record, good credit ratings***", emphasis added.[2358]

2353 MDR_ST_00053302 page 11; MDR_ST_00017000 page 12; MDR_ST_00090094 page 11; MDR_ST_00040127 page 12; MDR_ST_00047548 page 12; MDR_ST_00033505 page 12; MDR_ST_00145654 page 14; MDR_ST_00155374 page 12

2354 MDR_ST_00053302 page 12; MDR_ST_00017000 page 12; MDR_ST_00090094 page 11; MDR_ST_00040127 page 12; MDR_ST_00047548 page 12; MDR_ST_00033505 page 12; MDR_ST_00145654 page 14; MDR_ST_00155374 page 12

2355 MDR_ST_00154857 pages 9-10; MDR_ST_00154858 pages 9-10; MDR_ST_00154959 pages 11-12; MDR_ST_00154860 pages 8-9

2356 MDR_ST_00053300 page 19; MDR_ST_00032654 page 19; MDR_ST_00032653 page 19; MDR_ST_00032657 page 19; MDR_ST_00032650 page 19; MDR_ST_00033849 page 19

2357 MDR00088201

2358 MDR00221949 page 3

Source: Mouseinthecourt.co.uk

Q3.20 D6's sales people used scripts stating that LCF applied "***strict lending criteria***"[2359] and was "*currently rejecting over 60% of companies that apply"*. They said that LCF only made loans to established companies with a good credit history: "*we have a strict lending criteria before lending takes place (No startup companies, they must have been established for at least 3 years and must have a good credit history)*".[2360] LCF was frequently said to have 'strict lending criteria': "*We are a corporate financier and we lend money to small/medium size businesses. When we do so we have a strict lending criteria*";[2361] "*We have never had a default due to our strict lending criteria*";[2362] "*We have a very strict lending criteria and are currently rejecting over 60% of the companies that approach us*".[2363]

Q3.21 In reality, however, as the facts set out above make clear, these representations were untrue. There is no record of LCF ever conducting any due diligence at all. But more specifically: (i) LCF did not carry out a financial review of every borrower prior to making a decision to lend; (ii) LCF did not conduct any ongoing monitoring of the loans it made; (iii) LCF did not conduct an appraisal of the past 3 years of financial information (indeed, it could not have done so in most cases because the borrowing companies were only incorporated shortly before borrowing sums from LCF); (iv) LCF did not require nor obtain realistic repayment proposals from any borrower; (v) LCF did not lend only to established companies with good credit ratings; (vi) LCF did not arrange for an appraisal of a borrower's property assets by an independent surveyor; and (vii) LCF did not have "strict lending criteria" for lending applications as LCF did not invite lending applications from the market.

[2359] MDR00057471 page 7; MDR00058012 page 7; MDR00059612 page 8; MDR00059844

[2360] MDR00162747; MDR00194951

[2361] MDR00038337

[2362] MDR00059036

[2363] MDR00062355; MDR00071846

Source: Mouseinthecourt.co.uk

(3) False representations about lending to numerous unconnected SMEs

Q3.22 LCF falsely represented that it was lending monies invested by bondholders to numerous unconnected small and medium sized enterprises in the UK,[2364] pursuant to arm's length transactions.

Q3.23 LCF represented in its information memoranda that its business was to lend to SMEs. Indeed, the heading "*Summary of LC&F's business*" was followed by the heading "*Sources of finance for SMEs*". LCF's materials all began with an explanation of the requirement for finance in the SME market. They explained that LC&F's business was to lend to SMEs ("*The Directors of LC&F believe that the disparity between the demand for finance from SMEs and the availability of that finance has created an opportunity for LC&F and private investors*") and that LCF met lending demand in the SME market ("*LC&F has developed a business model whereby it … provides private investors the opportunity to earn returns by investing the bonds issued by LC&F and it enables LC&F to help meet the lending demand from the SME sector*").[2365]

Q3.24 LCF also represented that it was lending on commercially competitive terms: "*LC&F is confident that … the loans arising from those lending opportunities can be made to SMEs on* ***commercially competitive terms***".[2366] LCF was representing that its lending transactions were *bona fide* and genuine commercial transactions.

Q3.25 The representations about LCF's numerous loans are also evident from the information provided by D1 to D6, to be used by D6's salespeople when interacting with potential and existing bondholders.

[2364] RRRAPoC ¶7(1) **[B1/2.1/2]**.

[2365] MDR_ST_00053302 page 11; MDR_ST_00017000 page 12; MDR_ST_00090094 page 10; MDR_ST_00040127 page 11; MDR_ST_00047548 page 11; MDR_ST_00033505 page 11; MDR_ST_00145654 page 13; MDR_ST_00155374 page 11

[2366] MDR_ST_00053302 page 11; MDR_ST_00017000 page 12; MDR_ST_00090094 page 10; MDR_ST_00040127 page 11; MDR_ST_00047548 page 11; MDR_ST_00033505 page 11; MDR_ST_00145654 page 13; MDR_ST_00155374 page 11

Source: Mouseinthecourt.co.uk

Q3.26 In May 2017, D1 had explained, "*As at the beginning of May 2016 LCF has made 121 loans ... to all sectors*" with an "*average loan size of c.£75,000*".[2367] D1 had also confirmed to D7 on 03.08.16, when answering "*the points the AM's* [account managers] *have raised*", that there were "*around 120 loans currently issued*".[2368] And D1 had apparently told D6's sales people in or around June 2017 that LCF was lending to around 150 companies.[2369]

Q3.27 It is plain that D6's salespeople were proceeding on the basis that LCF had many borrowers when communicating with prospective bondholders, because this is one of the reasons why the accounts prepared by Ernst & Young caused such concern given that they referred only to 11 borrowers: LCF and D6's salespeople had been representing that there were over a hundred borrowing companies ("*How many companies do we currently lend to? We were told ~150 companies in June 2017*"[2370]; "*Page 1 states that LCF only lent to 11 companies , we are quoting many more than this to our clients (100's) – is there any further explanation to this?*"[2371]).

Q3.28 The natural meaning of LCF's statements about lending on commercially competitive terms in the SME market was that LCF was lending to third parties, i.e. was lending to unconnected borrowers pursuant to arm's length transactions.[2372] As above, LCF represented that it had "*strict lending criteria*" for dealing with "*applications*" ("*LC&F will conduct a full financial review of* ***every application***"*;* "*When a company is referred to LC&F,* ***its borrowing application*** *and associated financials and assets will undergo a full financial review*"), the natural and ordinary meaning of which was that LCF was lending to commercial entities which were previously unknown to (and therefore unconnected with) LCF, which is why LCF invited and considered lending applications.

2367 MDR00041314; MDR00041257; SUR00021583-0001

2368 MDR00052599

2369 SUR00144764-0001

2370 SUR00144764-0001

2371 MDR00130465

2372 RRRAPoC ¶7(1) **[B1/2.1/2]**.

Source: Mouseinthecourt.co.uk

Q3.29 These representations were false. LCF only ever lent to a small number of connected borrowers, as D1 accepted in cross-examination.[2373] It was not the case that LCF was participating in lending in the SME market, and LCF did not invite nor consider lending applications from market participants. LCF's loans were not on commercial terms, and the five major transactions for which LCF's monies used were all grossly uncommercial (and illegitimate) transactions, as explained above: the Lakeview SPA,[2374] the Elysian SPA,[2375] the Prime SPA,[2376] the LPE SPA,[2377] and the LPT SPA.[2378]

(4) False representations about LCF's loan agreements

Q3.30 LCF represented that no monies were (or ever would be) advanced to any borrower before the execution of a legally binding loan agreement between LCF and the borrower.[2379]

Q3.31 LCF's investment memoranda asserted that LCF never advanced loans without having signed loan and security agreements in place ("*Investor funds … will only be remitted to borrowers when all loan documents and security are in place*";[2380] "*Once a potential Borrowing Company has been assessed as creditworthy, agreed security is taken and legal documents are prepared and signed. Only when all legal and security documentation has been completed to LC&F's satisfaction, will funds be transferred to*

[2373] Day 26/page 68/line 16 – page 75/line 9 **[A5/26/17]**

[2374] G2.1-G2.22 above.

[2375] J2.1-J2.26 above.

[2376] K2.1-K2.22 above.

[2377] L2.1-L2.33 above.

[2378] M2.1-M2.20 above.

[2379] RRRAPoC ¶7(5) **[B1/2.1/3]**.

[2380] MDR00207063 page 12

Source: Mouseinthecourt.co.uk

the Borrowing Company"[2381]). The same representations were contained in the investment memoranda for the ISA bond series[2382] and in LCF's brochures.[2383]

Q3.32 It was also represented to prospective bondholders that LCF's loans would be subject to binding security. Hence, "*The asset backed aspect protects the loan money. So for every loan we issue, we take a legally binding first charge over assets*";[2384] "*For each loan that we issue, we take a legally binding first charge*";[2385] "*As security against the loan, we take a legally binding first charge over assets worth at least 25% more that the loan value*".[2386] D6's sales people often referred to the presence of security.[2387]

Q3.33 These representations were false. The numerous counter-examples set out above prove that this was untrue. Monies were often paid to borrowers before any loan agreement had been signed and without any security having been taken and no valuable security was put in place, as with the loans to L&TD;[2388] D4,[2389] and LOG.[2390] This was the case from the very beginning. When LCF did eventually enter into written agreements with connected borrowers, it regularly lent funds in excess of the facility limit, as with Sanctuary PCC,[2391] the L&TD facility,[2392] the LOG facility.[2393]

2381 MDR_ST_00053302 page 13; MDR_ST_00017000 page 13; MDR_ST_00090094 page 12; MDR_ST_00040127 page 13; MDR_ST_00047548 page 13; MDR_ST_00033505 page 13; MDR_ST_00145654 page 15; MDR_ST_00155374 page 13

2382 MDR_ST_00154857 page 11; MDR_ST_00154858 page 11; MDR_ST_00154959 page 13; MDR_ST_00154860 page 11

2383 MDR_ST_00053300 page 16; MDR_ST_00032654 page 16; MDR_ST_00032653 page 16; MDR_ST_00032657 page 16; MDR_ST_00032650 page 16; MDR_ST_00033849 page 16; MDR_ST_00098654 page 16

2384 MDR00043705

2385 MDR00053172

2386 SUR00024770-0001

2387 MDR00038368; MDR00038526; MDR00038588; MDR00038937; MDR00039235; MDR00040313; MDR00040339; MDR00040433; MDR00043363; MDR00048611

2388 I2.15-I2.16 above.

2389 N4.2-N4.13 and N4.22-N4.25 above.

2390 L2.1 above.

2391 H2.13-H2.17 above.

2392 I2.19-I2.20 above.

2393 L2.3-L2.4 and M2.7-M2.9 above.

Source: Mouseinthecourt.co.uk

Q3.34 In addition, monies were paid to companies other than the "*borrowing company*", with which there was no signed loan agreement, as with monies paid to Sands Equity,[2394] GAD,[2395] London Group LLP,[2396] and London Power Consultants.[2397] In reality, LCF had no regard for the representations it was making to bondholders about disbursing funds pursuant to binding and documented transactions.

(5) False representations that there was an independent security trustee

Q3.35 LCF falsely represented that security would be held by an "*independent security trustee*", i.e. which had no connection with LCF or any of its borrowers.[2398]

Q3.36 LCF's brochures claimed that the security would be held by an "*independent security trustee*".[2399] As above, LCF's materials were circulated to bondholders directly.

Q3.37 D6's sales people used GST's role to help them to sell LCF bonds when communicating with them directly. For example, Jo Baldock told prospective investors on 03.12.15, "*All bond holder funds are protected by an independent security trustee who manages the security held for the investor*".[2400]

Q3.38 D6's sales people used the same lines when communicating with bondholders.[2401] For example, Scott Allen of D6 told prospective investors on 13.06.16, "*An independent security trustee, Global Security Trustees Ltd, holds a charge over all LCF's assets (to include any new security LCF takes for additional loans made) which it holds on behalf of all bond holders*".[2402] These statements were included in an LCF fact sheet, which D7

2394 J2.24 above.

2395 K2.21 above.

2396 L2.5-L2.8 above.

2397 K2.22 and L2.7 above.

2398 RRRAPoC ¶7(7) **[B1/2.1/3]**.

2399 MDR_ST_00053300 page 16; MDR_ST_00032654 page 16; MDR_ST_00032653 page 16; MDR_ST_00032657 page 16; MDR_ST_00032650 page 16; MDR_ST_00033849 page 16; MDR_ST_00098654 page 16

2400 MDR00023601; SUR00130207-0001

2401 D7D9-0002508; D7D9-0002509; D7D9-0002510; D7D9-0002511; MDR00025991; MDR00027146; MDR00026924

2402 MDR00044477

Source: Mouseinthecourt.co.uk

circulated to D6's sales teams on 04.01.16[2403] and again on 14.01.16 ("*These assets are then held in the form of a debenture by Global Security Trustee's, a third party company who ensures there is always adequate security in place to protect the bond holders*").[2404] There are numerous examples of D6's sales people telling prospective investors about the role of the independent trustee, among other things.[2405]

Q3.39 Similarly, D7 emailed prospective investors to tell them about the "*third party*" GST[2406] "*who ensures there is always adequate security in place to protect the bondholders*".[2407]

Q3.40 This representation was also false. GST was closely connected with LCF and its borrowers. GST was set up by D8, in collaboration with D1, in circumstances where LCF was not able to obtain the services of GCEN.[2408] D8's connections with LCF and its borrowers were, plainly, very extensive: D8 worked for the "London Group" under the instruction of D2 and was the company secretary of many connected borrowers. He was therefore required to act in the interests of companies who had purported to give security. However, this created a clear conflict, because by acting as the security trustee, D8 was responsible for enforcing that security against those same companies. It was misleading to assert that GST was independent. In any event, GST did not monitor LCF's security.

(6) False representations about LCF's business model

Q3.41 LCF made numerous representations about the relationship between its lending activities and its generation of income, which gave the impression that LCF was a genuine business. More specifically, LCF represented that it generated income and profit from lending activity to pay high returns, based on its lending business to small and medium

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2403 SUR00004744-0001; SUR00004745-0001

2404 SUR00005658-0001; SUR00005659-0001

2405 MDR00026689; MDR00026692; MDR00026755; MDR00026769; MDR00026801; MDR00045709; MDR00048347; MDR00048625; MDR00050219

2406 MDR00026632; MDR00026697

2407 D7D9-0002441; D7D9-0002509; D7D9-0002479

2408 Day 23/page 81/line 19 – page 87/line 3 **[A5/23/21]**.

Source: Mouseinthecourt.co.uk

sized enterprises in the UK.[2409] Relatedly, LCF represented that monies invested by bondholders were capable of generating high returns.[2410] These are representations about LCF's business model.

Q3.42 These representations were false: no returns were generated by LCF's lending activities. LCF's only source of money was new bondholder monies. Consequently, LCF had no prospect of ever repaying bondholders, including as a result of the misappropriation of bondholder monies, and the payment of the 25% commission paid to D6.

Q3.43 LCF claimed that it generated its income from lending activity to pay high returns. The first LCF investment memorandum stated that "*provision of finance to regional business development will … provide a secure high rate of return for investors*". Subsequent investment memoranda stated, "***Income is generated by charging a Borrowing Company lending fees of 2% and making an interest 'tum' on the funds LC&F lends***", emphasis added.[2411] In other words, LCF's lending activities generated profits: "*the interest payable pursuant to these loans is* ***sufficient to enable LC&F to service its obligations pursuant to the bonds issued by it and to generate a profit for LC&F***", emphasis added.[2412]

Q3.44 The same statements appeared in the investment memoranda for the ISA bond series[2413] and brochures ("[LCF's] *principal activity is to identify opportunities in structured finance within the UK SME sector and to* ***generate income via loan interest and associated fees***", emphasis added;[2414] "*To continue to grow a profitable commercial*

[2409] RRRAPoC ¶7(3)-(4) **[B1/2.1/3]**.

[2410] RRRAPoC ¶7(8) **[B1/2.1/3]**.

[2411] MDR_ST_00053302 page 14; MDR_ST_00017000 page 14; MDR_ST_00090094 page 13; MDR_ST_00040127 page 13; MDR_ST_00047548 page 14; MDR_ST_00033505 page 14; MDR_ST_00145654 page 16; MDR_ST_00155374 page 13

[2412] MDR_ST_00053302 page 11; MDR_ST_00017000 page 12; MDR_ST_00090094 page 10; MDR_ST_00040127 page 11; MDR_ST_00047548 page 11; MDR_ST_00033505 page 11; MDR_ST_00145654 page 13; MDR_ST_00155374 page 11.

[2413] MDR_ST_00154857 page 11; MDR_ST_00154858 page 11; MDR_ST_00154959 page 14; MDR_ST_00154860 page 10

[2414] MDR_ST_00053300 page 4; MDR_ST_00032654 page 4; MDR_ST_00032653 page 4; MDR_ST_00032657 page 4; MDR_ST_00032650 page 4; MDR_ST_00033849 page 4; MDR_ST_00098654 page 4

Source: Mouseinthecourt.co.uk

loan business to meet the increasing demand of successful, but cash-starved UK SMEs"[2415]).

Q3.45 Prospective bondholders were told that LCF's income came from its lending activity. As D6's sales people stated, "***We make our money through the lending side of the business, not from investors***", emphasis added,[2416] "*We make our money solely from the corporate loans that we make to companies*";[2417] "*we make our money on the loans we issue*";[2418] "*Currently, our loan book is approximately 100 SMEs*".[2419] It was stated repeatedly that LCF charged these borrowers high interest rates, which enabled LCF to pay high interest rates to bondholders. Hence, "*LCF's business model is to then lend the bond funds out to companies at a premium rate*";[2420] "*It is because of the interest rates charged to our borrowers we are able to pass on the benefits to our investors*";[2421] "*We are a corporate financier, loaning money to UK businesses at around 12-20% on average*";[2422] "*We typically charge borrowers between 12% and 20% per year which means we are able to pass on higher interest rates to our investors*".[2423]

Q3.46 The only risk was said to be a big drop in the value of the security combined with numerous defaults. But they presented this as a purely theoretical or highly implausible risk: "*Mathematically it's possible … But we would argue it is highly unlikely*".[2424] "*A worst-case scenario*";[2425] "*highly unlikely, but technically possible*".[2426]

[2415] MDR_ST_00053300 page 4; MDR_ST_00032654 page 6; MDR_ST_00032653 page 6; MDR_ST_00032657 page 6; MDR_ST_00032650 page 6; MDR_ST_00033849 page 6; MDR_ST_00098654 page 6

[2416] MDR00038754

[2417] MDR00077241

[2418] MDR00055886

[2419] MDR00032132

[2420] MDR00023081

[2421] MDR00026127

[2422] MDR00070217

[2423] MDR00057471 page 7; MDR00058012 page 7; MDR00059612 page 8; MDR00059844 pages 2-3

[2424] MDR00224329 pages 70-71; MDR00224329 pages 70-71

[2425] MDR00066662

[2426] MDR00082299

Source: Mouseinthecourt.co.uk

Q3.47 D7 made additional false representations about LCF's business model in order to persuade prospective bondholders to entrust their monies to LCF. Among other things, D7 told prospective investors that "*we don't carry a lot of overheads*";[2427] that LCF's status as a plc meant that "*every information … we have to make publicly available*";[2428] that LCF *"tended to work with much larger companies*";[2429] that "*under data protection we can't tell you who the borrowers are … But they are quite significant*";[2430] and that LCF's security was "*extremely good*".[2431] D7 made such representations during telephone calls with prospective bondholders.[2432]

Q3.48 D7 represented that LCF's bonds were a secure investment and that it had a successful lending business. He said that LCF always took a personal guarantee from the borrower's owners[2433] and that the independent security company monitored the value of the security to ensure that it was adequate to cover LCF's loan book.[2434] D7 also said that LCF was "*fully authorised and approved by the financial conduct authority*".[2435]

Q3.49 On the lending side, D7 said that LCF was always flooded with applications for loans from its network of brokers and financial advisors[2436] and that LCF's lending team were therefore able to "*cherry pick the best of the bunch*".[2437] He also said LCF was lending

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2427 MDR00224329 page 50

2428 MDR00224329 page 30

2429 MDR00224329 page 33

2430 MDR00224329 page 33

2431 MDR00224329 page 51

2432 MDR_CC_00000180 **[I4/9/1]**; MDR_CC_00000977 **[I4/42/1]**; MDR_CC_00000002 **[I4/2/1]**; MDR_CC_00000187 **[I4/11/1]**; MDR_CC_00000251 **[I4/15/1]**; MDR_CC_00000294 **[I416/1]**; MDR_CC_00000250 **[I4/14/1]**; MDR_CC_00000378 **[I4/20/1]**; MDR_CC_00000357 **[I4/18/1]**; MDR_CC_00000503 **[I4/22/1]**; MDR_CC_00000038 **[I4/4/1]**; MDR_CC_00000524 **[I4/23/1]**; MDR_CC_00000242 **[I4/13/1]**

2433 MDR_CC_00000180 **[I4/9/1]**; MDR_CC_00000294 **[I4/16/1]**

2434 MDR_CC_00000294 **I4/16/1]**; MDR_CC_00000250 **[I4/14/1]**; MDR_CC_00000357 **[I4/18/1]**

2435 MDR00224329 pages 32 and 70; MDR_CC_00000357 **[I4/18/1]**; MDR_CC_00000180 **[I4/9/1]**; MDR_CC_00000187 **[I4/11/1]**; MDR_CC_00000503 **[I4/22/1]**

2436 MDR_CC_00000180 **[I4/9/1]**

2437 MDR_CC_00000524 **[I4/23/1]**

Source: Mouseinthecourt.co.uk

to hundreds of different business to diversify risk.[2438] He said that these loans were short-term loans, typically no more than 6 months[2439] but no longer than 12 months.[2440]

Q3.50 These representations were all false in numerous different respects.

Q3.51 **First**, LCF did not generate any income from its lending activity. D1 accepted in cross-examination that LCF's borrowers used further monies borrowed from LCF in order to meet their interest payments:[2441] in other words, "income" from LCF's borrowers represented recycled monies originating from LCF.

Q3.52 **Second**, as explained in further detail below,[2442] LCF operated as a Ponzi scheme from its inception, which necessarily rendered LCF's representations about its business model false. The payment of high returns to LCF's bondholders was dependent on the use of bondholder monies, directly (by LCF) or indirectly (after being routed through LCF's connected borrowers).

Q3.53 **Third**, very substantial funds invested into LCF were being used to fund payments to the personal bank accounts of D1, D2, D3, D4 (and others), including in particular under cover of the Lakeview SPA, the Elysian SPA, the Prime SPA, the LPE SPA, and the LPT SPA. The mere fact of the payments made from LCF's funds to these individuals, in circumstances where LCF did not generate any income from its borrowers, meant that LCF was insolvent from the very beginning and was never in a position to generate a profit.

Q3.54 **Fourth**, LCF's stated business model was also unsustainable as a result of the 25% commission paid to D6: there was also no prospect of LCF generating income from a 2% lending fee, and interest rates in the region of 10%-20%, whilst simultaneously paying 25% of the capital sum of each new bondholder investment directly to D6.[2443]

2438 MDR_CC_00000378 **[I4/20/1]**

2439 MDR_CC_00000180 **[I4/9/1]**

2440 MDR_CC_00000524 **[I4/23/1]**

2441 Day 26/page 79/line 20 – page 82/line 22 **[A5/26/20]**.

2442 Section Q4 below.

2443 Q9.89-Q9.93 below.

Source: Mouseinthecourt.co.uk

Q4 Fraudulent trading 2: operating a Ponzi scheme

The law relating to Ponzi schemes

Q4.1 The basic mechanism of a Ponzi scheme involves "*taking in cash from a number of clients, promising to invest it and to provide them with high returns, and then convincing them that these returns had been achieved by using their money, or the money of other clients, to make what appeared to them to be distributions of income or profits*": *Van Zuylen v Whiston-Dew* [2021] EWHC 2219 (Ch) at [142].[2444]

Q4.2 A key feature of a Ponzi scheme is that "*creditors are defrauded by falsely representing that they will get high returns for their investment whereas in fact they are simply paid from the monies received from subsequent creditors who invest in the scheme*": *Bozik v Ostrava Regional Court Czech Republic* [2010] EWHC 1382 (Admin) at [2] per Elias J.[2445]

Q4.3 Further, since it is the hallmark of a Ponzi scheme that "*withdrawals by investors are financed from existing or new deposits in the scheme and not from any real trading*" (*HSBC Bank plc v 5th Avenue Partners Ltd* [2008] 2 CLC 770 at [9] per Walker J),[2446] the fraudsters will be "*unable to give any coherent explanation of any profit-making activity which could have sustained the unrealistic returns which were promised to investors*": *Financial Conduct Authority v Golding* [2021] EWHC 372 (Ch) at [16] per Mellor J.[2447]

Q4.4 However, the fact that early investors are repaid, usually with a high return, has the effect of "*generating confidence in the reliability of the scheme, leading investors to invest more monies in the scheme*": (*R (Norman) v Chelmsford Crown Court* [2020] EWHC 3456 (Admin) at [50] per Dingemans J.[2448] Thus, "*such apparent successes induce further investments, and the growing funds are then periodically diverted for the benefit*

2444 **[S2/166.1/29]**.

2445 **[S2/105.1/2]**.

2446 **[S2/95.1/7]**.

2447 **[S2/166.2/4]**.

2448 **[S2/156.3/11]**.

Source: Mouseinthecourt.co.uk

of the owners of the corporate vehicle rather than for the benefit of the investors": *Paylor v Bowers* [2018] EWHC 2244 (Ch) at [24] per Sarah Worthington QC.[2449]

Q4.5 One characteristic of a Ponzi scheme is accordingly that some early investors "*suffer no loss because monies that the wrongdoer has misappropriated from them is replenished by money misappropriated from the funds of other innocent parties*": *Guide Dogs for the Blind Association v Box* [2020] EWHC 1948 (Ch) at [8] per HHJ Saffmann.[2450] As Lord Sumption put it in *Fairfield Sentry Ltd v Migani* [2014] UKPC 9 at [3]:[2451]

> "*It is inherent in a Ponzi scheme that those who withdraw their funds before the scheme collapses escape without loss, and quite possibly with substantial fictitious profits. The loss falls entirely on those investors whose funds are still invested when the money runs out and the scheme fails*".

Q4.6 The eventual failure of a Ponzi scheme is inevitable, as Lewison LJ explained in *Bucci v Carman* [2014] BCC 269 at [30]:[2452]

> "*In the early stages of a Ponzi scheme money flows in from investors promised high returns. Money from new investors is used to pay the promised returns to existing investors. On the face of it therefore the company is managing to pay its debts as they fall due.* ***But the underlying reality is that, sooner or later, the whole house of cards will collapse****. The accumulating liabilities to new investors cannot hope to be matched by any real investments: they are dependent on the continued inflow of new money. When that dries up, the game is up.* ***In any commercial sense the company is insolvent from the beginning***" (emphasis added).

Q4.7 Therefore, as Meade J confirmed in *Biscoe v Milner* [2021] EWHC 763 (Ch) at [267], a Ponzi scheme is "*bound to go into insolvent liquidation … once there was no longer enough money coming in from new investors*".[2453] In short, "*These arrangements always end badly*": *Van Zuylen v Whiston-Dew* [2021] EWHC 2219 (Ch) at [142].[2454]

2449 **[S2/144.2/10]**.

2450 **[S2/156.4/3]**.

2451 **[S2/124.2/4]**.

2452 **[S2/124.3/9]**.

2453 **[S2/166.3/47]**.

2454 **[S2/166.1/29]**.

Source: Mouseinthecourt.co.uk

A "double" Ponzi scheme

Q4.8 LCF operated as a Ponzi scheme throughout its lifetime. This is explained in further detail below. LCF advanced monies to its borrowers, which those borrowers then repaid to LCF in order to enable LCF to repay principal and pay interest to bondholders. LCF was dependent on the influx of monies from new bondholders in order to make redemption and interest payments to existing bondholders: LCF had no income other than bondholder monies, and none of the connected borrowers generated any real income. LCF was doomed to collapse from the start.

Q4.9 But this was not the only respect in which LCF was a Ponzi scheme. From its inception, LCF (known at that time as SAFE) operated as a Ponzi scheme in conjunction with the Sanctuary scheme: new investment monies paid to SAFE were used in order to discharge the existing liabilities of Sanctuary PCC to the Sanctuary investors.[2455] This was one of the first uses of monies invested into LCF (as SAFE). These payments continued throughout LCF's lifetime.

Q4.10 For these reasons, LCF carried on fraudulent trading: (i) the operation of the Ponzi scheme necessitated that LCF was accepting monies from new bondholders in circumstances where it knew that LCF would inevitably collapse and would never be able to repay them all; (ii) LCF was necessarily insolvent and traded whilst insolvent; and (iii) as explained above,[2456] LCF's representations that it was able to repay bondholders through profits or earnings, and otherwise conducted a genuine business, were false, and bondholders were thereby deceived into investing in LCF.

The operation of LCF's Ponzi scheme

Q4.11 The Claimants rely on two factual propositions which describe how LCF operated as a Ponzi scheme.[2457]

[2455] H3.8-H3.11 above.

[2456] Q3.41-Q3.54 above.

[2457] RRRAPoC ¶21A **[B1/2.1/25]**.

Source: Mouseinthecourt.co.uk

Q4.12 **First**, monies received from new bondholders were used *indirectly* to fund payments to existing bondholders. Here, monies were paid by LCF to borrowers, with the borrower receiving a sum net of D6's fee. The borrower then repaid funds back to LCF, either directly or via other connected entities, and those funds were then used by LCF to pay interest and redemption to existing bondholders. This is "**Proposition 1**".

Q4.13 **Second**, monies received from new bondholders were used *directly* to fund payments to existing bondholders. In these instances, sums received by LCF from new bondholders was used *directly* to pay interest and redemptions to existing bondholders without first being laundered through a borrowing entity. This is "**Proposition 2**".

Q4.14 The primary evidence on which the Claimants rely to establish these propositions is the evidence of David Hudson. Mr Hudson is a Partner of FRP Advisory Group Plc, who conducted an extensive review of bank statements for LCF and a number of connected companies, namely: LOG, Waterside Villages, CV Resorts, FSES, L&TD, GRP, Sands Equity, Elysian RGL, Prime RDL, and Green Electricity.[2458]

Q4.15 Following his assessment of the bank statements, Mr Hudson addressed the flow of funds into and out of LCF in a considerable amount of detail in: (i) the first witness statement of David Hudson dated 3 December 2021 ("**Hudson 1**");[2459] (ii) the second witness statement of David Hudson dated 9 December 2021 ("**Hudson 2**");[2460] (iii) the third witness statement of David Hudson dated 19 May 2023 ("**Hudson 3**");[2461] and (iv) the fourth witness statement of David Hudson dated 30 April 2024 ("**Hudson 4**").[2462]

[2458] Hudson 3 ¶¶11-12 **[C1/5/4-5]**.

[2459] **[C1/1/1]**.

[2460] **[C1/2/1]**.

[2461] **[C1/5/1]**.

[2462] **[C1/6/1]**.

Source: Mouseinthecourt.co.uk

Q4.16 David Hudson was cross-examined on his evidence. Mr Hudson's assessment of the flows of funds into and out of LCF as set out in his witness statements[2463] was not seriously challenged in cross-examination and should be accepted in full.[2464]

Proposition 1

Q4.17 Monies which were paid into LCF by new bondholders were first paid to companies connected with LCF, before then being returned to LCF in order to make interest or redemption payments to LCF's existing bondholders.

Q4.18 This can be shown by way of an example concerning L&TD, which was the first connected borrower used to operate the Ponzi scheme in this way. First, LCF would pay funds to L&TD. Secondly, on the same day or the next day, L&TD would make a payment to LCF, into its operational account, with amounts and payment references which matched the name of the bondholder concerned (such as "Salter", "Thompson", "Robinson", "Andrews", and "Lear"). Finally, the LCF operational account would make a payment to the bondholder concerned.[2465]

Q4.19 Although redemption payments were normally addressed on an individual basis, interest payments came to be handled on a bulk basis. On 24.02.16, D1 emailed D3 to say that it "*would be useful to have an idea of the funds you will need for month end to ensure we have it covered*".[2466] On 30.03.16, Katie Maddock of LCF emailed Nicky Thomson (cc D3) to say that she had just transferred £93,442.82 to L&TD,[2467] and to ask L&TD to return £39,055.07 with reference S2 Mar 16 Int, and £27,922.38 with reference S5 Mar 16 Int.[2468] Nicky arranged for L&TD to make these payments back to LCF,[2469] which used the monies to make interest payments to existing bondholders.[2470]

[2463] Hudson 4 was served during the trial, in order to formally confirm a small number of typographical errors, which Mr Hudson explained briefly in his evidence in chief.

[2464] Day 18/page 63/line 11 – page 109/line 2 **[A5/18/6]**.

[2465] Day 9/page 115/line 20 – page 119/line 8 **[A5/9/29]**.

[2466] MDR00031584; MDR00031586

[2467] MDR00034034

[2468] MDR00034040

[2469] MDR00034044; MDR00215815 pages 22-23; MDR00034151 page 2

[2470] MDR00052127 rows 290-334

Source: Mouseinthecourt.co.uk

Q4.20 Over the course of LCF's lifetime, the Ponzi scheme was operated through a number of different borrower entities. Initially, LCF operated the Ponzi scheme through L&TD from January 2016 onwards.[2471]

Q4.21 From around March 2017, the Ponzi scheme was also conducted through LOG.[2472]

Q4.22 By the middle of 2017, LCF was also conducting the Ponzi scheme through GRP and Sands Equity. LCF paid monies from new bondholders to GRP, which transferred them to Sands Equity, which repaid some of these monies to LCF in order to enable LCF to make interest and redemption payments to existing bondholders.[2473]

Q4.23 From May 2018, the Ponzi scheme was being conducted through GAD.[2474] GAD was a company under D8's control.[2475] The bank statements confirm that LCF was paying monies from new bondholders to GAD which repaid some of those monies to LCF.[2476]

Q4.24 The fact that LCF operated in this way also appears from a number of contemporaneous documents and communications.

Q4.25 Katie Maddock of LCF explained the position to D3 on 19.01.16, saying, "*Harris reinvested their funds and they just wanted their interest paid to them. We paid this out of the LCAF ops account and until today hadn't had the money back from LTD to cover the payment*".[2477]

Q4.26 D1 would authorise the payments to bondholders. For example, Katie Maddock emailed D3 on 10.02.16 and explained that this was the case: "***Both of these clients have called in today screaming. Andy has confirmed to me that he is happy to lend the funds to***

[2471] Hudson 1 ¶¶9-14 **[C1/1/3]**.

[2472] Hudson 1 ¶¶15-25 **[C1/1/9]**.

[2473] MDR00215792

[2474] Hudson 1 ¶¶26-34 **[C1/1/12]**.

[2475] D2D10-00040407; D2D10-00040186

[2476] D2D10-00000503 page 6; D2D10-00000680

[2477] EB0012610

Source: Mouseinthecourt.co.uk

make the repayments *... With what's going on behind the scenes at the moment we're keen not to receive a complaint*" (emphasis added).[2478]

Q4.27 The fact that LCF was dependent on the recycling of its own monies in order to make payments to bondholders also appears in the contemporaneous documents. In the context of discussing a new draft facility agreement between LCF and LOG, D8 explained that "*at the moment* ***when there are redemptions these are funded by further drawings. If no drawdowns are available, it might be difficult to make the redemption***" (emphasis added).[2479] D8 forwarded this email to D2.[2480] D1 also saw it.[2481]

Q4.28 Shortly after the raid by the FCA on LCF's premises, employees of LCF described LCF's business model in terms which show that it operated as a Ponzi scheme. Katie Maddock of LCF provided Graham Reid with information on 22.01.19.[2482] She told him that she was "*working through the information requested by the FCA*". She made clear that repayments by borrowers to LCF, which LCF then used to make redemptions to bondholders, "*were funded by the borrowers refinancing their obligations by way of a drawing on their loan facility*". [2483]

Q4.29 It is clear that LCF depended on the use of new bondholder monies in order to meet redemption and interest payments to existing bondholders. As Mr Hudson explains, this follows from the fact that the companies to which LCF lent monies were in most cases non-trading entities which did not generate any income. When those companies paid monies to LCF, these were monies previously paid to them from LCF.

Q4.30 This enables Mr Hudson to have a high degree of confidence in his conclusion that funds were recycled through LCF in this way:

[2478] MDR00030596

[2479] MDR00000570

[2480] MDR00000570

[2481] MDR00162231

[2482] MDR00205993

[2483] MDR00206074

Source: Mouseinthecourt.co.uk

(1) "*[I]t is clear that the monies which were paid into LCF by new Bondholders, continued to be recycled through LCF and other Laundering Entities before being paid to existing Bondholders who were due to receive interest payments or redemption payments from LCF*";[2484]

(2) "*I am able to state this with a high degree of certainty because the Laundering Entities, in most cases, were non-trading entities which did not generate monies from business activities and only ever received funds from LCF (either directly or indirectly from other Laundering Entities which, themselves, only received funds from LCF) such that when the Laundering Entities repaid LCF, it can be concluded without doubt that the funds which were used to repay LCF were ultimately the same funds which were received from LCF previously;"*[2485]

(3) "*In respect of each of the Laundering Entities, I am able to evidence that each of those entities recycled monies received from LCF back to LCF since in each case one of the following scenarios apply:*

(a) the Laundering Entity only received funds from LCF; or

(b) the other entity or entities from which funds were received, themselves only received funds from LCF; or

(c) where external funds were received whose origin cannot be traced, the funds received from such entities were substantially less than the funds paid back to LCF such that it can be concluded that the funds paid to LCF were (at least) largely made up from funds received from LCF initially or that, even if not on a strict 'tracing' basis, the funds paid to LCF were financed in some way by the receipt of other funds received from LCF initially";[2486]

[2484] Hudson 3 ¶17 **[C1/5/6]**.

[2485] Hudson 3 ¶18 **[C1/5/6]**.

[2486] Hudson 3 ¶19 **[C1/5/6]**.

Source: Mouseinthecourt.co.uk

(4) "***I am therefore confident that the vast majority of the funds paid by LCF to the Laundering Entities and which made their way back to LCF were ultimately funds which originated from LCF initially***"[2487] (emphasis added).

Q4.31 None of these propositions was challenged in Mr Hudson's oral evidence, and Mr Hudson explained the position in the same terms in his oral evidence.[2488] He explained "*categorically*" that funds used by LCF to make payments to its bondholders came from other bondholders who invested into LCF.[2489]

Q4.32 LCF depended on new bondholder monies in order to make redemption and interest payments to LCF's existing bondholders, because there was no independent source of income from LCF's borrowers which could otherwise be used to make those repayments. LCF was a Ponzi scheme and was doomed to collapse from the start.

Proposition 2

Q4.33 As noted above, in other instances, LCF simply used monies received from new bondholders to make redemption and interest payments to existing bondholders, without any intermediate payments through connected borrowers. In turn, this took place in two ways.

Q4.34 The first was that LCF circulated monies through GCEN before using the funds to make redemption payments. All along the monies belonged to LCF, because GCEN was LCF's collection agent as above. This took place from September 2018 onwards, after D1 set up additional GCEN accounts for individual borrowers.[2490] During October 2018, for example, LCF paid monies from new investors to each individual borrower's account with GCEN, which returned the monies to LCF to enable LCF to make redemption and interest payments to existing bondholders.[2491]

[2487] Hudson 3 ¶44 **[C1/5/29]**.

[2488] Day 18/page 100/line 20 – page 101/line 18 **[A5/18/25]**.

[2489] Day 18/page 101/line 19 – page 102/line 8 **[A5/18/26]**.

[2490] MDR00173140; MDR00175074

[2491] MDR00177940; MDR00179934; MDR00181608

Source: Mouseinthecourt.co.uk

Q4.35 The second was that new bondholder monies would be paid from GCEN to LCF, which LCF then used to repay existing bondholders. The monies collected by GCEN were new bondholder monies collected on LCF's behalf. This is explained in further detail by Mr Hudson,[2492] who concludes that in the period from 09.10.18 to 06.12.18, "*On any view, payments by LCF to Bondholders consisted largely of money which originated from Bondholders*".

Q4.36 As explained above, LCF had no source of income from its borrowers, and so depended on the use of new bondholder monies to repay existing LCF's bondholders.

Acknowledgments that LCF operated as a Ponzi scheme

Q4.37 Both D1 and D8 have acknowledged in these proceedings that, as a matter of fact, LCF used new bondholder monies to make redemption and interest payments to existing bondholders.

Q4.38 D8 declined to give any oral evidence at trial. However, in his skeleton argument for trial, D8 accepted that, as a matter of fact, LCF used funds from later investors to repay earlier investors. D8 merely disputed the characterisation of this arrangement as a "Ponzi scheme":[2493]

> *"**It is I think common ground that money from new borrowers** [sic] **was used to pay interest and to redeem earlier loans** … On its own the use of later investors' money to pay out earlier investors does not make it a Ponzi scheme."*

Q4.39 D1 accepted Mr Hudson's evidence about payments from and into LCF. D1 also accepted that payments to LCF's existing bondholders were funded by monies LCF received from new bondholders, which were first paid to connected borrowers for that purpose. This was something which the loan agreements "*allowed to happen*", and D1 stated "*absolutely*" that he only took issue with the use of the phrase "Ponzi scheme":[2494]

[2492] Hudson 1 ¶¶35-45 **[C1/1/14-16]**.

[2493] D8 Written Opening Submissions ¶5 **[A2/7/4]**.

[2494] Day 26/page 79/line 20 – page 82/line 22 **[A5/26/20]**.

Source: Mouseinthecourt.co.uk

24 Q. You have referred in your witness statement to the three
25 witness statements from Mr Hudson?

1 A. Yes, I have looked through those.
2 Q. You have seen that those statements contain numerous
3 examples of LCF lending monies from new bondholders to
4 borrowers so that those same borrowers could then repay
5 the monies to LCF to enable LCF to make interest and
6 redemption payments to existing bondholders?
7 A. I looked at Mr Hudson's work, and he's clearly spent
8 a lot of time on it. But the answer is contained for
9 all to see in the loan documents that allow for that to
10 happen. Again, there are numerous companies out there
11 that allow borrowers to gear up on their assets to meet
12 the commitments while they're in the development stage.
13 What LCF did is manage the cash flow in the middle of
14 that. I don't take that it is a Ponzi scheme. There
15 are verifiable assets that we lent against. Yes, we
16 allowed them to borrow to meet principal and interest
17 until such time as they could monetise the assets that
18 they have or refinance out.
19 Q. That's right. So you don't challenge the facts of
20 the payment. You take issue with what you might call
21 the characterisation or the interpretation it's based
22 on?
23 A. Absolutely. I have never said that our borrowers didn't
24 borrow further funds against their assets to meet
25 interest and principal requirements, and, indeed, in the

1 loan document -- I forget the clause -- it specifically
2 says that if LCF needs to make a repayment to
3 a borrower, we reserve the right to make a demand
4 against -- sorry, to a bondholder, we reserve the right
5 to make a demand in that loan document on the borrower
6 to provide those funds back to us, but then, also, we
7 commit to the borrower that we will replace those.
8 Because we got -- LCF raised money over one-, two-
9 and three-year terms, but we lent out to our borrowers
10 on three-year terms, on a rolling basis. So we managed
11 the cash flow in the middle.

Q4.40 There can therefore be no doubt that LCF operated as a Ponzi scheme and was necessarily doomed to collapse from the start. On this basis also, LCF carried on business for a fraudulent purpose within s.246ZA.

Q5 <u>Fraudulent trading 3: misappropriating bondholder monies</u>

Q5.1 LCF also carried on fraudulent trading by misappropriating bondholder monies.[2495]

[2495] RRRAPoC ¶22 **[B1/2.1/25]**.

Source: Mouseinthecourt.co.uk

Q5.2 The practical means by which monies were misappropriated from LCF was (principally) a series of uncommercial and illegitimate transactions, by which monies invested into LCF by bondholders were paid out to D1, D2, D3, D4 and certain others.

Q5.3 These transactions were the Lakeview SPA,[2496] the Elysian SPA,[2497] the Prime SPA,[2498] the LPE SPA,[2499] and the LPT SPA.[2500] These transactions were considered in detail above. These transactions were put in place to facilitate the misappropriation of funds, and each one comprised numerous elements.

Q5.4 The five major transactions have three overarching features in common.

Q5.5 **First**, a central aspect of these transactions was that LCF entered into loan agreements. Loan agreements were the mechanism adopted in order to explain why monies were being paid out of LCF at all: they were designed to create a façade of legitimate business activities in transferring money to connected borrowers.[2501]

Q5.6 In reality, this was the first step in routing monies from LCF to D1, D2, D3 and D4, and these loan agreements concealed the fact that LCF's business was carried on with intent to defraud bondholders.

Q5.7 The loans were uncommercial: (i) LCF regularly "loaned" monies to connected borrowers in the absence of any written loan agreement;[2502] (ii) LCF regularly exceeded borrowing limits;[2503] (iii) LCF was party to numerous backdated loan agreements and side letters, whose purpose was to mislead others into believing that LCF remained within contractual lending limits, and conducted a genuine business; (iv) LCF was party to the re-allocation of its liabilities to new corporate vehicles for no commercially

[2496] Section I above

[2497] Section J above.

[2498] Section K above

[2499] Section L above.

[2500] Section M above.

[2501] RRRAPoC ¶¶16-17 **[B1/2.1/7-16]**.

[2502] Q3.33-Q3.34 above.

[2503] Q3.33 above.

Source: Mouseinthecourt.co.uk

defensible reason, as explained above in relation to the "support" companies, and the transfer of the loan to D4 to FSES; and (v) monies were not in fact paid to the borrower identified in the loan agreement, but various companies under the control of D1, D2, D3, D4.[2504]

Q5.8 Moreover, all of LCF's borrowers were under the ultimate ownership and/or control of D1, D2, D3 and/or D4. This was an essential element of the transactions as above, in order to ensure that (as D7 put it) "*funds get utilised their way*".[2505]

Q5.9 **Second**, the transactions involved share purchase agreements which purported to explain why bondholder monies were being paid to the Defendants personally.

Q5.10 These share purchase agreements had three broad characteristics: (i) they involved the sale of worthless shares; (ii) they involved self-dealing, such that beneficial ownership of whatever was purportedly sold did not change; and (iii) they relied upon artificial devices in order to justify the consideration to be paid to the Defendants, whether clauses providing for an uplift in the consideration,[2506] redeemable preference shares which had never been issued,[2507] companies whose underlying assets had no value,[2508] or inflated valuations of shares.[2509]

Q5.11 But these were never genuine commercial transactions. Documents were frequently backdated in order to conceal the fact that monies had already been paid to D1, D2, D3, and D4.[2510] The transactions led to incoherence, such as the sale of non-existent preference shares.[2511] There was no coherent relationship between the lending from LCF to the connected borrowers (i.e. justifying payments out of LCF), and the share purchase agreements (i.e. justifying payments to D1, D2, D3, D4 and others). Further, in the case

[2504] Q3.34 above.

[2505] SUR00091510-0001

[2506] I2.9-I2.14, I2.23, I4.11-I4.15 and I6.13-I6.22 above.

[2507] J2.16 above.

[2508] J2.17 and K2.12-K2.13 above.

[2509] M2.12-M2.19 and L2.25-L2.33 above.

[2510] I3.14, I3.18, I3.23 and L2.12-L2.15 above.

[2511] J2.16 above.

Source: Mouseinthecourt.co.uk

of the Elysian SPA and the Prime SPA, the "purchasers" were entities controlled by individuals who agreed to participate in the transactions in return for a fee.[2512]

Q5.12 All of these transactions were instead dishonest transactions which had no genuine commercial rationale, and whose purpose was to disguise the misappropriation of bondholder monies.[2513]

Q5.13 **Third**, all of the transactions were highly elaborate.

Q5.14 Once these transactions are understood, with the benefit of extensive investigations by the Claimants and their legal representatives, they are clearly unsustainable. Yet they are the product of a significant degree of intellectual effort: they required deliberate action in order to orchestrate, prepare, and execute numerous different types of legal document in order to give the impression that they were genuine transactions.

Q5.15 In other words, the misappropriation of bondholder monies through LCF was a pre-meditated fraud, and the participants in the fraud went to great lengths to conceal the misappropriations that were taking place.

Q5.16 In addition to the five major SPA transactions, monies were misappropriated in various other ways. LCF was used to make direct payments to D1, D2, D3, D4 and D8, such as in reliance on false invoices,[2514] and otherwise to benefit D4, whether under cover of loans to D4 directly[2515] or other transactions for his benefit.[2516]

Q5.17 As a result of misappropriating monies invested by bondholders and paying a large proportion of those monies to D1, D2, D3, D4 and others, LCF carried on business with the intent to defraud them and in fact defrauded them.

[2512] J2.18-J2.21 and K2.14-K2.20 above.

[2513] RRRAPoC ¶¶18-20 **[B1/2.1/17]**.

[2514] Sections N2, N3, N6 and N8 above.

[2515] Section N4 above.

[2516] Section N5 above.

Source: Mouseinthecourt.co.uk

Q6 The test for participation in and knowledge of fraudulent trading

Q6.1 The second and third elements of a claim for fraudulent trading are: (i) participation; and (ii) knowledge. The applicable legal principles were set out in the Claimants' written opening submissions on the law,[2517] but are summarised below for convenience.

The "participation" element

Q6.2 The Defendants must have been "*parties to the carrying on of the business in the manner mentioned in subsection (1)*" – in other words, they must have participated in some way in the carrying on of business of the company in the fraudulent manner.

Q6.3 A person may be liable for fraudulent trading whether or not they are an officer of the company. The Court of Appeal confirmed in *Bilta (UK) Ltd (in liquidation) and others v Tradition Financial Services Ltd* [2023] Ch 343 that there is no requirement for a person to exercise a controlling or managerial function within the company:[2518]

> "*118. I should make it clear, however, that nothing I say must be taken as setting the outer limits of the scope of section 213. All that we are asked to decide is whether a person cannot fall within the scope of section 213 unless he has a controlling or managerial function within the company. Whether an "outsider" can be said to be party to the carrying on by a company of a fraudulent business may well be a question of fact and degree which requires careful analysis. That question does not arise in this case, because of the settlement agreement.*"

Q6.4 The question is therefore whether, on the facts, a person can be said to be a "party" to the carrying on by the company of a fraudulent business. The cases indicate four main ways in which a person might "participate" in fraudulent trading for this purpose.

Q6.5 **First**, the threshold of "participation" is satisfied by "*some positive steps of some nature*".[2519] Any positive steps of any nature are therefore sufficient.

[2517] *Maidstone Buildings Limited* [1971] 1 WLR 1085 at 1092 **[S2/28/8]**; Claimants' written opening submissions on the law ¶¶13-31 **[A2/2/5]**.

[2518] **[S2/174/35]**.

[2519] **[S2/28/8]**.

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Q6.6 **Second**, a counterparty to a transaction may participate in fraudulent trading by means of a supply to the company, which has the effect of "*furthering and facilitating*" the company's fraudulent business. Lewison LJ explained in *Bilta (UK) Ltd (in liquidation) and others v Tradition Financial Services Ltd* [2023] Ch 343 at [93]:[2520]

> *"The extent to which a counterparty must be involved in the carrying on of the fraudulent business may depend upon the facts. Suppose that a manufacturer regularly supplies counterfeit designer clothes to a retailing company, knowing that the retailer will pass them off as genuine. It is, in my judgment, no misuse of language to describe the manufacturer as "party to the carrying on" of a fraudulent business, even though he exercises no managerial or controlling role within the retailing company; and the manufacturer may have other business activities that are not fraudulent. The manufacturer knows about the retailer's fraudulent business and is actively participating in it in the sense of furthering and facilitating it."*

Q6.7 **Third**, a person can provide the "occasion" for a company's fraudulent trading by being party to a transaction which itself enables the fraud to take place, even if the transaction is not with the company itself, and there is no need for that transaction to itself be fraudulent: *Bilta (UK) Limited (in liquidation)* [2020] EWHC 546 (Ch) at [170] (referring to *Alpha Sim v CAZ Distribution Services* [2014] EWHC 207 (Ch)[2521]):[2522]

Q6.8 **Fourth**, a person can participate by accepting money obtained through the fraudulent carrying on of business: *Re Gerald Cooper Chemicals Limited (in Liquidation)* [1978] 1 Ch 262 per Templeman J at 267H-268D.[2523]

The "knowledge" element

Q6.9 Actual knowledge will of course suffice.

Q6.10 Knowledge of fraudulent trading also includes "blind-eye" knowledge, which exists (i) where a person shuts his eyes to the obvious or (ii) where a person fails to make the enquiries that a reasonable and honest person would make for fear that his suspicions

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2520 **[S2/174/29]**.

2521 **[S2/119].**

2522 **[S2/152/42]**.

2523 **[S2/30/6-7]**.

Source: Mouseinthecourt.co.uk

will be confirmed. "*In my opinion, in order for there to be blind-eye knowledge, the suspicion must be firmly grounded and targeted on specific facts. The deliberate decision must be a decision to avoid obtaining confirmation of facts in whose existence the individual has good reason to believe*": *Manifest Shipping Co Ltd v Uni-Polaris Insurance Co Ltd (The Star Sea)* [2003] 1 AC 469 per Lord Scott at [116].[2524] See also *Morris v Bank of India* [2004] BCC 404 per Patten J at [13].[2525]

Q6.11 For liability in fraudulent trading to arise, it is sufficient that the participant had actual or blind-eye knowledge of a "*connection*" between their involvement and at least one fraud of the company. Where a participant assists in a fraud, the participant takes the risk that they are part of a fraud the details of which they do not know: *HMRC v Livewire Telecom Limited* [2009] EWHC 15 (Ch) at [103].[2526]

Q6.12 A person can therefore participate "knowingly" in a fraud where they do not understand the precise respects in which the company's business is fraudulent, and without the claimants having to show which fraudulent aspects of the company's business which the participant would have discovered upon making reasonable inquiries: *Megtian (Administration) v Revenue and Customs Commissioners* [2010] EWHC 18 (Ch) per Briggs J at [37]-[38];[2527] *JD Group Limited* [2023] EWHC 775 (Ch) per Sir Anthony Mann at [26].[2528]

Q6.13 A knowing participant in fraudulent activity must meet the two-stage test for dishonesty. The court must ascertain (i) subjectively, the defendant's actual state of knowledge or belief as to the facts, and (ii) whether, in the light of that state of mind, the conduct was honest or dishonest applying the objective standards of ordinary decent people: see *Ivey v Genting Casinos UK Ltd* [2018] AC 391 at [74] per Lord Hughes.[2529]

2524 **[S2/74/49]**.

2525 **[S2/85/16]**.

2526 **[S2/98/34]**.

2527 **[S2/101/12]**.

2528 **[S2/175/26]**.

2529 **[S2/140/26]**.

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Q6.14 Where conduct ranges over many years, the court is entitled to draw inferences from circumstantial evidence in order to make a finding of knowledge or dishonesty: *Fortune v Wiltshire* [2013] 1 WLR 808 (CA) at [22];[2530] *Arif (trading as Trinity Fisheries) v HMRC* [2006] EWHC 1262 (Ch) at [22].[2531]

Q7 D1: Participation in and knowledge of LCF's fraudulent trading

Q7.1 D1 was at the centre of LCF's fraudulent trading at all times. His actions and knowledge extended to every area of LCF's activity. D1 had actual knowledge of LCF's fraudulent trading, in which he participated extensively.

Participation in LCF's fraudulent trading

Q7.2 D1 was a *de jure* director of LCF at all material times and was involved in all of its activities. D1 knew that D4 was the individual ultimately in charge of SAFE and LCF and acted at his direction[2532] despite knowing that he was disqualified as a director.[2533]

Q7.3 D1 was actively involved in making false representations to prospective bondholders: (i) D1 was involved in the preparation and approval of information memoranda and brochures,[2534] and indeed had done so from the beginning;[2535] (ii) D1 approved the making of false representations on LCF's behalf about the value of LCF's security to bondholders, such as the claim that LCF had security over assets worth at least £215 million;[2536] and (iii) D1 was the ultimate decision-maker at LCF regarding the manner in which LCF presented itself to bondholders. As a result, D1 had knowledge of the representations made on behalf of LCF.

2530 **[S2/113/9]**.

2531 **[S2/88/6]**.

2532 Section H7 above.

2533 Day20/page93/line15 - page94/line14 **[A5/20/24]**.

2534 Section H2 and Q3.4 above.

2535 H2.7-H2.9 and H3.1-H3.2 above; Thomson ¶¶34-35 **[C2/2/14]**.

2536 Q3.8 above.

Source: Mouseinthecourt.co.uk

Q7.4 D1 caused LCF to issue bonds by which bondholders invested monies into LCF. D1 was also the sole individual responsible for LCF's lending and payment decisions: (i) D1 signed all loan agreements and security documents on behalf of LCF, including documents which were falsely backdated; (ii) D1 was responsible for making payments out of LCF to the connected borrowers and gave approvals in this regard.[2537]

Q7.5 D1 was responsible for dealings with auditors and accountants,[2538] including the preparation of documents by which they were misled, including the Surge agreement.[2539] D1 signed all of LCF's accounts.[2540] D1 acted on behalf of LCF in deceiving the auditors of LOG.[2541]

Q7.6 D1 actively administered the Ponzi scheme: D1 caused or permitted monies from new bondholders to be used to make payments to LCF's existing bondholders.[2542] D1 provided confirmation that LCF's monies could be lent, in order to be returned to LCF, and then used to repay bondholders.[2543]

Q7.7 D1 also participated actively in numerous aspects of the five major transactions by which monies were misappropriated from LCF and paid to D1, D2, D3, D4: for the reasons explained in some detail above, he participated in each of the Lakeview SPA,[2544] the Elysian SPA,[2545] the Prime SPA,[2546] the LPE SPA,[2547] and the LPT SPA.[2548] The Claimants rely on all of D1's actions in connection with each transaction, as set out further above, as amounting to D1's participation in LCF's fraudulent trading.

[2537] I4.30 and L2.8 above

[2538] H2.17 and I4.32-I4.33 above.

[2539] H3.15 and P2.103-P2.192 above.

[2540] **[A1/5/70-72]**.

[2541] L3.4-L3.9 and M3.2-M3.3 above.

[2542] MDR00018732; EB0012599; MDR00031584; MDR00031586

[2543] MDR00030596

[2544] Section I4 above.

[2545] Section J3 above.

[2546] Section K3 above.

[2547] Section L3 above.

[2548] Section M3 above.

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Q7.8 In addition, D1 participated in other misappropriations from LCF, including the payment to himself of 0.5% of LCF's receipts from new bondholders, which D1 arranged to be paid to himself through D6.[2549] D1 also participated in (and approved) misappropriations from LCF in other ways, as set out more particularly above.[2550]

Knowledge: falsity of the representations

Q7.9 D1 knew that the representations made by LCF were false. Moreover, D1 also participated in the means by which the representations were rendered false, as a result of his activities in relation to LCF. This is set out below in relation to each representation.

(1) False representations about the value of LCF's security

Q7.10 The four principal assets on which LCF relied for security purposes are The Hill, The Beach, Paradise Beach, and Lakeview. D1 knew that these assets were plainly inadequate to support LCF's ever increasing lending and could not be relied upon for security purposes.

Q7.11 D1 knew that The Hill was worthless as security for any lending by LCF. D1 knew that The Hill was held on trust for the El Cupey investors.[2551] He knew that there was no free equity in The Hill and that the value of the site, other than to the Sanctuary investors, was nil.[2552] In particular, D1 knew that the potential liability to the Sanctuary investors for this purpose was very substantially higher than the value of The Hill.[2553]

Q7.12 D1 knew that The Beach was worthless as security to LCF. D1 knew that Tenedora did not own any land at all at The Beach until 2017, and even when some plots began to be acquired, D1 knew that Tenedora never came to own all of the parcels of land which would enable the development of The Beach.[2554] Hence, whatever the theoretical value

[2549] P

[2550] Sections N2-N8 above.

[2551] E3.5 above.

[2552] E3.11(1)-(5) above.

[2553] E3(4) above.

[2554] E3.13 above.

Source: Mouseinthecourt.co.uk

of the land at The Beach, the plots actually owned by Tenedora could not be used for development and were essentially worthless. D1 also knew that the valuation of the site on which he did rely was, in any event, expressly not to be relied upon for the purposes of loan security.[2555]

Q7.13 D1 knew that Paradise Beach was worthless as security to LCF. D1 knew that CV Resorts held only a contract to acquire Paradise Beach.[2556] He also knew that the contract involved paying very substantially more than the asset was worth in order to acquire it.[2557] D1 therefore knew that the contractual rights held by CV Resorts, which is all that LCF indirectly owned, had no value. Further, D1 knew at all material times that CV Resorts never acquired land at Paradise Beach that could serve as loan security in any event.[2558]

Q7.14 D1 knew that the Lakeview site only had very limited value as security to LCF, which he knew was far less than the inflated value attributed to it in LCF's spreadsheets. D1 knew about the real value of the Lakeview site: he knew about the purchase price and the terms of the LCCL SPA, under which LCCL had acquired the Lakeview site for approximately £1.5 million,[2559] and D1 also knew that the Lakeview site had been valued at approximately £4 million by Savills and GVA.[2560] At the same time, D1 knew that the high figures used for the purpose of LCF's security value could not be justified. D1 knew that the other valuations obtained in relation to the Lakeview site were flawed and based on assumptions which he knew were false – and indeed, wildly inaccurate.[2561]

Q7.15 In addition to the underlying assets described above, D1 knew that LCF was lending to companies which had been recently incorporated and did not have any assets. D1 knew that the "support" companies had no assets.[2562] Despite this, D1 knew that LCF was

[2555] E3.12 above.

[2556] F3.1-F3.2 above.

[2557] F3.3-F3.4 above.

[2558] F3.8 above.

[2559] G3.4 above.

[2560] G3.8 above.

[2561] G3.10-G3.15 above.

[2562] J3.4 above.

Source: Mouseinthecourt.co.uk

lending to those companies by allocating to them L&TD's debt to LCF,[2563] and that the purpose of this arrangement was to allow GRP to be sold debt free to enable GRP's subsidiaries to borrow afresh from LCF to fund further misappropriation payments.[2564]

Q7.16 D1 also knew that there was no adequate security for the liability owed by Atlantic Petroleum Support. He knew that there had been no effective assignment of LOG's rights in relation to Atlantic Petroleum to be used as security for LCF's lending.[2565] In addition, he knew that the total value of LOG's rights which were purportedly assigned to LCF for this purpose were very significantly below the amount of lending by LCF.[2566] D1 therefore knew that the liability owed by Atlantic Petroleum Support to LCF was in reality entirely unsecured.

Q7.17 D1 knew that redeemable preference shares purportedly given in security by London Group had never been issued, and therefore could not be used as security for LCF's lending.[2567]

Q7.18 D1 knew that (i) it was false to claim that LCF had the high security values which were represented to bondholders, and (ii) in reality, LCF's lending was inadequately secured and indeed LCF had negligible security for its lending to connected borrowers.

(2) False representations about due diligence on LCF's borrowers

Q7.19 D1 knew that LCF's representations about conducting financial due diligence prior to making lending decisions, and the presence of financial controls and ongoing monitoring of its borrowers, were false.

Q7.20 From the beginning of LCF's lifetime, D1 knew that LCF (as SAFE) lent to Sanctuary PCC.[2568] D1 knew that Sanctuary PCC had promised returns to the Sanctuary investors

[2563] J3.1 above.

[2564] J3.4 above.

[2565] J3.7 above.

[2566] J3.5 above.

[2567] J3.10 above.

[2568] H2.13 above.

Source: Mouseinthecourt.co.uk

which it was unable to repay. D1 had been a director of Sustinere and knew that it had made payments to Sanctuary to prevent it becoming cash flow insolvent.[2569] D1 also knew that monies loaned by LCF (as SAFE) were being used by Sanctuary to repay its liabilities to the Sanctuary investors.[2570]

Q7.21 Another early example is LCF's lending to D4. LCF loaned funds to D4 from at least 27.11.15 (including to D4's trading style Home Farm Equestrian Centre).[2571] There is no evidence of D1 conducting any due diligence on the financial ability of D4 to repay the liabilities which he was assuming to LCF, such as by reference to D4's financial affairs. Indeed, D4's personal borrowing from LCF was novated to FSES (also known as "River Lodge UK"), pursuant to a plan to prevent D4 from having to repay any of the money he borrowed.[2572]

Q7.22 D1 was involved in the lending by LCF to the newly incorporated "support" companies and had knowledge that those transactions rendered the representations false. As part of the Elysian transaction considered above, it was proposed that L&TD's legacy debt would be "allocated" to five newly-incorporated companies, whose purpose was to assume the debt such that GRP's subsidiaries would be debt free. The five newly incorporated companies are the "support" companies: Colina Support Limited, Costa Support Limited, Cape Verde Support Limited, Waterside Support Limited, and Atlantic Petroleum Support. The "support" companies were incorporated on 25 and 26 April 2017. Despite this, LCF loaned enormous sums to these companies only a few days later on 29 April 2017, by "allocating" them L&TD's legacy debt.

Q7.23 D1 knew that these companies had no assets[2573] but was nevertheless lending to them.[2574] Since those companies had no assets, they cannot have had any business, and therefore had no means of generating income with which to repay the liabilities to LCF. These companies did not conduct any discernible commercial activity. The same appears from

[2569] E2.32 and E3.1 above.

[2570] H3.8-H3.11 above.

[2571] Section N4 above.

[2572] N4.15-N4.20 above.

[2573] J3.4 above.

[2574] J3.1 above.

Source: Mouseinthecourt.co.uk

the accounts filed on Companies House: those companies either filed no accounts at all,[2575] or had negligible balance sheets representing £100 of share capital.[2576]

Q7.24 D1 also knew that no "verified" valuations of the security had been obtained. As explained above in connection with representation (1), D1 knew that the valuations were not current (often D1 had seen them from his involvement in those matters historically) and were based on false assumptions, and were otherwise inflated or flawed.

Q7.25 D1 was responsible for LCF's lending decisions to the connected borrowers and there is no record of D1 requiring any form of financial due diligence from them. He therefore knew at all times that the representations were false.

Q7.26 In his witness statement for trial, D1 has attempted to defend the fact that LCF did not conduct any financial due diligence, by making assertions about other things that LCF might have done. If this is relied upon to suggest that the representations were true, then the Court cannot accept it.

Q7.27 For example, D1 asserted that LCF "*conducted checks on each of the companies to ensure that they were properly constituted and could carry out the business they were purporting to carry out*".[2577] But LCF was not simply representing that its borrowers were "*properly constituted*" (i.e. extant companies) or "*could*" carry out the business that they were purporting to carry out. This is a further example of D1 offering misleading evidence that sought to justify his position, when in reality he had no answer to the allegation. In his oral evidence, D1 accepted that the description of due diligence in LCF's materials was not accurate:[2578]

> 5 MR ROBINS: Can we go to <I1/5> at page 1, please.
> 6 Mr Thomson, do you remember we were looking at this
> 7 yesterday?
> **8 A. Yes.**
> 9 Q. Page 10, please. Page 11. Is it the next page? We
> 10 were looking at how, on the right, under "Review of
> 11 historical financial information", we looked at:

[2575] CV Support **[A1/5/8]** and Atlantic Petroleum Support (i.e. LPE Support) **[A1/5/88]**.

[2576] Colina Support **[A1/5/12]**, Costa Support **[A1/5/16]**, and Waterside Support Limited **[A1/5/108]**.

[2577] Thomson ¶106 **[C2/2/37]**.

[2578] Day 27/page 1/line 5 – page 2/line 1 **[A5/27/1]**.

Source: Mouseinthecourt.co.uk

12 "The historical financial review will seek to
13 analyse the performance of the potential borrowing
14 company over the last three years ..."
15 I think you accepted, yesterday, for a number of
16 your borrowers, it was not possible to conduct
17 a historical review going back three years because they
18 hadn't been trading for that long?
19 A. I do accept that the borrowing company, because they
20 couldn't have been trading that long, some of them were
21 newly incorporated. However, the correct -- what we
22 should have done, the wording should have been expanded
23 on, and the -- if I can use the word "venture" or
24 "asset", that would have provided historical, so that's
25 what I believe we would have been reviewing, but I agree

1 the wording isn't ideal.

(3) False representations about lending to numerous unconnected SMEs

Q7.28 D1 knew that LCF was lending only to a small number of connected borrowers, contrary to LCF's representations about commercial lending to small and medium sized enterprises in the United Kingdom in arm's length transactions. This representation was false in two respects: (i) LCF only lent to connected borrowers; and (ii) LCF only lent to a small number of borrowers.

Q7.29 D1 acknowledges in his witness statement that he knew about and was responsible for lending only to connected borrowers. His knowledge is evident from his efforts to seek to justify LCF's lending decisions in retrospect. D1 accepts that he had knowledge and responsibility for LCF's lending decisions generally, which is why he acknowledges that he may be criticised for failing to diversify LCF's loan book, but nevertheless seeks to justify the composition of LCF's loan book for which he was responsible.[2579]

Q7.30 In this regard, D1 explains that LCF lent to connected companies from the outset ("*I knew them and I had a "foot in the door" to secure their lending business … It seemed to me that I could build LCF using my existing contacts in the first instance and then expand by generating new contacts*"[2580]). In the same vein, D1 seeks to justify this decision based on LCF's marketing materials, which were considered above: "*it was*

[2579] Thomson ¶102 **[C2/2/35]**.

[2580] Thomson ¶102 **[C2/2/35]**.

Source: Mouseinthecourt.co.uk

explained in the information memoranda that sources of borrowers would include the directors' personal contacts".[2581]

Q7.31 D1 confirmed in oral evidence that he knew that representations made on behalf of LCF about sourcing its borrowers through brokers and third parties were false: every single borrower was connected to D1, D2, D3 and D4. D1 accepted that each of LCF's borrowers was connected, but could not provide any explanation for this, other than to say that this was "*not the plan at the outset*", which itself concedes (at least) that the representations became false at some point but continued to be made.[2582]

Q7.32 There is no contemporaneous documentary evidence of D1 seeking unconnected borrowers to whom to loan funds, and D1 knew that LCF was only lending to connected persons (and had only ever done so), when he knew LCF was representing the opposite to prospective bondholders. Hence, any suggestion by D1 that he did not plan only to lend to connected borrowers is irrelevant. In any event, his evidence cannot be accepted. If D1 ever held a genuine intention of making a single loan to an unconnected borrower, between August 2015 and December 2018, then LCF would have done so.

Q7.33 As a result of his knowledge of LCF's loan book, D1 knew that LCF only lent to a small number of borrowers and therefore knew that the representation was false. D1 admitted that he knew that LCF's representations as to its number of borrowers was false in his oral evidence:[2583]

> Q. If we look at <MDR00042902>, you have given this
> 14 information to the account holders and they're using it.
> 15 Jo Baldock is emailing a prospective bondholder, and she
> 16 says:
> 17 "Further to your enquiry today, I believe you
> 18 requested some further information ... provided below
> 19 some of the common questions along with the answers.
> 20 "How many clients have we lent to?
> 21 "As at the beginning of May 2016 LCF has made
> 22 121 loans."
> 23 So, do you accept that you were responsible for
> 24 misrepresentations being made to prospective
> 25 bondholders?

[2581] Thomson ¶101 **[C2/2/35]**.

[2582] Day 26/page 68/line 16 –page 75/line 9 **[A5/16/17]**.

[2583] Day 26/page 171/line 13 – page 174/line 6 **[A5/26/43]**.

Source: Mouseinthecourt.co.uk

1 A. I accept that that is not absolutely accurate at all.
2 Yes, we did make 121 individual loans. However, looking
3 at the question, yes, I can do nothing but agree with
4 you, Mr Robins.
5 Q. Isn't it an answer that's deliberately crafted to
6 mislead?
7 A. It is an answer crafted to create an impression.
8 Q. To create a false impression, Mr Thomson?
9 A. Yes, we did have -- we did make 121 loans. We didn't
10 have 121 clients. I can do nothing but agree with you,
11 Mr Robins. It is incorrect. It didn't last for long.
12 We did stop it.
13 Q. Can we look at <MDR00052283>. This is now August 2016.
14 Mr Russell-Murphy emails you saying that the AMs have
15 put a list of commonly used facts which are not noted in
16 the IM, and he asks you to confirm that it is accurate.
17 Is this the sort of thing you remember happening?
18 A. Possibly. Kobus has had a compliance visit and got
19 questions, I can see this happening. It clearly has,
20 he's emailed me.
21 Q. Can we look at <MDR00052599>. You have provided your
22 answers. Number 2, you said:
23 "Around 120 loans currently issued."
24 That was from Mr Russell-Murphy's email. You have
25 then added:

1 "Agreed this is okay."
2 So, having crafted something to mislead, you are
3 then confirming again that it is okay for them to say it
4 to prospective bondholders, aren't you?
5 A. I've got no defence, Mr Robins, at all. That is --
6 I read it now and slightly cringe.

Q7.34 However, LCF did not stop misleading prospective investors in this way, as D1 well knew. It was the discrepancy between the number of borrowers that D1 had told D6 that LCF had and the fact that the EY accounts recorded 11 borrowers that caused such consternation among the account managers at D6.[2584]

(4) False representations about LCF's loan agreements

Q7.35 The representation by LCF that it never lent funds to a borrower before the execution of a legally binding loan agreement was false. D1 knew that it was false at all times.

Q7.36 D1 knew that the representation was false before LCF began selling bonds as "LCF" (rather than as "SAFE"): D1 knew that LCF (as SAFE) had previously lent funds to Sanctuary PCC in excess of the limit set out in a loan agreement dated 1 October

[2584] P3.377-P3.386 above.

Source: Mouseinthecourt.co.uk

2013.[2585] He knew that he had dishonestly backdated a facility agreement to 22 October 2013, in order to mislead SAFE's (later LCF's) auditor into believing that the funds had not been lent in excess of its facility limit.[2586]

Q7.37 D1 knew that the representation was false throughout LCF's lifetime, as numerous examples show. D1 knew that he had facilitated the drawing of funds by L&TD from LCF, from August 2015, onwards without any agreement in place with LCF.[2587]

Q7.38 D1 also knew that LCF had loaned monies to D4 personally from 27.11.15 onwards, without there being any facility agreement in place. D1 was involved in preparing a facility agreement for this purpose after the event, which was eventually signed on or after 03.10.16, but falsely backdated to 20.11.15 to conceal the fact that LCF had paid funds without having any facility agreement in place.[2588]

Q7.39 D1 authorised payments from LCF to LOG before any facility agreement had been agreed.[2589] D1 was involved in backdating LOG's facility agreement with LCF in order to give the false impression that there had never been any lending to LOG without a facility agreement in place.[2590]

Q7.40 Further, D1 approved payments to LOG that breached the facility limit under its agreement.[2591] D1 knew that the payments exceeded the facility limit, and was involved in backdating a facility extension letter in order to deceive LOG's auditor into believing that LOG had never breached the facility limit.[2592] D1 was involved in backdating a second facility agreement between LCF and LOG, again, in order to deceive LOG's auditor into believing that LCF had not lent funds in excess of the facility limit.[2593]

[2585] H3.4 above.

[2586] H3.5-H5.6 above.

[2587] I4.28 above

[2588] N4.13 above.

[2589] L3.1 above.

[2590] L3.2 above.

[2591] L3.3 above.

[2592] L3.4-L3.5 above.

[2593] M3.2 above.

Source: Mouseinthecourt.co.uk

Q7.41 As late as November 2018, D1 arranged for GCEN to pay £452,000 of LCF's monies to D4 via LCM, purportedly by way of loan.[2594] There was no loan agreement in place. D1 was then involved in fabricating and backdating a loan agreement to provide to GCEN, in order to conceal the fact that LCM had loaned monies to D4 without any loan agreement being in place.[2595]

(5) False representations that there was an independent security trustee

Q7.42 D1 knew at all times that GST was not an independent security trustee, and that it was false of LCF to represent that GST was independent. D1 knew that these representations were false, because he knew that GST was controlled by D8, who was plainly not independent from LCF or its connected borrowers.

Q7.43 D1 knew that GST was a company which had been set up by D8: D8 told D1 on 27.10.15 that he had applied to form a company called "Global Business Security Limited" (which later changed its name to "Global Security Trustee").[2596] When presented with this document, D1 confirmed in his oral evidence that he recalled having discussions with D8 about the subject of forming a security trustee.[2597] D1 also knew that D8 had signed a security trust deed as well as a debenture on behalf of GST,[2598] and that debentures in favour of LCF by GST had been backdated by D8.[2599]

Q7.44 D1 knew that a Maltese company of which he was a director, Oracle Limited, became the owner of the shares in GST (and, therefore, controlled GST) by 27.10.18.[2600]

Q7.45 D1 does not seek to put forward any justification for GST's lack of independence in his witness statement or oral evidence. Rather, D1 accepted that he asked D8 to set up a

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[2594] N4.22-N4.26 above.

[2595] N4.27-N4.30 above.

[2596] MDR00019612

[2597] Day 23/page 80/line 18 – page 81/line 4 **[A5/23/20]**.

[2598] MDR00000010; MDR00002139; MDR00002146

[2599] MDR00026940; MDR00026941; MDR00026942

[2600] **[A1/5/113]** (Oracle Limited) and **[A1/5/47]** (GST).

Source: Mouseinthecourt.co.uk

company to fulfil that role when GCEN were proving difficult: D1 sought to explain that he had interviewed numerous professionals for the role, and had numerous conversations at the time about alternatives, before he asked D8 to set up a company to fulfil that role.[2601] There is no documentary evidence to corroborate any of D1's assertions about seeking alternatives, which appear designed to give the impression that D1 acted professionally, and the Court should not accept them.

(6) False representations about LCF's business model

Q7.46 D1 knew that LCF was falsely representing its business model to prospective bondholders.

Q7.47 D1 knew that LCF's borrowers did not generate any income and therefore that LCF did not generate any income from its lending activity, which necessitated the Ponzi scheme. In cross-examination, D1 had no answer to the allegation that he knew that LCF's borrowers were unable to repay their indebtedness to LCF, and instead made assertions about the value of IOG and the prospect that "*2019 was going to be transformative*".[2602] When the Court asked D1 to explain how LCF's borrowers were going to pay sufficient income to LCF to enable it to service bonds of 1 to 3 years, D1 gave an entirely incoherent answer,[2603] the ultimate thrust of which: (i) involved the assertion that someone else might lend additional funds to those borrowers, and so did not involve the generation of income by borrowers; and (ii) did not involve LCF receiving income by virtue of the lending in place between LCF and its borrowers.

Q7.48 As noted above, D1 accepted in cross-examination that LCF's borrowers used further monies borrowed from LCF in order to meet their interest payments:[2604] in other words, "income" from LCF's borrowers represented monies recycled from LCF.

Q7.49 D1 also knew that LCF was paying 25% of all new bondholder monies which were invested into LCF to D6 by way of commission. D1 knew that this information was

[2601] Day 23/page 81/line 19 – page 87/line 3 **[A5/23/21]**.

[2602] Day 26/page 77/line 9 – page 79/line 13 **[A5/26/20]**.

[2603] Day 26/page 87/line 3 – page 88/line 20 **[A5/26/22]**.

[2604] Day 26/page 79/line 20 – page 82/line 22 **[A5/26/20]**.

Source: Mouseinthecourt.co.uk

omitted from LCF's marketing materials, because as set out above, he was involved in drafting and approving them.

Q7.50 As explained further below, D1 knew that LCF was a Ponzi scheme.

Q7.51 As explained further below, D1 knew that LCF was misappropriating bondholder monies.

Knowledge: operating a Ponzi scheme

Q7.52 D1 knew that LCF was a Ponzi scheme. As above, D1 participated actively in administering LCF's Ponzi scheme and knew about his participation in it.

Q7.53 D1 knew that LCF's Ponzi scheme was unsustainable. For example, D1 knew that L&TD had no other source of funding except funds transferred to it from LCF and that it was not generating any revenues or profits from any commercial activities.[2605] In the context of the Ponzi scheme being operated through LOG, D1 also knew that redemptions were funded by "*further drawings*", i.e. LCF's monies, and that "*If no drawdowns are available, it might be difficult to make the redemption"*.[2606]

Q7.54 D1 also knew that LCF (as SAFE) was operating as a Ponzi scheme from its inception. He knew that SAFE used new investor monies to discharge the existing interest due to the Sanctuary investors.[2607] He knew that Sanctuary had taken deposits from investors and that interest payments were due to those investors.[2608] He also knew that SAFE would only have been able to pay interest to its own investors by using monies from new investors.[2609]

Q7.55 In his oral evidence, D1 took issue with the characterisation of what happened as a "Ponzi" scheme and said that there was nothing wrong with what he was doing. But D1

[2605] I4.27 above.

[2606] MDR00162231

[2607] Section H3 above.

[2608] E3.3; E3.7-E3.8 above.

[2609] H3.7-H3.11 above.

Source: Mouseinthecourt.co.uk

did not take issue with the underlying facts, and accepted that he was aware of them: "*I have never said that our borrowers didn't borrow further funds against their assets to meet interest and principal requirements*".[2610] It is clear that D1 merely objected to the stigma of being associated with a Ponzi scheme; but he had no problem with using the monies of new bondholders to meet interest payments to LCF's existing investors, which is the essence of a Ponzi scheme, as the authorities set out above make clear.

Knowledge: misappropriating bondholder monies

Q7.56 D1 knew about the use of the five major transactions by which the majority of monies invested by bondholders were misappropriated to each of D1, D2, D3, and D4. For the reasons explained in some detail above, he knew about each of the Lakeview SPA,[2611] the Elysian SPA,[2612] the Prime SPA,[2613] the LPE SPA,[2614] and the LPT SPA.[2615] D1 knew that these were not genuine commercial transactions which served to conceal the misappropriation of bondholder monies to D1, D2, D3 and D4 in agreed ratios.

Q7.57 D1 knew that he received the sums described at Section N above and that there was no justification for his receipt of these sums.

Q7.58 D1 also knew that he was receiving 0.5% of LCF's receipts from new bondholders, which D1 arranged to be paid to himself through D6.[2616] D1 knew about the other misappropriations from LCF in which he was participating, as set out more particularly above.[2617]

[2610] Day 26/page 79/line 20 – Day 26/page 82/line 22 **[A5/26/20]**.

[2611] Section I4 above.

[2612] Section J3 above.

[2613] Section K3 above.

[2614] Section L3 above.

[2615] Section M3 above.

[2616] P3.130-P3.169 above.

[2617] Sections N2-N8 above

Source: Mouseinthecourt.co.uk

Q8 D4: Participation in and knowledge of LCF's fraudulent trading

Q8.1 D4 was the person ultimately in charge of LCF. D4 was the key decision-maker in relation to LCF's conduct of business. As with D1, he remained at the centre of LCF's fraudulent trading at all times.

Q8.2 As explained above, the Claimants' case on participation and knowledge necessarily relies more on inference than their case against other parties. D4 did not give any disclosure in these proceedings, and he was duly debarred from defending the claims against him. It is also clear from the documents that: (i) D4 preferred not to communicate by email; and (ii) D4 acted through proxies (such as D3), no doubt due to D4's disqualification from acting as a director of companies. The Court is asked to bear this in mind when evaluating the relative paucity of contemporaneous documents to which he is a direct party.[2618]

Q8.3 Nevertheless, it is clear D4 had actual knowledge of LCF's fraudulent trading from its inception, in which he participated extensively.

Participation in LCF's fraudulent trading

Q8.4 D4 was a *de facto* and/or shadow director of LCF at all material times, as explained at Section R2 below. D4 gave directions to D1 regarding LCF's affairs, throughout the entire period during which LCF carried on business, and D4 had the power to overrule D1 and did in fact overrule him.[2619]

Q8.5 D4 acted on behalf of LCF when communicating with D5, D6 and D7 directly in connection with LCF's affairs, such as in connection with D4's promises about providing security,[2620] and without reference to D1.[2621]

[2618] Section C7 above.

[2619] Section H7 above

[2620] P3.63, P3.73 and P3.81 above.

[2621] H7.7 above.

Source: Mouseinthecourt.co.uk

Q8.6 D4 was involved in commenting on LCF's marketing materials[2622] and its website, which contained the principal representations which would be made by LCF throughout its lifetime.[2623]

Q8.7 As above, it is also likely that the documentary record does not reflect the complete picture of D4's involvement on account of (i) his lack of disclosure, and (ii) preference for communications which did not leave a written record and use of proxies.

Q8.8 D4 made the principal decisions regarding LCF's carrying on of business and knew and approved of the representations being made about LCF by D6 and in LCF's marketing materials, at all material times.

Q8.9 D4 participated in LCF's fraudulent trading by personally borrowing from LCF[2624] and receiving monies from LCF ostensibly on that basis from 27.11.15 onwards.[2625] D4 was thereby party to transactions by which (i) monies were misappropriated from LCF, and (ii) the representations to prospective bondholders were rendered false.

Q8.10 D4 loaned monies to D5 in January 2016, which was to be repaid by D6 reducing the commissions it charged to LCF: in this way, D4 was (i) directly facilitating D6's activities in making representations on LCF's behalf to prospective bondholders;[2626] and (ii) funding and encouraging the growth of LCF, such that it would result in a higher level of new investments from bondholders.

Q8.11 D4 was actively involved in the process of agreeing and documenting D6's commission of 25%,[2627] which was concealed from prospective bondholders and by which (as explained above) the representations were rendered false.

2622 H7.4 above.

2623 H7.5 above.

2624 Section N4 above.

2625 N4.2 above.

2626 P2.28 above; SUR00005951-0001; Day 28/page 107/lines 5-11 **[A5/28/27]**.

2627 P2.66-P2.67, P2.116 and P2.186 above.

Source: Mouseinthecourt.co.uk

Q8.12 D4 also participated actively in numerous aspects of the five major transactions by which monies were misappropriated from LCF and paid to D1, D2, D3, D4: for the reasons explained in some detail above, he participated in each of the Lakeview SPA,[2628] the Elysian SPA,[2629] the Prime SPA,[2630] the LPE SPA,[2631] and the LPT SPA.[2632] The Claimants rely on all of D4's actions in connection with each transaction, as set out further above, as amounting to D4's participation in LCF's fraudulent trading.

Q8.13 D4 participated in and negotiated the agreement with D6 by which 1% of all bondholder monies received by LCF during the previous month were misappropriated to himself and submitted invoices and accepted payments in respect of those sums.[2633]

Q8.14 D4 received the single largest share of monies misappropriated from LCF.

Knowledge: falsity of the representations

Q8.15 D4 knew that the representations made by LCF were false. Moreover, D4 also participated in the means by which the representations were rendered false, as a result of his activities in relation to LCF. This is set out below in relation to each representation.

(1) False representations about the value of LCF's security

Q8.16 D4 knew that the assets relied upon as security were plainly inadequate to support LCF's ever increasing lending and could not be relied upon for security purposes. The four principal assets on which LCF relied for security purposes are The Hill, The Beach, Paradise Beach, and Lakeview.

[2628] Section I4 above

[2629] Section J4 above

[2630] Section K4 above.

[2631] Section L4 above.

[2632] Section M4 above.

[2633] P3.244-P3.303 above.

Source: Mouseinthecourt.co.uk

Q8.17 D4 was aware of the trust arrangement involving The Hill and El Cupey, such that it was held for the benefit of the Sanctuary investors.[2634]

Q8.18 D4 was aware that Tenedora had not acquired any interest in land at The Beach, as a result of his involvement in the Sanctuary scheme.[2635]

Q8.19 D4 knew that CV Resorts did not have any valuable rights in relation to Paradise Beach: he knew that CV Resorts had defaulted at the outset, and that CV Resorts never completed the purchase of a single unit at Paradise Beach when the contract was terminated on 07.06.17.[2636]

Q8.20 D4 knew the true value of the Lakeview site: he was the main figure behind the purchase of the Lakeview site, became the majority owner of LCCL, would have known the amount for which it was acquired, was involved in the instruction of Savills to value the site, and should be inferred to have had the same knowledge as D1.[2637]

Q8.21 D4 knew that these assets were relied upon as security for the lending from LCF to L&TD, and further lending to GRP's subsidiaries, including as a result of his participation in the Elysian SPA. D4 knew that (i) there was no adequate security for the existing lending to L&TD, and (ii) the consideration payable under the Elysian SPA was far in excess of the assets being transferred.[2638]

(2) False representations about due diligence on LCF's borrowers

Q8.22 D4 knew that LCF's representations about conducting financial due diligence prior to making lending decisions, and the presence of financial controls and ongoing monitoring of its borrowers, were false.

[2634] E4.1 above.

[2635] E4.3 above.

[2636] Section ¶F4 above.

[2637] Section G4 above.

[2638] J4.1-J4.4 above.

Source: Mouseinthecourt.co.uk

Q8.23 D4 knew that LCF (as SAFE) had lent to Sanctuary PCC,[2639] which he knew was in financial difficulties and owed outstanding sums to the Sanctuary investors, and was the subject of a "rescue package".[2640] D4 knew that LCF (as SAFE) had therefore lent to an insolvent company at the outset.

Q8.24 D4 knew that LCF loaned funds to him from at least 27.11.15 (including as Home Farm Equestrian Centre),[2641] and that no due diligence was ever conducted by LCF in relation to himself.

Q8.25 D4 also knew that his personal borrowing from LCF was novated to FSES (also known as "River Lodge UK"), pursuant to a plan to prevent D4 from having to repay any of the money he borrowed.[2642] D4 was the controller of FSES and knew that no financial due diligence was conducted in relation to it.

Q8.26 D4 was the beneficial owner of numerous borrowers connected with LCF, and received the largest share of monies paid out of LCF to connected borrowers according to the ratio agreed with D1, D2, D3, D4. As a *de facto* and/or shadow director of LCF, and on account of the evidence that D4 exercised ultimate control over LCF throughout its lifetime,[2643] it is more likely than not that D4 was the individual ultimately responsible for LCF's lending decisions in this way, which as above were made without the conduct of any financial due diligence.

(3) False representations about lending to numerous unconnected SMEs

Q8.27 D4 knew that LCF was lending only to a small number of connected borrowers, contrary to LCF's representations about commercial lending to small and medium sized enterprises in the United Kingdom in arm's length transactions. This representation was false in two respects: (i) LCF only lent to connected borrowers; and (ii) LCF only lent to a small number of borrowers.

2639 H2.13 and H4.6 above.

2640 E4.1-E4.2 above.

2641 Section N4 above.

2642 N4.15-N4.20 above.

2643 Section H7 above.

Source: Mouseinthecourt.co.uk

Q8.28 D4 knew that in lending to L&TD and to GRP subsidiaries, LCF was lending to connected companies which were connected on account of (among other things) their common ultimate beneficial ownership by D4.[2644]

Q8.29 D4 also knew that the Prime group of companies were connected, and that monies borrowed by them would be diverted to D1, D2, D3 and D4.[2645]

Q8.30 As explained in connection with representation (2) above, D4 knew that LCF lent monies to himself personally, and that he was connected with LCF as both its beneficial owner, and the individual who exercised ultimate control over it.

Q8.31 As a *de facto* and/or shadow director of LCF, and the evidence that D4 exercised ultimate control over LCF throughout its lifetime,[2646] D4 was aware of the composition of LCF's loan book. D4 therefore knew the companies which had borrowed from LCF. D4 knew that those companies were connected with LCF, on account of his beneficial interest in those companies and receipt personally of monies from those companies.

(4) False representations about LCF's loan agreements

Q8.32 The representation by LCF that it never lent funds to a borrower before the execution of a legally binding loan agreement was false. D4 knew that it was false at all times.

Q8.33 D4 knew that funds had been loaned to himself before the execution of any loan agreement, from 27.11.15 onwards.[2647] D4 signed a loan agreement at some point on or after 03.10.16, but falsely backdated to 20.11.15 to conceal the fact that LCF had paid funds without having any facility agreement in place.[2648]

[2644] J4.2 and J4.4 above.

[2645] K4.2-K4.4 above.

[2646] Section H7 above.

[2647] Section N4 above.

[2648] N4.13 above.

Source: Mouseinthecourt.co.uk

Q8.34 D4 knew that Sands Equity was a conduit for payments by the GRP subsidiaries as above.[2649] D4 therefore knew that LCF's monies were not paid to its borrowers but were diverted to other companies.

Q8.35 As a *de facto* and/or shadow director of LCF and in circumstances where D4 exercised ultimate control over LCF throughout its lifetime,[2650] D4 knew of all of LCF's borrowers and the circumstances in which LCF lent money to them.

(5) False representations that there was an independent security trustee

Q8.36 As a *de facto* and/or shadow director of LCF, and on account of the evidence that D4 exercised ultimate control over LCF throughout its lifetime,[2651] it is likely that D4 was aware that (i) GST was LCF's security trustee, and (ii) that it was under the control and direction of D8, which in any event was information in the public domain.[2652]

Q8.37 D4 knew that D8 acted as the in-house lawyer for companies connected with D2, D3, D4 and the "London Group", including on account of their common and overlapping participation and knowledge in the Sanctuary scheme,[2653] the Paradise Beach contract,[2654] the Lakeview site,[2655] SAFE,[2656] the Lakeview SPA,[2657] the Elysian SPA,[2658] the Prime SPA,[2659] the LPE SPA,[2660] and the LPT SPA.[2661]

Q8.38 D4 therefore knew that GST was not independent of LCF or its borrowers.

[2649] J4.9 above.

[2650] Section H7 above.

[2651] Section H7 above.

[2652] P3.103 above.

[2653] Section E4 (D4) and Section E5 (D8) above.

[2654] Section F4 (D4) and Section F5 (D8) above.

[2655] Section G4 (D4) and Section G5 (D8) above.

[2656] Section H4 (D4) and Section H5 (D8) above.

[2657] Section I5 (D4) and Section IJ6 (D8) above.

[2658] Section J4 (D4) and Section J5 (D8) above.

[2659] Section K4 (D4) and Section K5 (D8) above.

[2660] Section L4 (D4) and Section L5 (D8) above.

[2661] Section M4 (D4) and Section M5 (D8) above.

Source: Mouseinthecourt.co.uk

(6) False representations about LCF's business model

Q8.39 D4 knew that LCF was falsely representing its business model to prospective bondholders. D4 was aware of the terms on which SAFE had raised monies from prospective bondholders,[2662] and as explained above, was aware of the representations made by LCF to prospective investors at all material times.[2663]

Q8.40 D4 knew that LCF (as SAFE) had operated as a Ponzi scheme, and that it was unable to repay its investors.[2664] He knew that LCF (as SAFE) had not operated as a legitimate business.

Q8.41 D4 knew that monies purportedly lent by LCF were in fact being used to fund payments to D1, D2, D3 and D4, and D4 was kept informed by D1 of the amounts available for this purpose.[2665]

Q8.42 D4 also knew that LCF was paying 25% of all new bondholder monies which were invested into LCF to D6 by way of commission as a result of his role in agreeing and documenting it.[2666] D4 also knew that the commission was 25% because he required payment to himself of 1% of new bondholder monies received each month as the *quid pro quo* for maintaining D6's commission at 25%.[2667]

Q8.43 As explained further below, D4 knew that LCF was a Ponzi scheme.

Q8.44 As explained further below, D4 knew monies from bondholders were being misappropriated.

[2662] H4.4 above.

[2663] H7.4-H7.5 above.

[2664] Section H4 above.

[2665] L4.1 above.

[2666] P2.28 above.

[2667] P3.245 above.

Source: Mouseinthecourt.co.uk

Knowledge: operating a Ponzi scheme

Q8.45 As above, D4 knew that LCF (as SAFE) had operated as a Ponzi scheme. He knew that SAFE would only have been able to pay interest to its own investors by using monies from new investors .[2668]

Q8.46 D4 was a beneficial owner of many of LCF's borrowers, including L&TD,[2669] London Group LLP (and its subsidiaries).[2670] It is more likely than not that D4 knew that LCF's borrowing companies in which he owned a 45% beneficial interest (i) did not conduct any real commercial activity, and (ii) did not generate any profits.

Q8.47 D4 was kept informed about new bondholder monies paid into LCF.[2671] He knew that when these funds were drawn, they were used to fund personal payments to D1, D2, D3, D4,[2672] and were not used to generate income with which to repay loans to LCF.

Q8.48 D4 was involved in LCF's Ponzi scheme: he was an owner and controller of Sands Equity,[2673] which as explained above, was involved in conducting the Ponzi scheme, and paying monies originating from LCF back to LCF to make payments to existing bondholders.

Q8.49 As a *de facto* and/or shadow director of LCF, and on account of the evidence that D4 exercised ultimate control over LCF throughout its lifetime,[2674] it is inherently likely that D4 understood LCF's business model and the manner in which it serviced payments to bondholders.

Q8.50 As a result of the matters in the paragraphs above, D4 knew that (i) LCF did not have any other source of income or monies other than investments from new bondholders; (ii)

2668 H4.4 above.

2669 I4.26 above.

2670 J2.2 above.

2671 H7.1-H7.2 and L4.1 above.

2672 L4.1 above.

2673 Day 25/page 142/lines 10-12 **[A5/25/36]**.

2674 Section H7 above.

Source: Mouseinthecourt.co.uk

LCF's borrowers did not generate any income with which to make payments to LCF, which was funded by monies previously received from LCF; and (iii) LCF used monies from new bondholders to make redemption and interest payments to existing bondholders, including by routing those monies through connected borrowing companies.

Knowledge: misappropriating bondholder monies

Q8.51 D4 knew about the use of the five major transactions by which the majority of monies invested by bondholders were misappropriated to each of D1, D2, D3, and D4. For the reasons explained in some detail above, he knew about each of the Lakeview SPA,[2675] the Elysian SPA,[2676] the Prime SPA,[2677] the LPE SPA,[2678] and the LPT SPA.[2679] D4 knew that these were uncommercial transactions which served to conceal the misappropriation of bondholder monies to D1, D2, D3 and D4 in agreed ratios.

Q8.52 As a *de facto* and/or shadow director of LCF, and on account of the evidence that D4 exercised ultimate control over LCF throughout its lifetime,[2680] D4 knew about and approved all of these transactions, as explained in more detail above in connection with each transaction.

Q8.53 D4 knew that when these monies were drawn ostensibly pursuant to a loan, they were in fact used to fund personal payments to D1, D2, D3, D4.[2681]

Q8.54 D4 knew that he was being paid 1% of all bondholder monies received by LCF during the previous month from D6 and submitted invoices and accepted payments in respect of those sums.[2682]

[2675] Section I5 above.

[2676] Section J4 above.

[2677] Section K4 above.

[2678] Section L4 above.

[2679] Section M4 above.

[2680] Section H7 above.

[2681] L4.1 above.

[2682] P3.244-P3.303 above.

Source: Mouseinthecourt.co.uk

Q8.55 D4 misappropriated funds by his personal borrowing from LCF.[2683] D4 participated in and knew about a plan to ensure that he did not have to repay the monies loaned to him from LCF.[2684]

Q9 D5/D6: Participation in and knowledge of LCF's fraudulent trading

Q9.1 Prior to D5's involvement with LCF, D5 was experiencing financial difficulties: he had numerous debts which he needed to settle and was "*scraping around for funds*".[2685]

Q9.2 D5 quickly appreciated that the "*insane*" commission payments LCF was prepared to make to D6 would resolve his financial difficulties in short order.[2686]

Q9.3 It is plain that D5 never genuinely believed that LCF was a legitimate business. From the very outset of his involvement with LCF, D5 considered that there were grounds for thinking that it was a fraud or a "*rinse*". So he decided that he was only going to work for LCF for a few months in order to generate some much-needed cash.

Q9.4 Almost from the outset of his involvement with LCF, D5 had actual knowledge that LCF was engaged in fraudulent activity, through his knowledge that the misrepresentations made to prospective bondholders was false. He also had blind-eye knowledge that LCF was engaged in other fraudulent activity.

Q9.5 From as early as September 2015, however, D5 was excited about the fact that D6 was generating substantial profits,[2687] and that this would ultimately result in financial benefits for himself.[2688] This resulted in him maintaining his involvement.

2683 Section N4 above.

2684 N4.15-N4.20 above.

2685 P2.1 above.

2686 P2.72 above.

2687 P2.75 and P2.79-P2.82 above.

2688 P2.77-P2.78 above.

Source: Mouseinthecourt.co.uk

Q9.6 By early 2016, D5 was discovering that LCF was not only addressing his financial problems but making him rich (*"if JRM pulls off that 1m Friday then I'll be buying a 70k car with the comms the week after"*).[2689] Indeed, selling LCF's bonds was generating a "*fucking fortune*".[2690] D5 was involved in selling Blackmore Group's bonds but knew that LCF was the "*cash cow*", a commonly held view at D6.[2691] D6's success was down to the 25% commission paid by LCF to D6, as he explained later that year.[2692]

Q9.7 Having been tempted by the money and then becoming increasingly keen not to end D6's engagement by LCF, D5's suspicions nonetheless matured and he started "taking comfort" from anything he thought he could use to claim ignorance, while deliberately averting his eyes from the obvious fraud that he was participating in.

Q9.8 D5 feared that any sincere investigation of his concerns would lead to the cessation of commission payments to D6 and would make it difficult for him to plausibly deny them to others. D5 deliberately sought to not to obtain answers to his concerns, because D5 feared that investigating his concerns would confirm the facts which he suspected.

Q9.9 The documentary record reveals that during LCF's lifetime, D5 was actively concerned about creating the paper trail on which he now relies to defend himself. His concern at the time to ensure that he would have a paper trial on which he could rely in the event of LCF's collapse undermines his position by showing that he knew that LCF was carrying on a fraudulent scheme and anticipated that it would collapse.

Q9.10 It is also evident that D5 was prepared to engage in dishonest conduct for his own financial gain, when facilitating LCF's business. This was the case at all material times. Early on, D5 was prepared to actively mislead members of the public in order to make money for himself, in connection with LCF, as appears from his role in running The Investment Experts which made false statements to members of the public.[2693] D5 was prepared for D6's sales people to make false representations to members of the public.

[2689] P3.91 above.

[2690] P2.83 above.

[2691] P2.89-P2.91 above.

[2692] P2.84 above.

[2693] P3.1-P3.2 above.

Source: Mouseinthecourt.co.uk

Later, to preserve the 25% commission, D5 was prepared to pay shares of gross receipts of new bondholder monies (0.5% to D1 and 1% to D4).

Q9.11 By the time of the IoW deal in July 2018, D5 had obtained actual knowledge of all aspects of the fraudulent scheme carried on by LCF, including the misappropriation of monies from bondholders through uncommercial transactions.

Q9.12 Through his knowledge in the IoW deal, D5 had actual knowledge of the precise mechanism used by D4 (and others) to extract monies from LCF by using a connected borrowing company and an uncommercial sale transaction to conceal the payment of monies to D4 (and others) personally. It is likely that D5 had actual knowledge of this at an even earlier stage; however, only a very limited number of the messages exchanged between D5 and D4 have been disclosed.

Participation in LCF's fraudulent trading

Q9.13 Before his involvement with LCF, D5 was "*scraping around for funds*" and did not conduct any significant profit-making activity through D6.[2694]

Q9.14 D5 participated in LCF's business from July 2015 onwards: (i) D5 was involved in the rebranding of SAFE as LCF;[2695] (ii) D4 lent monies to D6 at D5's request in order to fund D6, so that D6 could market and sell LCF's bonds.[2696] In this way, D5 was actively involved in furthering and facilitating LCF's business from the very beginning.

Q9.15 D5 was involved in selling LCF's bonds by reference to LCF's marketing materials and in improving its outward appearance to prospective bondholders.[2697] For example, (i) D5 was involved in giving the impression to prospective investors that LCF was a large operation, rather than "*very small*",[2698] and (ii) D5 was involved in seeking to give the

[2694] P2.1 above.

[2695] H2.29 above.

[2696] P2.1-P2.5 above.

[2697] P2.6-P2.11 above.

[2698] P3.3 above.

Source: Mouseinthecourt.co.uk

impression that LCF was conducting genuine lending to real business,[2699] which is what LCF was representing to prospective bondholders. D5 had actual knowledge of the representations being made on behalf of LCF at all material times.

Q9.16 D5 was also instrumental in LCF's meteoric growth. D5 set increasingly ambitious monthly sales targets and drove D6's employees and consultants to work hard, fostering an ethos of greed-driven, money-focussed, relentless salesmanship amongst his team. His reasons for seeking to push the sales of LCF's bonds so unceasingly are clear: D6 received 25% of the amount of each bond sale and therefore ambitious targets and high growth for LCF were, in fact, ambitious targets and high growth for D6 to enrich D5.

Q9.17 D5's participation furthered LCF's business. The involvement of D5 was critical in LCF's continuing success during late 2015, throughout 2016 and into 2017,[2700] which contrasts markedly with the activities of SAFE prior to D5's involvement. D5's continued involvement in running D6 coincided with very significant increases in LCF's success in attracting new bondholders,[2701] and was plainly the reason for this.

Q9.18 D5 was involved in setting up various fake investment comparison websites, which he controlled, such as Best Investment Funds, BSR, and BIR. These websites involved misleading members of the public by creating the impression that LCF had been endorsed by a third party, when this was not true.[2702] D5 did this in order to maximise investments into LCF and commission payments to D6.[2703]

Q9.19 As a result: (i) D5 took active dishonest steps in connection with LCF's marketing and promotion; and (ii) D5 identified with the interests of LCF and promoted LCF in a non-independent way, because he was participating in its business. D5's language shows he considered himself and D6 to be part of LCF ("*We need the lending page on LCF going live and with it we need to add what **a normal company we would lend to** look likes*").[2704]

[2699] P3.41-P3.43 above.

[2700] P2.28-P2.45 above.

[2701] P2.59-P2.64 above.

[2702] P2.20-P2.22 above.

[2703] P2.27 above.

[2704] P3.43 above.

Source: Mouseinthecourt.co.uk

Q9.20 D5 participated in actively marketing LCF's ISA bonds to prospective bondholders.[2705] D5 was involved in setting up new false ISA comparison websites for that purpose.[2706]

Q9.21 D5 knew that the commission paid by LCF to D6 was "*huge*". As explained above, the D6 commission of 25% was one of the means by which LCF's representations about its business were rendered false.

Q9.22 D5 was keen to fabricate an online presence in order to give the impression that GST was legitimate and trustworthy (and that LCF was more legitimate trustworthy).[2707] He knew that his salespeople repeatedly told members of the public that GST was independent of LCF when in fact GST was not independent of LCF.

Q9.23 D5 caused D6 to pay D1 0.5% of gross bondholder monies which had been received by LCF in the previous month, which was paid to D1 through D6 with D5's approval.[2708]

Q9.24 D5 also participated in the payment to D4 of 1% of gross bondholder monies which had been received by LCF in the previous month, which was paid to D4 through D6 with D5's approval.[2709]

Knowledge: falsity of the representations

Q9.25 There are numerous ways in which D5 knew that he was participating in fraudulent trading. The first is that D5 knew that he was furthering and facilitating a business which was premised on raising monies from members of the public on false pretences.

Q9.26 Taking in turn the representations considered further above, the Claimants set out D5's knowledge on which they rely.

[2705] P2.49 above.

[2706] P2.53 above.

[2707] P3.103 above.

[2708] P3.130-P3.162 above.

[2709] P3.244-P3.303 above.

Source: Mouseinthecourt.co.uk

Q9.27 For the avoidance of doubt, the Claimants rely collectively on the entirety of the knowledge set out below, because it is not necessary for the Claimants to establish that D5 knew of the precise respects in which LCF's activities were fraudulent.

(1) False representations about the value of LCF's security

Q9.28 D5 knew that there was a concern that LCF may lack any security when Mark Partridge explained to D5 on 10.12.15 that there was a concern based on LCF's filed accounts: all of LCF's loan book was lent to "*Thomson's company*" ("*… shifted to International Resorts Group, a company that Thomson used to be a director for.* ***So it could be that the liabilities now have no assets to back them up***)."[2710]

Q9.29 D5 knew in December 2015 that there was a concern about LCF's lack of security, which was sought to be addressed by D4 offering to provide £30 million in security.[2711] D5 knew that the lack of identifiable security was "*our main objection*" from prospective bondholders.[2712]

Q9.30 D5 also knew that the promises about new security (i) changed by mid-January 2016 so that what was promised was much less than before,[2713] and (ii) the security which was promised was never available after all ("*There is no £30 million security*", "*It was never an option*").[2714]

Q9.31 As a result, D5 knew that (i) LCF had not explained its security position, (ii) when security was offered by D4 and those behind LCF, the story changed,[2715] and then the promises turned out to be false; and (iii) LCF had not provided access to its lending book. By 25.01.2016, D5 therefore held a targeted suspicion that LCF may have inadequate security to support any lending which it was making, such that LCF was making false representations to prospective bondholders.

[2710] P3.48 and P3.64 above.

[2711] P3.63 and P3.71-P3.72 above.

[2712] P2.73 above.

[2713] P3.75-P3.79 above.

[2714] P3.80 above.

[2715] P3.113 above.

Source: Mouseinthecourt.co.uk

Q9.32 D5 knew in April 2016 that his suspicions were probably true: (i) D1 had failed to provide information about loans or security despite numerous requests;[2716] and (ii) when D1 did finally provide information to D5 on 12.04.16, it consisted of a single facility agreement from L&TD and a corporate guarantee from London Group Plc, making clear that LCF's representations about lending to numerous unconnected borrowers were probably false.[2717]

Q9.33 As at May 2016, D5 knew of additional specific information which meant that his suspicions were in fact true. In May 2016, Mark Partridge provided detailed information contained in a colour-coded spreadsheet to D5, which indicated that the company which had provided security to LCF did not have any value.[2718] Mark Partridge explained to D5 that he was concerned by the "*complete lack of security*".[2719]

Q9.34 D5 knew that information provided by D1 in July 2016 could not allay his suspicions, because his answers were inconsistent with previous answers.[2720] In addition, D5 knew, by July 2016, that D1 had lied about the reasons for delaying the provision of LCF's accounts.[2721] As above, the in-house view of D6 was that D1 was not to be trusted in any event, which was expressly communicated to D5 at the time.[2722]

Q9.35 D5 did not obtain any reassurance from LCF's accounts audited by PwC, because he said in oral evidence that it is very unlikely that he actually read them.[2723] In any event, even if he did read them, they could not erase his knowledge, as explained above.

[2716] P2.94-P2.96 above.

[2717] P3.97 above.

[2718] P3.109 above.

[2719] SUR00021238-0001

[2720] P3.129 above.

[2721] P3.170-P3.186 above.

[2722] P3.128 above.

[2723] P3.198 above.

Source: Mouseinthecourt.co.uk

Q9.36 Further, he was soon informed by Mark Partridge that the accounts were already out of date such that LCF's security appeared inadequate.[2724]

Q9.37 D5 knew that his concerns were not addressed by statements from D1 about LCF's security values provided in February 2017,[2725] which D5 sought to have put on file, because (i) the figures came from D1, (ii) D5 did not trust D1 (and neither did Kerry Venn or Mark Partridge), (iii) D1's statements were unlikely to be true.

Q9.38 D5 consciously believed that D1's answers were inadequate, and that D1 was taking a risk by saying something that was likely to be untrue ("*he's* [sic] *neck on the line*").[2726] D5 also knew that any figures provided by D1 were unverified.[2727]

Q9.39 Despite his conscious belief that D1 had failed to address his targeted suspicions about LCF's security, D5 deliberately continued to market LCF's bonds on the basis of D1's statements, which included deploying the so-called "verified" security figure of £215 million.[2728] At the time of these advertisements, D5 held other concerns about exposing LCF to increased scrutiny, including from the FCA.[2729]

Q9.40 As a result, by February 2017, D5 had actual knowledge that the representations made about LCF's security were misleading.

Q9.41 D5 also knew in June 2017 that LCF's draft accounts aggravated his concerns, because the statements were inconsistent with statements previously made by D1 about LCF's security,[2730] and (ii) D1 was secretive about the statements in the accounts.[2731]

[2724] P3.202 above.

[2725] P3.202-P3.205 above.

[2726] P3.207 above.

[2727] P3.208-P3.210 above.

[2728] P3.211-P3.212 above.

[2729] P3.214 above.

[2730] P3.231 above.

[2731] P3.232 above.

Source: Mouseinthecourt.co.uk

Q9.42 D5 knew that in July and August 2017, he did not know what LCF's security comprised, despite this being a continuing concern.[2732]

Q9.43 D5's concerns were unanswered by the accounts prepared by EY in February 2018 and he did not in fact receive any assurance from them.[2733] D5 knew that the accounts raised a number of problems and inconsistencies regarding LCF's loans and security, including a higher figure for April 2017 (£284 million) than D1 represented at the time (£215 million).[2734] D5 knew that EY's information would have come from D1, who D5 knew was a liar and a source of untrue information. D5 did not know what information had been provided to EY by D1. As explained above, D5's reliance on these accounts in these proceedings is an *ex post facto* rationalisation that does not withstand scrutiny.

Q9.44 By February 2018, it is probable that D5 held the positive belief that LCF was not adequately secured, because he could not attach any weight to claims by D1 about LCF's security following a conference call on 22.02.18 between D1, D7 and Kerry Venn, summarised for D5 after the event,[2735] in which D1 claimed that LCF had security of £1 billion, which was patently implausible and was soon contradicted by Kobus.[2736]

Q9.45 Further evidence that D5 had actual knowledge that LCF's claims about security were not genuine can be seen in the context of LCF 2, as a result of his involvement with LCF 2, because in that context D7 had explained that a loan and security would be taken on so that "*the AM's can talk about XXXX amount of security*".[2737]

(2) False representations about due diligence on LCF's borrowers

Q9.46 In October 2015, D5 became concerned that LCF did not have a lending page, which would mean that LCF did not engage in the lending activity described in its IMs and

[2732] P3.235 above.

[2733] P3.363-P3.389 above.

[2734] P3.374-P3.375 above.

[2735] SUR00093580-0001

[2736] P3.390-P3.396 above.

[2737] P3.420 above.

Source: Mouseinthecourt.co.uk

other materials.[2738] D5 was involved in efforts to manufacture a lending page, to be relied upon in furthering the selling of LCF's bonds to prospective bondholders.[2739]

Q9.47 D5 therefore suspected that LCF did not in fact conduct its lending activity in the manner represented to members of the public. This concern endured throughout 2015 and 2016,[2740] 2017,[2741] and 2018,[2742] and was never satisfactorily addressed.

Q9.48 As set out further below, D5 also suspected (and knew) that LCF was engaged in lending only to connected borrowers. His suspicion and knowledge in that regard, as set out below, also mean that he knew that representations in the IMs and other materials about conducting due diligence were false.

(3) False representations about lending to numerous unconnected SMEs

Q9.49 D5 knew that D4 ultimately controlled LCF, as set out above. D5 dealt with D4 in relation to LCF without reference to D1.[2743] When D1 ran LCF on a day-to-day basis, D5 knew that D4 still controlled LCF and that D4 could "*squeeze*" D1 when needed.[2744]

Q9.50 D5 knew that as at 20.07.15, LCF's operation was in fact "*very small*".[2745] Despite this, D5 knew that LCF was making representations that LCF lent to a large number of SMEs.

Q9.51 D5 also knew that LCF never had a lending page and that this is something which a business ostensibly conducting lending activity would be expected to have.[2746]

[2738] P3.41 above.

[2739] P3.42-P2.43 above.

[2740] P3.70 above.

[2741] P3.219 above.

[2742] P3.353-P3.354 and P3.367 above.

[2743] H7.7 above.

[2744] P2.186 above.

[2745] P3.3 above.; SUR00129106-0001

[2746] P3.41-P3.43 above.

Source: Mouseinthecourt.co.uk

Q9.52 By 10.12.15, D5 knew that based on LCF's available accounts, all of LCF's loan book was lent to "*Thomson's company*", i.e. that LCF did not lend to numerous unconnected businesses but in fact made loans to a single company connected with D1.[2747]

Q9.53 D5 knew in December 2015 that a pertinent question in response to information from D1 was whether LCF's borrowers or proposed borrowers were under the same or connected ownership.[2748]

Q9.54 D5 also knew by the end of December 2015 that businesses owned by D4 (who he believed to ultimately control LCF) were borrowing from LCF, on account of D4's making an offer to put "*security*" on LCF's balance sheet.[2749]

Q9.55 As a result, by the end of December 2015, D5 held a targeted suspicion that the representation made on behalf of LCF was false, on the basis that D1 and D4 were linked to the borrower side of LCF's operation. This is because of his suspicions that (i) LCF appeared to be a small operation, (ii) LCF had only lent to a borrower connected with D1, based on LCF's accounts, (iii) the "security" or assets supporting LCF's lending was linked to D1 and/or offered by D4, and (iv) D4's businesses were borrowing from LCF. Throughout this time, as above, D5 knew that D1 and/or D4 owned and controlled LCF.

Q9.56 D5 deliberately did not seek to address the concerns which he held. He believed that LCF would "*stay under the radar for a while yet*" and thereby avoid investigation from FCA.[2750] As a result, D5 elected to allow his suspicion to continue unaddressed and did not seek confirmation of facts which he suspected.

Q9.57 It is likely that D5 did not believe that his concern could be satisfactorily addressed by statements made from D1, D4 or D7: Mark Partridge expressed the view that "*Spencer's*

[2747] P3.48 above.

[2748] P3.55 above.

[2749] P3.63 above.

[2750] P3.67 above.

Source: Mouseinthecourt.co.uk

lot and so JRM" were not to be trusted after pointing out contradictions made by D1,[2751] and the in-house view within D6 was that D1 could not be trusted.

Q9.58 Further evidence of D5's deliberate decision not to seek confirmation of facts he suspected appears from his continuing efforts to give the impression that LCF conducted a legitimate business, e.g. D5's involvement in plans to create a lending page on LCF's website as a "*sales tool*" to give a more convincing impression to prospective investors that LCF did actually lend to unconnected companies.[2752]

Q9.59 There is no question that D5 had blind-eye knowledge that LCF's representations about unconnected borrowers was false by 25.01.16, which is the date on which D5 knew that: (i) D1, who ostensibly ran LCF, had explained that **all** of LCF's loans were connected to D4, who ultimately ran LCF ("*Crucially all 80 loans are to Spencer related businesses i.e. they are funding their own operations*"); and (ii) D1 regarded this as sensitive information and did not want it to be communicated in writing, which was an obvious red flag ("*I have just spoken with Andrew Thompson* [sic]*, we discussed some quite sensitive information which he initially didn't want to be communicated by email*").[2753]

Q9.60 D5 did not ask questions which would have confirmed his suspicions. D5 knew that these suspicions might be confirmed: he accepted that "early on" he had "worked out" that all of the loans were connected to D4.[2754] D5 could have asked D4 for evidence to show that the lending was legitimate and amply secured but he elected not to do so.[2755]

Q9.61 D5 received considerable further information which confirmed his suspicions. In May 2016, he received a detailed spreadsheet from Mark Partridge which identified connections between LCF and the company from which it had obtained security.[2756] As above, D5 deliberately did not investigate these concerns, which is evident from his

[2751] P3.69 above.

[2752] P3.70 above.

[2753] P3.80 and P3.113 above.

[2754] P3.81 above.

[2755] P3.81 above.

[2756] P3.109-P3.111 above.

Source: Mouseinthecourt.co.uk

decision to aggressively continue selling LCF's bonds.[2757] It is also likely that D5 waited to see whether D1's answers provided a sufficient fig leaf to justify continued involvement ("*let's wait and see his response … before we make our next move*")[2758].

Q9.62 D5 knew that D6's sales team continued to seek answers to questions regarding LCF's borrowers and that they were commonly asked by bondholders and that D1 was not prepared to provide such information to D6's salespeople or the public.[2759]

Q9.63 A specific example of D5 making a deliberate decision of this nature took place on 17.05.16, when D5 deliberately intervened in order to prevent a salesperson at D6 from asking a question to D1 about D1's role at LCF.[2760]

Q9.64 On 18.05.16, D5 knew that D1's answers to questions about LCF's borrowers were unsatisfactory and could not be believed,[2761] because (i) they were inconsistent with previous information provided by D1, and (ii) D5 acknowledged at the time that they were unsatisfactory ("*Grrrr*"). Also on 18.05.16, D5 also knew that D1 had drafted an answer which was designed to give a misleading impression about the number of LCF's borrowers.[2762] Despite this, D5 decided to continue aggressively selling LCF's bonds despite knowing that they gave prospective bondholders a false impression.[2763] As above, the reason for D5's decision was the desire to make a lot of money. D5 was content for this misleading information to be communicated to the public to sell LCF bonds, because 25% of any monies from the public would be paid to D6.

Q9.65 D5's actual knowledge that the representation was misleading is beyond question as at July 2017: D5 knew that LCF had not made loans to 120 SMEs as represented to the public and knew that LCF had loaned to a small number of companies linked to D4.[2764]

[2757] P3.112 above.

[2758] P3.121 above.

[2759] P3.115-P3.119 above.

[2760] P3.120 above.

[2761] P3.122-P3.125 above.

[2762] P3.125 above.

[2763] P3.126 above.

[2764] P3.219-P3.221 above.

Source: Mouseinthecourt.co.uk

Q9.66 D5 knew that D1's comments on posts on the MSE forum about LCF's lending operation provided no answer to the concerns which were regarded by D6 as "*clearly a problem*" (and as D7 neatly put it, "*He hasn't responded particularly well*").[2765]

Q9.67 And D5 also knew that D1 did not want anyone to scrutinise his loan book because he had something to hide:[2766] D5 knew what D1 was seeking to hide.

Q9.68 As at September 2017, D5 also had actual knowledge that the number of LCF's borrowers or loans was small ("*not huge (sub 20)*"), and therefore that the statements that had been and were being made to the public were false.

Q9.69 D5's concerns were unanswered by the accounts prepared by EY in February 2018 and he did not in fact receive any assurance from them.[2767] As above, D5 knew that the accounts raised a number of problems and inconsistencies regarding LCF's loans including that LCF only loaned to 11 borrowers.[2768] It is likely that D5 reacted similarly to Kerry Venn: "*LCF is suspicious because 11 borrowing companies doesn't look good*".[2769] As explained above, D5's reliance on these accounts in these proceedings is an *ex post facto* rationalisation that does not withstand scrutiny.

Q9.70 D5 also had actual knowledge that the representation was false as a result of a conference call on 22.02.18 between D1, D7 and Kerry Venn (who it is inferred passed the contents on to D5),[2770] in which D1 stated that LCF only had 7 borrowers, and as a result of Kerry Venn's summary of that exchange, in which Kerry Venn confirmed the representation to be false to D5 and others ("*they don't lend to SMEs*"[2771]).

[2765] P3.219-P3.225 above.

[2766] P3.239 above.

[2767] P3.363-P3.389 above.

[2768] P2.377-P3.380 above.

[2769] P2.446 above.

[2770] P2.390-P3.396 above.

[2771] SUR00093580-0001

Source: Mouseinthecourt.co.uk

Q9.71 D5 also had actual knowledge that LCF was a vehicle for lending to D2 and D4. In the context of LCF 2, D7 had explained to D5 that LCF 2 "*needs to issue a loan to SHK/SG prior to going live*",[2772] i.e. lending to D2 and D4 was in nature of LCF's activities and was being replicated for LCF 2. As explained above, D5 knew that the representation about lending to numerous borrowers was false and he could not give any plausible account of himself in cross-examination.[2773]

(4) False representations about LCF's loan agreements

Q9.72 D5 had no reason to believe the representation that LCF never made loans without written agreements in place. D5 knew that LCF was paying 25% commissions to D6 without a written agreement, and therefore that D1 was content to act on this basis.[2774] He also knew that D1 was reluctant to put a signed written agreement in place.

(5) False representations that there was an independent security trustee

Q9.73 At the beginning, D5 had no reason for believing that GST was independent. Kerry Venn explained on 03.12.15 that it did not have an online presence and that it appeared to be a new company. At this time, D5 was (at least) careless or reckless as to whether the representation was true.

Q9.74 D5 must have believed before May 2016 that GST was in some way connected to D1, and therefore that the representation about GST's independence was false, because on 03.05.16 he said he would speak to D1 about setting up an online trail of provenance for it.[2775] D5 later emailed D1 "*Off record"* to repeat the concern. There is no other intelligible explanation of these communications: if D5 believed that GST were independent, there was no reason to communicate with D1 about setting up an online presence on behalf of GST, because D1 would not exercise any control in relation to it.

[2772] P3.420 above.

[2773] P3.421 above.

[2774] P2.103-P2.192 above.

[2775] P2.19 and P3.98-P3.99 above.

Source: Mouseinthecourt.co.uk

Q9.75 On 09.05.16, Mark Partridge identified a number of specific connections between GST and individuals linked to LCF, based on information taken from Companies House. He concluded, "*there are a number of connections between LCF and GST*" and indicated that they were significant ("*without casting aspersions or commenting on their magnitude*").[2776] The same day, Mark Partridge provided detailed information contained in a colour-coded spreadsheet to D5, which substantiated these connections.[2777]As at May 2016, therefore, D5 knew that the representation about GST was false.

Q9.76 The state of D5's knowledge is apparent from the nature of his actions, which were to address the *appearance* of GST and impact on bond sales ("*so that the issue disappears"*) but not underlying problems about the GST.[2778]

(6) False representations about LCF's business model

<u>High interest rates</u>

Q9.77 D5 knew that LCF had promised to pay bondholders high interest rates of approximately 8%, and that this called for an explanation for two reasons: (i) in September 2015, D5 knew that the high interest rate was an outlier in the market and not credible;[2779] (ii) in November 2015, Kerry Venn had repeated the concern that LCF's interest rates were an outlier;[2780] and (iii) by December 2015, the concern was expressed by prospective bondholders that the rates of interest were "too good to be true" (i.e. they may not be true, because LCF was not able generate real income sufficient to pay those rates of interest), which had been shared with others at D6.[2781]

[2776] P3.104 above.

[2777] P3.109 above.

[2778] P3.99, P3.103 and P3.106-P3.107 above.

[2779] P2.17-P2.11 above.

[2780] P3.20 above.

[2781] P3.15-P3.16 above.

Source: Mouseinthecourt.co.uk

Q9.78 It is therefore likely that D5 held a targeted suspicion about LCF's ability to generate income to pay interest rates of around 8%. This concern was repeated by prospective bondholders frequently thereafter.[2782]

Q9.79 D5's concern was unanswered by the circulation of PwC's accounts, because D5 himself said that it is very unlikely that he looked at them.[2783] If he did, they would have only increased his suspicions because they revealed[2784] that LCF had made a profit of £166,916 which was tiny when compared to the vast profit being made by D6. There was no valid explanation for why D1 would be prepared to give away such a large share of the profits or, given such small profits, how D1 was paying for his lifestyle. As noted above, D5 knew for example that D1 had bought a helicopter.[2785]

Q9.80 D5 must have had actual knowledge that LCF's stated business model was incoherent, such that there was no plausible explanation of how LCF could pay high interest rates to bondholders through its income, because in July 2017 it was explained expressly in these terms on the MSE forum in a post which D6's sales people thought was "*clearly a problem*".[2786] D5 recognised that this was a valid concern and knew that D1 had not been able to answer it.[2787]

Q9.81 D5 also knew that D1's comments provided no answer to these concerns which were regarded by D6 as "*clearly a problem*" (and as D7 neatly put it, "*He hasn't responded particularly well*").[2788]

Q9.82 D5 also knew in June 2017 that LCF's draft accounts aggravated his concerns, because (i) D1 was secretive about the statements in the accounts,[2789] and (ii) Mark Partridge reiterated the concern that LCF's profits could not support its ostensible expenditure

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[2782] P3.22 above.

[2783] P3.198 above.

[2784] P3.193-P3.197 and P3.201 above.

[2785] P2/232 above.

[2786] P3.219-P3.223 above.

[2787] P3.224-P3.225 above.

[2788] P3.219-P3.225 above.

[2789] P3.231 above.

Source: Mouseinthecourt.co.uk

("*Not sure how he can afford a helicopter out of these accounts*"),[2790] and that the accounts looked wrong.[2791] D5 knew that D1 was living an expensive lifestyle which could not be supported by the profits shown in LCF's accounts.

Q9.83 In December 2017, D5 was made aware of a connection between a "*failed investment*" under the control of D4 and D8, LUKI, and LCF. D5 must have appreciated that this was inconsistent with the prospect that the same individuals were able to successfully generate enormous income that could legitimately pay interest rates as high as 8%.[2792]

Q9.84 D5's concerns were unanswered by the accounts prepared by EY in February 2018 and he did not in fact receive any assurance from them: he knew that they generated numerous further questions about LCF,[2793] as already mentioned above.

Q9.85 D5 actively intervened in order to prevent people from asking questions about LCF's business model.[2794] By this time, D5 already had actual knowledge that LCF's business model was unsustainable. But by these actions, D5 was seeking to prevent other persons at D6 from concluding that LCF's business was inherently unsustainable. He did this in order to seek to preserve the flow of commission payments to D6.

Q9.86 At this time, D5 knew that it was proving more difficult to maintain plausible deniability of what he knew and became more actively involved in discussions to manufacture a paper trail on which to rely in the event that LCF collapsed.[2795] This reveals that D5 had actual knowledge that LCF was not a sustainable business.

Q9.87 D5 knew in February 2018 that concerns expressed on MSE about a lack of any lending activity by LCF had circulated among D6's sales staff in February 2018,[2796] and had given rise to the concern that LCF was not a legitimate operation.

2790 P3.232 above.

2791 P3.233 above.

2792 P3.243 above.

2793 P3.363-P3.389 above.

2794 P3.384-P3.385 above.

2795 P3.360-P3.362 above.

2796 P3.353-P3.359 above.

Source: Mouseinthecourt.co.uk

Q9.88 During the same period, in February 2018, D5 knew that Kobus Huisamen of LCF had circulated a document which falsified representations made about LCF's business model and generation of income and meant that LCF was inevitably insolvent.[2797] As a result of his role at D6, D5 must have been aware of this document.

Q9.89 By May 2018, it is likely that D5 knew that the incoherence of LCF's business model was circulating more widely at D6, as a result of at least one prospective bondholder pointing out that there was an inconsistency in saying that LCF made loans to companies which could not access mainstream finance at reasonable interest rates and yet were nevertheless said to have excellent credit records and to never default.[2798]

The 25% commission

Q9.90 D5 knew that the 25% commission being paid to D6 was "*huge*" and "*insane*". He knew that it was in fact unsustainable.[2799]

Q9.91 Despite this, D5 knew that it had never been disclosed to prospective bondholders, because he knew about the contents of the representations contained in LCF's marketing materials. D5 must have known, as Kerry Venn clearly did, that the size of the commission was likely to be "*off-putting*" to prospective bondholders.[2800]

Q9.92 D5 knew from his involvement in the preparation of LCF's marketing materials in spring and summer 2015 that the 25% commission was not disclosed to prospective bondholders and therefore that the marketing materials were materially misleading.

Q9.93 D5 knew that LCF had made 25% commission payments to D6 without (ever) having a signed written agreement in place.[2801] D5 explained on 27.06.17 that he wanted a signed

[2797] P3.397-P3.400 above.

[2798] P3.410-P3.414 above.

[2799] P2.71, P3.24 above.

[2800] P3.31 above.

[2801] P2.103-P2.192 above.

Source: Mouseinthecourt.co.uk

contract in place,[2802] and it is likely that this reflected a concern about receiving commissions without a signed agreement being in place. Since there was no written agreement at all times, it is likely that D5 held this concern at all times.

Q9.94 D5 held a targeted suspicion that LCF was not operated professionally or properly, in light of being willing to pay such high rates of commission without the presence of a signed written agreement.

Fear that LCF would collapse

Q9.95 D5 did not believe that LCF was a secure investment: (i) D5 knew in early January 2016 that the FCA considered that LCF's bonds were being mis-sold;[2803] and (ii) D5 was later told by Kerry on 28.09.16 that they needed to make sure that they were not unduly exposed if LCF were investigated or went bust, which was a view they shared.

Q9.96 By 28.09.16, D5 did not hold an honest belief in the truth of LCF's representations about being a "secure" investment, given his knowledge about the lack of security, the identity of the borrowers, the identity of the security trustee, the fact that the same small group of individuals controlled the lender side, the borrower side and the security trustee, the commission being paid to D6, the high rates of interest promised to bondholders, the inexplicable source of D1's high discretionary spending on luxury items and the concerns shared by D5 and Kerry that LCF was at risk of collapse in future.

Q9.97 D5 in fact believed that LCF was a risky and dangerous investment by no later than November 2017, when he became involved in "LCF 2" along with D2, D4 and D7.[2804] As explained above, LCF 2 proceeded on the assumption that LCF required a "*back-up*" operation and might either (i) collapse, or (ii) be shut down by the FCA.[2805] D5's concern was a real and tangible one because he was prepared to take active steps to pursue LCF 2. This concern was repeated to D5 (by D7) in August 2018.[2806]

[2802] P2.180 above.

[2803] P3.80-P3.86 above.

[2804] P3.340 above.

[2805] P3.338-P3.352 above.

[2806] P3.424 above.

Source: Mouseinthecourt.co.uk

ISA bonds

Q9.98 By early December 2017, D5 knew that the ISA bonds would not be legitimate or compliant investments, as a result of Kerry Venn's explanation of the position which was supported by three sets of lawyers.[2807]

Knowledge: operating a Ponzi scheme

Q9.99 D5 knew that the entire "SAFE" or "LCF" operation was inherently suspicious,[2808] and that a natural reaction was to consider that it was a fraud ("*I know you'll be screaming 'RINSE'! It's not*").

Q9.100 D5 was made aware on 24.07.15 by Mark Partridge that LCF's business was inherently unsustainable, on the basis of (i) the term of the bonds which SAFE was selling, and (ii) the payment of 25% commission to D6, as this required LCF's own assets to grow by 55% in two years.[2809]

Q9.101 By 24.07.15, D5 must have had the targeted suspicion that LCF (including as SAFE) was using monies from new bondholders to pay redemption and interest payments.

Q9.102 D5 also knew that the integrity of LCF's business model called for explanation, which is why salespeople for D6 who knew the same facts considered that due diligence was called for,[2810] in order to address the suspicion that LCF may not be legitimate.

Q9.103 D5 also knew that Mark Partridge, whose opinion he trusted,[2811] believed by October 2015 that D4 (known to be behind LCF) was to be likened to Bernard Madoff,[2812] who famously conducted a very large Ponzi scheme. It is likely that D5 knew that this simply

[2807] P3.323 above.

[2808] P3.5 above.

[2809] P2.72 above.

[2810] P3.6 above.

[2811] P3.10 above.

[2812] P3.11 above.

Source: Mouseinthecourt.co.uk

represented a factual report of Mark Partridge's opinion ("*Mark thinks*"), rather than a joke, which was D5's explanation in his oral evidence.

Q9.104 By September 2015, D5 held a targeted suspicion that (i) new bondholder monies were in fact being used to meet D6's commission payments, because bondholders paid monies to Buss Murton's client account, and Buss Murton immediately paid 25% of each receipt to D6;[2813] and (ii) LCF had no realistic prospect of generating profits to repay investors,[2814] including on account of his knowledge that D6's commission of 25% could not be justified.[2815]

Q9.105 D5 made the deliberate decision not to inquire into the targeted suspicion which he held as set out above and had made this decision between 08.12.15[2816] and 10.12.15. This is because D5: (i) knew that due diligence was necessary, because he thought there was a real risk that something could be wrong with LCF;[2817] (ii) the due diligence required would likely sound alarm bells ("*I have a plan to make the necessity of the DD seem more run of the mill*"[2818]); (iii) D5 had linked conducting due diligence on LCF with the concern that LCF could be a Ponzi scheme ("*holly-shit-this-better-not-be-a-ponzi*"); (iv) D5 knew that the only borrower was a so-called "land bank", which (by its very nature) would not be generating any profits;[2819] (v) D5 did not conduct the due diligence required to address his concern that something could be wrong with LCF, and D5 knew that the due diligence would require an understanding of where new investor monies were going and how payments to existing investors were being funded;[2820] (vi) D5 did this deliberately, because D5 did not want to jeopardise D6's 25% commission.[2821]

2813 P2.74 and P3.25 above; SUR00129510-0001

2814 P3.25 above.

2815 P3.26-P3.30 above.

2816 P3.44 above.

2817 P3.45 above.

2818 SUR00127979-0001

2819 P3.49 above.

2820 P3.45 above.

2821 P3.46-P3.47 above.

Source: Mouseinthecourt.co.uk

Q9.106 As a result, by December 2015, D5 had blind-eye knowledge of the facts which he suspected but did not wish to know, namely that LCF (i) was not a legitimate business; and (ii) LCF did not generate income to enable it to pay commission to D6 or to make payments to existing bondholders, and that it could only do so from new bondholder monies – in other words, that LCF was a Ponzi scheme.

Q9.107 Following this, D5 instead made "light touch" inquiries of D1 regarding how LCF operated,[2822] which were sugar-coated in terms of promoting LCF to prospective investors, and not designed to elicit the truth regarding LCF or its assets.

Q9.108 As at January 2016, it was an established concern (of which D5 was aware) that LCF may be a Ponzi scheme: (i) Mark Partridge continued to communicate with D5 in terms which made clear that LCF might well be a Ponzi scheme;[2823] and (ii) Kerry Venn knew that absent details about LCF's lending book and details regarding the security that was in place, they could not satisfy themselves that LCF was not a Ponzi scheme ("*Missing piece of the 'is it a ponzi' jig saw: we need access to the lending book, inclusive of details re the security in place …*"), which she had discussed with D5.[2824]

Q9.109 D5 did not thereafter ask questions of D1 and D4 which were intended to elicit the truth about the facts which he suspected.[2825]

Q9.110 D5 did not in fact obtain any reassurance from LCF's audited accounts because he has said that it is very unlikely that he looked at them. If he did, they would have increased his suspicions rather than addressed them. In particular, he would have considered it likely that LCF was making payments to existing bondholders and payments of commission to D6 out of new bondholder monies (rather than LCF's profits or other income), because LCF's accounts contained a "profit" figure of £148,550 which was very substantially less than the profit being made by D6.[2826] In any event, the accounts did not erase D5's prior knowledge, as stated above, including that D1 had provided

[2822] P3.51 above.

[2823] P3.74 above.

[2824] P3.88-P3.88 above.

[2825] P3.90 above.

[2826] P3.193-P3.197 and P3.201 above.

Source: Mouseinthecourt.co.uk

unreliable and misleading information to others and had been seeking to mislead PwC.[2827]

Q9.111 D5 knew that his concern about the incoherence of LCF's business model was being circulated in the public domain.[2828] D5 also expressed concern about LCF opening itself to further public exposure and did not want LCF to stick its head above the parapet.[2829]

Q9.112 As above, in December 2017, D5 must have known that the connection between a "*failed investment*" under the control of D4 and D8, LUKI, and LCF, made it increasingly difficult to defend the proposition that LCF was generating enormous profits with which to make payments to bondholders.

Q9.113 By October 2017, D5 knew and shared the view that LCF was a company that could not be trusted.[2830] D5 knew that Kerry Venn was so concerned about working with LCF that she was feeling unwell.[2831]

Knowledge: misappropriating bondholder monies

Q9.114 D5 knew that D6 was paying D1 0.5% of gross bondholder monies which had been received by LCF in the previous month.[2832]

Q9.115 As explained in detail above, the court should conclude D5 had actual knowledge that there was no legitimate basis for payments of this nature.[2833]

Q9.116 D5 therefore had actual knowledge by the time when the payments were agreed, by no later than 14.06.16 ("*As agreed I've raised an invoice*"),[2834] that D1 was

[2827] P3.199 above.

[2828] P3.219 above.

[2829] P3.240 above.

[2830] P3.307 above.

[2831] P3.306 above.

[2832] P3.130-P3.162 above.

[2833] P3.163-P3.167 above.

[2834] P3.130 above.

Source: Mouseinthecourt.co.uk

misappropriating bondholder monies. At this time, D5 knew that D1 was the director of LCF, and was connected to its borrowers.

Q9.117 By at least July 2016, D5 knew that LCF was making payments to D4 and others, because: (i) D5 knew that LCF was making payments sufficient to cause LCF's bank account payment limit to be hit;[2835] (ii) those payments were not merely commission payable to D6; (iii) those payments included sums being paid to "*spencer etc*",[2836] which as explained above D5 understood to be a reference to D4 personally,[2837] and (iv) it is inherently unlikely to be pure coincidence that the remark was made on a day when payments were in fact made to D1, D3, D4 and D10,[2838] i.e. to "*spencer etc*". (Even if D5 had genuinely believed that the payments were loan advances to companies owned by D2 and D4, as he maintained, this would not assist him, because, as explained above, it would merely confirm that he had actual knowledge of the fact that misleading statements about LCF's lending operation and borrowers were being made to the public.)

Q9.118 D5 knew that D4 was being paid 1% of gross bondholder monies which had been received by LCF in the previous month, because (i) these sums were being paid to D4 through D6 with D5's approval,[2839] and (ii) these payments coincided with the cessation of equivalent payments of 0.5% which D5 knew were being made to D1.[2840]

Q9.119 As explained in detail above, D5 had no explanation for these payments, the court should conclude that D5 had actual knowledge that there was no legitimate basis for payments of this nature.[2841] At this time, D5 knew that D4 ultimately controlled LCF, and was connected to its borrowers.

[2835] P3.187 above.

[2836] SUR00032895-0001

[2837] P3.190-P3.192 above.

[2838] P3.188-P3.189 above.

[2839] P3.244-P3.300 above.

[2840] P3.271 above.

[2841] P3.301-P3.303 above.

Source: Mouseinthecourt.co.uk

Q9.120 D5 therefore also had actual knowledge by the time when the payments were agreed, probably by September 2017 and in any event by no later than 03.10.17,[2842] that D4 was (or was likely to be) involved in misappropriating bondholder monies.

Q9.121 It is clear that by 29.01.18, D5 had actual knowledge that all monies paid into LCF were or could be misappropriated for the benefit of those whom he understood to run LCF, which included D4. D5 knew that LCF was run in the same way and by the same individuals as LCF2, and D5 knew that "*They want their own man, so funds get utilised their way*". D5 agreed with this statement based on his own knowledge: "*Yes, precisely what John says*".[2843] D5 sought to prevent this from being explained in writing.[2844]

Q9.122 By at least July 2018 (but probably sooner), D5 had actual knowledge of the mechanisms used by those involved in LCF to misappropriate funds, as a result of his knowledge of the Isle of Wight deal.[2845]

Q9.123 D5 participated actively in this proposed transaction and knew that it involved the use of monies from LCF, through a connected borrower and an uncommercial transaction, in order to generate substantial payments to D4, and to himself.

Q9.124 D5 had more than merely actual knowledge: he knew that what he was doing was morally reprehensible, which is why he later lied about it to others.[2846]

Q9.125 Due to D5's deficient disclosure and the lack of any disclosure from D4, the Claimants cannot identify any particular date prior to July 2018 on which D5 acquired actual knowledge of the transactional mechanism used to misappropriate monies.[2847] However, it is likely in view of the above that his actual knowledge was acquired at some point prior to July 2018.

[2842] P3.245-P3.257 above.

[2843] P3.348 above.

[2844] P3.349 above.

[2845] P3.425-P3.440 and P3.443 above.

[2846] P3.442 above.

[2847] P3.436 above.

Source: Mouseinthecourt.co.uk

Q10 D7: Participation in and knowledge of LCF's fraudulent trading

Q10.1 As with D5, by at least July 2018 D7 had actual knowledge of the precise means by which LCF defrauded its bondholders: he was also involved in the IoW deal from the beginning. Given D7's relationship with D4, it is likely he had this knowledge at a much earlier stage; however, the Claimants cannot say precisely when, due to the paucity of communications with D4 that have been disclosed and the failure of D7 to participate in these proceedings.

Q10.2 The only question therefore relates to the identification of the precise *earlier* point in time at which D7's knowledge, actual or blind-eye, arose.

Q10.3 D7 was in a different position from D5 in one respect: the connection between D7 on the one hand, and D1, D2, D3 and D4 on the other, was much more long-standing.

Q10.4 D7 had had a business relationship with D4 for over 15 years.[2848] He had involvement with more than one of D4's schemes.

Q10.5 D7 knew about the Sanctuary scheme and the participants in it, and D7 was himself involved. D7 had been paid £100,000 from One Monday, originating ultimately from the Sanctuary investors.[2849] D7 had also been paid commissions from Sanctuary PCC's client account.[2850]

Q10.6 D7 also had extensive involvement in SAFE, as is described above.[2851]

Q10.7 D7 was present at introductory meetings in 2015 attended by D2, D4, D5 and Kerry Venn.[2852] Throughout LCF's lifetime, D7 acted as a recognised conduit to D4. He was

[2848] SUR00159541-0001

[2849] E3.15 above.

[2850] E5.7 above.

[2851] Section H5 above.

[2852] H2.19 above.

Source: Mouseinthecourt.co.uk

one of "*Spencer's lot*" ("*You can't believe anything that comes out of Spencer's lot and so JRMs mouth*"[2853]) and attended meetings with him.[2854]

Q10.8 In those circumstances, at all material times D7's knowledge was at least equal to that of D5 and that D7 had greater reason than D5 to believe that LCF was not a legitimate operation.

Q10.9 As with D5, D7's state of knowledge was dishonest at all material times. For this purpose, the Claimants rely not only on D7's blind-eye knowledge, but D7's actual knowledge from the outset that LCF was (and as SAFE, always had been) a Ponzi scheme.

Participation in LCF's fraudulent trading

Q10.10 D7 agreed the "*insane*" and unsustainable 25% commission for himself and carried this agreement over to D6, as recorded by D5 ("*Without JRM we wouldn't be here today. He increased comms to 25%*").[2855]

Q10.11 D7 participated in making representations to bondholders from its earliest days.[2856] D7 converted leads into bond sales for LCF.[2857]

Q10.12 D7 agreed to work as D6's sales director and therefore occupied a senior role in selling LCF's bonds to prospective bondholders, in which D6's salespeople presented themselves as though they were LCF.[2858]

Q10.13 D7 was involved in reviewing and commenting on LCF's marketing materials from the outset.[2859]

[2853] SUR00130885-0001

[2854] P3.64 above.

[2855] P2.84 above.

[2856] P2.15 above.

[2857] H2.29 above.

[2858] P2.68 above.

[2859] H7.4.68 above.

Source: Mouseinthecourt.co.uk

Q10.14 D7 was involved in selling LCF's bonds as D6's involvement began to have a substantial impact on the success of LCF, and during this period, D7 participated in furthering and facilitating the sales efforts of D6's staff.[2860]

Q10.15 D7 was involved in commenting on LCF's website and proposed changes to it.[2861]

Q10.16 D7 participated in actively marketing LCF's ISA bonds to prospective bondholders.[2862] He went on home visits to persuade particularly high value investors (such as Alan Darrah, acting on behalf of his daughter Chloe Darrah) to buy LCF bonds.

Q10.17 D7 was involved in setting up new false comparison websites to promote LCF.[2863]

Q10.18 D7 was involved in advising D5, D6 and Kerry Venn on marketing LCF's bonds to prospective bondholders and was regularly consulted in this regard.

Q10.19 D7 lied deliberately to D6's salespeople in order to convince them to continue to market LCF's bonds, such as by making false claims about SAFE's integrity when D7 knew that it was a Ponzi scheme.[2864]

Knowledge: falsity of the representations

Q10.20 D7 knew that LCF was not a genuine business from the outset: he knew that it was lending to companies connected with D2 and D4 (at least), and as noted below, he knew that it was a Ponzi scheme from its inception. Consequently, D7 had actual knowledge, at all material times, that he was participating in LCF's fraudulent trading.

Q10.21 In addition, as also set out below, D7 was privy to numerous communications which show that he appreciated that LCF was raising monies by false representation.

[2860] P2.80-P2.83 above.

[2861] P3.42 above.

[2862] P2.49 above.

[2863] P2.53 above.

[2864] P3.8 above.

Source: Mouseinthecourt.co.uk

Q10.22 To the extent it is necessary to rely on D7's "blind-eye" knowledge, D7 ignored the suspicions which he held as set out below, because (i) he wanted D6 to continue to be paid enormous commissions of 25%, as with SAFE over a number of years, (ii) D7 recognised that LCF was a "*cash cow*",[2865] (iii) in the same way as D5, D7 wanted to seek to maintain plausible deniability; and (iv) D7 was not satisfied by explanations from D1 and knew that he was a liar.[2866]

(1) False representations about the value of LCF's security

Q10.23 D7 knew that D2 and D4 were involved in providing security to SAFE in the form of two sites in "*the UK and Dominican Republic*", which it is inferred are references to Lakeview and The Hill.[2867]

Q10.24 D7 knew in December 2015 that there was a concern about LCF's lack of security, which was sought to be addressed by D4 offering to provide £30 million in security.[2868]

Q10.25 D7 knew that the lack of identifiable security was a "*main objection*" from prospective bondholders.[2869]

Q10.26 D7 also knew that the promises about new security (i) changed by mid-January 2016 so that what was promised was much less than before,[2870] and (ii) the security which was promised was never available after all.[2871]

Q10.27 D7 knew in April 2016 that D1 had failed to provide information about loans or security despite numerous requests.[2872]

[2865] P2.83 above.

[2866] P3.170-P3.186 above.

[2867] H4.2 above.

[2868] P3.63 and P2.75 above.

[2869] P2.73 above.

[2870] P3.75-P3.79 above.

[2871] P3.80 and P3.113 above.

[2872] P2.96 above.

Source: Mouseinthecourt.co.uk

Q10.28 By February 2018, D7 held the positive belief that LCF was not adequately secured, because he could not attach any weight to claims by D1 about LCF's security following a conference call on 22.02.18 with D1 and Kerry Venn, in which D1 claimed that LCF had security of £1 billion, which was patently implausible.[2873]

(2) False representations about due diligence on LCF's borrowers

Q10.29 As a result of D7's knowledge in connection with SAFE, D7 knew that no due diligence was being or would be conducted in connection with LCF's borrowers.

Q10.30 From the outset and in October 2015, D7 knew that LCF did not have a lending page, which would mean that LCF would not have any due diligence to conduct: it did not engage in any lending activity.[2874] D7 was involved in efforts to manufacture a lending page, to be relied upon in furthering the selling of LCF's bonds to prospective bondholders.[2875]

Q10.31 D7 therefore at least suspected that LCF did not in fact conduct its lending activity in the manner represented. This concern endured throughout 2015 and 2016,[2876] 2017,[2877] and 2018,[2878] and was never satisfactorily addressed.

Q10.32 D7 knew in November 2017 that D1 continued to be reluctant to provide any examples of businesses obtaining loans from LCF.[2879]

[2873] P2.390-P3.396 above.

[2874] P3.41 above.

[2875] P3.42-P2.43 above.

[2876] P3.70 above.

[2877] P3.219 above.

[2878] P3.353-P3.354 and P3.367 above.

[2879] P3.242 above.

Source: Mouseinthecourt.co.uk

Q10.33 D7 knew in February 2018 that concerns expressed on MSE about a lack of any lending activity by LCF had circulated among D6's sales staff in February 2018,[2880] which gave rise to the concern that LCF was not a legitimate operation.

(3) False representations about lending to numerous unconnected SMEs

Q10.34 D7 knew that SAFE lent to D2 and D4.[2881] D7 therefore knew that LCF (as SAFE) had lent to connected borrowers, such that the representation was false.

Q10.35 It is likely that D7 knew that LCF, as the same company as SAFE and operated by the same individuals, would continue lending funds to connected borrowers, such that he knew that the representation would continue to be false from its inception.

Q10.36 D7 knew that D1 was not providing information about LCF's loan book, such as the average loan size.[2882]

Q10.37 D7 had (at least) blind-eye knowledge that LCF's representations about unconnected borrowers was false by 25.01.16, which is the date on which it was explained to D7 (along with D5) that: (i) D1, who ostensibly ran LCF, had explained that **all** of LCF's loans were connected to D4, who ultimately ran LCF; and (ii) D1 regarded this as sensitive information and did not want it to be communicated in writing.[2883]

Q10.38 D7 received further information which made would have made clear to D7 that LCF was a similar scheme to Sanctuary and SAFE, being connected to a number of entities with which it is likely he was already familiar. As noted above, in May 2016, he received a detailed spreadsheet from Mark Partridge which identified connections between LCF and the company from which it had ostensibly obtained security.[2884]

[2880] P3.353-P3.359 above.

[2881] H2.9 and H5.2-H5.3 above.

[2882] P3.70 above.

[2883] P3.80 and P3.115 above.

[2884] P3.109-P3.111 above.

Source: Mouseinthecourt.co.uk

Q10.39 As at May 2016, D7 in fact knew that there were numerous connections between LCF and its borrowers.[2885]

Q10.40 D7 knew that concerns expressed online were putting off prospective bondholders and well-substantiated, because he knew that D1 was able unable to address them ("*He hasn't responded particularly well*").[2886]

Q10.41 By September 2017, D7 knew from D1 that LCF had issued a small number of loans (*"the volume of loans is not huge (sub 20)*") and therefore that the representation was false.[2887] D7 knew that D1 did not want LCF's loan book to be scrutinised.

Q10.42 D7 knew that the accounts prepared by EY in February 2018 did not provide any assurance.[2888] D7 knew (including as a sales director of D6) about the problems and inconsistencies regarding LCF's security and loans which had been circulated among D6's staff, and that the revelation that LCF only loaned to 11 borrowers falsified the representations which D6 had been making on behalf of LCF.[2889]

Q10.43 D7 also had actual knowledge in February 2018 that the representation was false as a result of a conference call with D1 and Kerry Venn, in which D1 confirmed the representation to be false, on account of LCF lending only to 7 borrowers.[2890]

Q10.44 D7 had further actual knowledge by at least August 2018 that LCF was a vehicle for lending to D2 and D4, as a result of his involvement with LCF 2, because in that context he had explained to others that LCF 2 "*needs to issue a loan to SHK/SG prior to going live*",[2891] i.e. lending to D2 and D4 was in nature of LCF's activities and was being replicated for LCF 2.

2885 P3.109-P3.111 above.

2886 P3.219-P3.225 above.

2887 P3.238 above.

2888 P3.363-P3.389 above.

2889 P2.377-P3.380 above.

2890 P2.390-P3.396 above.

2891 P3.420 above.

Source: Mouseinthecourt.co.uk

(4) False representations about LCF's loan agreements

Q10.45 As above, D7 knew that (i) LCF was paying commissions of 25% to D6, (ii) there was no written agreement from the outset, and (iii) no written agreement for the commission between D6 and LCF had been concluded. He was copied into numerous communications in which the draft agreement was still being discussed.[2892]

Q10.46 As a result, D7 suspected at all times that D1 was prepared to disburse significant amounts of LCF's monies without a signed written agreement. It is likely that he knew that D1 was prepared to lend (as well as disburse) LCF's funds without a signed written agreement.

(5) False representations that there was an independent security trustee

Q10.47 By 09.05.16, D7 had actual knowledge of connections between LCF and GST: Mark Partridge identified a number of specific connections between GST and individuals linked to LCF, based on information taken from Companies House. He concluded, "*there are a number of connections between LCF and GST*" and indicated that they were significant ("*without casting aspersions or commenting on their magnitude*").[2893] As at May 2016, D7 in fact knew that the representation was false.

(6) False representations about LCF's business model

<u>High interest rates</u>

Q10.48 D7 knew that LCF (as SAFE) did not conduct a legitimate business, and that its business was unsustainable, because D7 had been paid commissions of 20% (and later 25%) for selling SAFE's bonds for a number of years.[2894]

Q10.49 D7 knew that SAFE was a Ponzi scheme.[2895]

[2892] P3.180, P2.183 and P2.186 above.

[2893] P3.104 above.

[2894] P2.73 above.

[2895] H5.1-H5.6 above.

Source: Mouseinthecourt.co.uk

Q10.50 D7 knew that LCF was making commission payments of 25% to D6 without having a signed written agreement in place, and that D1 was seeking to put an agreement in place after the event in order to satisfy PwC.[2896]

Q10.51 D7 knew that LCF paid bondholders high interest rates of approximately 8%, and that this called for an explanation as to how LCF was able to generate income to pay those rates of interest, in light of concerns expressed by members of the public.[2897]

Q10.52 D7 also knew in June 2017 that LCF's draft accounts did not address concerns about LCF, because (i) D1 was secretive about the statements in the accounts,[2898] and (ii) Mark Partridge reiterated the concern that LCF's profits could not support its ostensible expenditure,[2899] meaning D7 must have known that LCF and D1 would have used new bondholder monies.

Q10.53 At this time, D7 knew that it was proving more difficult to maintain plausible deniability of what he knew, and became more actively involved in discussions to manufacture a paper trail on which to rely in the event that LCF collapsed.[2900] This reveals that D7 had actual knowledge that LCF was not a sustainable business.

Q10.54 By May 2018, it is likely that D7 knew that the incoherence of LCF's business model was circulating more widely at D6, as a result of at least one prospective bondholder pointing out that LCF appeared to lend to companies which (i) could not access mainstream finance, yet (ii) nevertheless had good credit records.[2901]

[2896] P2.107, P2.124 and P2-137 above.

[2897] P3.15-P3.16 above.

[2898] P3.231 above.

[2899] P3.232 above.

[2900] P3.360-P3.362 above.

[2901] P3.410-P3.414 above.

Source: Mouseinthecourt.co.uk

Fear that LCF would collapse

Q10.55 D7 knew in early January 2016 that the FCA considered that LCF's bonds were being mis-sold.[2902]

Q10.56 D7 believed that LCF was a risky and dangerous investment by no later than November 2017, when he became involved in "LCF 2" along with D2, D4 and D5.[2903] As explained above, LCF 2 proceeded on the assumption that LCF required a "*back-up*" operation and might either (i) collapse, or (ii) be shut down by the FCA.[2904] D7's concern was a real and tangible one because he was prepared to take active steps to pursue LCF 2. This concern was repeated by D7 in August 2018.[2905]

Q10.57 In February 2018, D7 knew that Kobus Huisamen of LCF had circulated a document which falsified representations made about LCF's business model and generation of income and meant that LCF was inevitably insolvent.[2906]

Q10.58 By June 2018, D7 knew that others (such as Kerry Venn) were seeking to take steps to distance themselves from LCF in view of the possibility that it would go bust.[2907]

ISA bonds

Q10.59 D7 knew that LCF was unable to generate any legitimate income from the sale of ISA bonds, and that the ISA bonds were not secure investments, because D7 did not trust D1's claims that these investments were eligible for tax-free status.[2908] By early December 2017, D7 knew that the ISA bonds would not be legitimate or compliant investments, as a result of Kerry Venn's explanation of the position which was supported

[2902] P3.80-P3.86 above.

[2903] P3.340 above.

[2904] P3.338-P3.352 above.

[2905] P3.423 above.

[2906] P3.397-P3.403 above.

[2907] P3.403 above.

[2908] P3.314-Q3.337 above.

Source: Mouseinthecourt.co.uk

by three sets of lawyers,[2909] and his own knowledge of the applicable rules.[2910] D7 knew that D1 was clearly taking a risk ("*Thanks jo, it's there* [sic] *problem*").[2911]

Q10.60 As a result, D7 had actual knowledge (and at least blind-eye knowledge) that all of the ISA bonds were not legitimate or compliant investments, despite his involvement in representing them to be legitimate or compliant investments.

Knowledge: operating a Ponzi scheme

Q10.61 D7 worked with D1, D2, and D4 in connection with SAFE, and knew the terms on which SAFE proposed to raise funds from investors, and that monies paid into SAFE would not be lent out in line with what was described in its advertising materials, "*ie cash for Simon and Spencer etc*".[2912]

Q10.62 D7 was paid a commission 20% for selling SAFE's bonds, which later rose to 25%.[2913] As noted above, this was the real genesis of the 25% commission which would be paid to D6. The commission rate had been decided by D4.[2914] It was clearly unsustainable.

Q10.63 D7 knew that D4 maintained overall control of SAFE and that it was a Ponzi scheme.[2915]

Q10.64 D7 knew that LCF was operating in the same way as SAFE in (i) paying commission rates of 25% from new investor monies, and (ii) attracting new investor monies on the basis of the same ostensible business model. From the outset, it is likely that D7 had actual knowledge that LCF was a Ponzi scheme.

Q10.65 For the reasons explained above, D7 knew that there was no proper explanation of the means by which LCF was paying high interest rates to bondholders, and 25%

[2909] P3.323 above.

[2910] P3.327 above.

[2911] P3.329 above.

[2912] H2.9 and H5.2-H5.3 above.

[2913] H2.11 above.

[2914] H4.5 above.

[2915] H5.1-H5.6 above.

Source: Mouseinthecourt.co.uk

commissions to D6, out of income which it generated: he must have known (and did in fact know) that LCF was using new bondholder monies, and thereby operating a Ponzi scheme.

Knowledge: misappropriating bondholder monies

Q10.66 D7 knew that D4 was being paid 1% of gross bondholder monies which had been received by LCF in the previous month by D6, because he acted as the conduit to D6 of invoices from D4 and was involved in email and text communications about the negotiation of D4's percentage.[2916]

Q10.67 It is clear that by 29.01.18, D7 had actual knowledge that all monies paid into LCF were or could be misappropriated for the benefit of those whom he understood to run LCF, which included D4. D7 knew that LCF was run in the same way and by the same individuals as LCF2, and D7 knew that "*They want their own man, so funds get utilised their way*".[2917]

Q10.68 By February 2018, D7 also knew that Prime RDL was transacting with LCF.[2918]

Q10.69 By at least July 2018 (but probably sooner), D7 had actual knowledge of the mechanisms used by those involved in LCF to misappropriate funds, as a result of his knowledge of the Isle of Wight deal.[2919] D7 participated actively in this proposed transaction and knew that it involved the "borrowing" of monies from LCF, by a connected borrower, through an uncommercial transaction, in order to generate personal profits for those behind LCF including D4.

Q10.70 Due to D5's deficient disclosure in these proceedings, the lack of any disclosure from D4 and D7's decision not to participate in the trial, the Claimants cannot say precisely

[2916] P3.244-P3.300 above.

[2917] P3.348 above.

[2918] P3.352 above.

[2919] P3.425-P3.440 and P3.443 above.

Source: Mouseinthecourt.co.uk

when D7 acquired actual knowledge of the precise means by LCF to defraud bondholders.[2920]

Q10.71 As noted above in connection with D5, as a result of (i) D7's knowledge that funds would be used "*their way*" as above, and (ii) D7's knowledge in February 2018 that Prime RDL was transacting with LCF,[2921] it is to be inferred that D7 must have known about the precise methods used by LCF to defraud bondholders much earlier than July 2018, and at least by February 2018.

Q11 D8: Participation in and knowledge of LCF's fraudulent trading

Q11.1 D8 was one of the principal enablers of LCF's fraudulent conduct of business.

Q11.2 He was a longstanding associate of D2 and D4. He acted as a lawyer for the "London Group" and also acted as a lawyer in connection with various personal affairs of D2 and D4. His involvement in schemes operated by D2 and D4 also predates LCF.

Q11.3 D8 was involved in the conception, preparation and administration of the majority of transactions by which LCF's monies were misappropriated by D1, D2, D3 and D4, including the five major transactions set out above. He was involved in backdating an astonishing number of documents.

Q11.4 D8 filed a witness statement in these proceedings. After the Claimants had completed their oral opening submissions, and during the cross-examination of D1 by the Claimants, D8 explained that he was now declining to give oral evidence and to submit to cross-examination. The Claimants seek to draw adverse inferences in respect of D8 on the basis that he had no honest answer to the allegations against him.[2922]

Q11.5 D8 had actual knowledge of LCF's fraudulent trading from its inception, in which he participated extensively.

[2920] P3.436 above.

[2921] P3.352 above.

[2922] C8.6-C8.7 above.

Source: Mouseinthecourt.co.uk

Participation in LCF's fraudulent trading

Q11.6 D8 participated actively in numerous aspects of the five major transactions by which monies were misappropriated from LCF and paid to D1, D2, D3, D4: for the reasons explained in detail above, he participated in each of the Lakeview SPA,[2923] the Elysian SPA,[2924] the Prime SPA,[2925] the LPE SPA,[2926] and the LPT SPA.[2927] The Claimants rely on all of D8's actions in connection with each transaction, as set out further above, as amounting to D8's participation in LCF's fraudulent trading.

Q11.7 D8 exercised control over the Buss Murton client account, which received funds on behalf of LCF and paid them in accordance with directions from LCF.

Q11.8 The all-pervading nature of D8's involvement in preparing LCF's transactions with a single group of borrowers means that D8's involvement in those transactions amounts to the participation in LCF's conduct of business.

Q11.9 D8 was acting at all material times on the ultimate instruction of D4, who as above was the beneficial owner of LCF and a *de facto* and/or shadow director of LCF who exercised control over LCF throughout its lifetime.[2928] For this reason, D8's actions amount to participation in the management of LCF.

Q11.10 Further and in any event, as a result of the conduct set out above: (i) D8 furthered and facilitated LCF's fraudulent trading; and (ii) D8 participated in and furthered the transactions between London Group companies, as well as between London Group companies and LCF, which in each case provided the occasion for LCF's fraudulent trading.

[2923] Section I6 above.

[2924] Section J5 above.

[2925] Section K5 above.

[2926] Section L5 above.

[2927] Section M5 above.

[2928] Section H7 above.

Source: Mouseinthecourt.co.uk

Q11.11 D8's involvement meant that he had knowledge that the representations relied on below were made: (i) D8 had knowledge of the terms on which monies were raised from prospective bondholders by SAFE[2929] which later was rebranded as LCF, and (ii) D8's involvement in the preparation of a draft exclusivity agreement between D2, D4, D5 and D7,[2930] which itself referred to the raising of monies by LCF in materially the same way as SAFE, resulted in D8 having actual knowledge of the means by which LCF was raising monies from prospective bondholders.

Knowledge: falsity of the representations

Q11.12 D8 knew that the representations made by LCF were false. Moreover, D8 also participated in the means by which the representations were rendered false, as a result of his activities in relation to LCF. This is set out below in relation to each representation.

(1) False representations about the value of LCF's security

Q11.13 D8 knew that The Hill was worthless as security for any lending by LCF, because (i) the interest in The Hill was held on trust for El Cupey for the benefit of the Sanctuary investors, and (ii) the liabilities of the Sanctuary investors were c.£23.5 million.[2931] As set out above, D8 had been closely involved in these matters.

Q11.14 D8 knew about the terms of the Paradise Beach contract because of his extensive involvement in acting on behalf of CV Resorts both in arranging the deal and in dealing with disputes about default on the contract.[2932] He knew that the price was too high,[2933] such that the contract was not a valuable asset and knew that CV Resorts never acquired any property at Paradise Beach.[2934]

[2929] H6.2 above.

[2930] H7.17-H7.24 above.

[2931] E5.8-E5.10 above.

[2932] F5.1-F5.5 above.

[2933] F5.9 above.

[2934] F5.10 above.

Source: Mouseinthecourt.co.uk

Q11.15 D8 knew about the price by which Lakeview was acquired by LCCL as a result of his role in preparing and documenting the transaction on behalf of D2.[2935] D8 knew that LCCL did not have any monies of its own in early 2013[2936] and required finance to complete the acquisition.[2937] D8 therefore knew that LCCL was involved in dealing with the Telos investors and knew about their position.[2938] As a result of D8's knowledge, and position in relation to LCCL, he was aware of the true value of the Lakeview site,[2939] which he knew was less than the liabilities for which it was to stand as security.

Q11.16 D8 knew that the security purportedly provided to secure L&TD's borrowing from LCF was worthless and that L&TD's liabilities to LCF were effectively unsecured.[2940]

Q11.17 D8 knew that the security granted by the "support" companies was worthless.[2941]

Q11.18 D8 knew that there was no adequate security for the liability owed by Atlantic Petroleum Support. He knew that there had been no effective assignment of LOG's rights in relation to Atlantic Petroleum to be used as security for LCF's lending.[2942]

Q11.19 D8 knew that the security granted by London Group LLP was worthless.[2943]

(2) False representations about due diligence on LCF's borrowers

Q11.20 D8 knew that no financial due diligence was being conducted on LCF's borrowers, or would ever be conducted on LCF's borrowers, because LCF's borrowers were all connected with the London Group. As a result of D8's overarching involvement as a

[2935] G5.1-G5.7 above.

[2936] G5.8 above.

[2937] G5.11-G5.13 above.

[2938] G5.9-G5.10 above.

[2939] G5.14 above.

[2940] I6.26 above.

[2941] J5.4-J5.6 above.

[2942] J5.7 above.

[2943] J5.9 above.

Source: Mouseinthecourt.co.uk

lawyer acting for London Group in its transactions, as set out further above, D8 would have been informed of any such due diligence.

Q11.21 D8 knew that due diligence was irrelevant to LCF, because he knew that L&TD had defaulted in filing its accounts and exceeded its facility limit, and that LCF was party to the creation of documents whose purpose was to give the false impression that neither of these things had taken place.[2944]

Q11.22 D8 knew that the "support companies" were newly incorporated, had no assets and no business,[2945] and would nevertheless take over debt owed to LCF.[2946]

(3) False representations about lending to numerous unconnected SMEs

Q11.23 D8 was involved in the Sanctuary scheme, during which he had made payments from Sanctuary PCC's client account to companies connected with D2 and D4, which he knew were not in accordance with the terms represented to the Sanctuary investors.[2947]

Q11.24 D8 was involved in the SAFE scheme, during which he knew that SAFE had raised monies from investors on false pretences, by making representations to investors[2948] but (i) loaning the monies to Sanctuary which did not have any security,[2949] (ii) misappropriating the monies through One Monday,[2950] and (iii) using those monies to make payments to the Sanctuary investors.[2951]

Q11.25 D8 knew that the London Group was beneficially owned by D1, D2, D3 and D4.[2952]

[2944] I6.27 above.

[2945] J5.4 above.

[2946] J5.5 above.

[2947] E5.5 above.

[2948] H6.2 above.

[2949] H6.4 above.

[2950] H6.5 above.

[2951] H6.6 above.

[2952] I6.6 above.

Source: Mouseinthecourt.co.uk

Q11.26 D8 knew about the terms of the Golding-SHK Agreement, which stated that LCF was to be responsible for all fundraising for London Trading (and its group of companies), which D8 knew were connected to D2 and D4.[2953] D8 therefore knew that the representation was false and was never intended to be true.

(4) False representations about LCF's loan agreements

Q11.27 As a result of D8's overarching involvement as a lawyer acting for London Group in its transactions, as set out further above, D8 knew the circumstances in which LCF entered into loan agreements with connected borrowers.

Q11.28 D8 knew by at least 20.01.16 that L&TD had already borrowed from LCF without having any facility agreement in place,[2954] and knew that the facility agreement later put in place was backdated in order to conceal this fact.[2955]

Q11.29 D8 knew that new monies loaned from LCF in connection with the Prime SPA would not be loaned to Prime RDL but would be diverted to London Group LLP[2956] or GAD (which was controlled by D8).[2957]

Q11.30 D8 knew that LCF had loaned funds to LOG without a facility agreement in place and knew that the facility agreement later put in place was backdated in order to conceal this fact.[2958]

(5) False representations that there was an independent security trustee

Q11.31 D8 owned and controlled GST. D8 had set up GST.[2959] D8 had actual knowledge at all material times that GST was not independent from LCF or its borrowers: (i) D8 knew

[2953] H6.8 above; D8-0001655

[2954] I6.23 above.

[2955] I6.26 above.

[2956] K5.5 above.

[2957] K5.13 above.

[2958] L5.1 above.

[2959] P2.13 above.

Source: Mouseinthecourt.co.uk

that he was the solicitor instructed to act on behalf of many of LCF's connected borrowers, i.e. companies in the London Group; and (ii) D8 was also the company secretary of many connected borrowers. D8 was clearly not independent of the borrowers or LCF.

(6) False representations about LCF's business model

Q11.32 As explained further below, D8 knew that LCF was a Ponzi scheme.

Q11.33 As explained further below, D8 knew that LCF was misappropriating bondholder monies.

Knowledge: operating a Ponzi scheme

Q11.34 D8 knew that SAFE was a Ponzi scheme.[2960] D8 knew that LCF was ultimately owned by the same individuals, was making the same basic representations as SAFE, and was likely to be operating in the same way.

Q11.35 As a result of D8's overarching involvement as a lawyer acting for London Group in its transactions, as set out further above, D8 knew (i) the terms on which London Group was borrowing; (ii) that London Group borrowers did not generate any real independent income; (iii) that any payments from London Group borrowers to LCF therefore involved the recycling of LCF's monies; and (iv) that LCF did not generate any income from London Group borrowers, which would enable LCF to make payments to bondholders. It is therefore likely that D8 had actual knowledge that LCF was a Ponzi scheme at all material times.

Q11.36 D8 owned and controlled GAD,[2961] which as explained above, was involved in operating the Ponzi scheme. D8 arranged for some of the monies received by GAD from LCF to be paid back to LCF to enable it to make payments to bondholders,[2962] and D8 had actual

[2960] H6.7 above.

[2961] K5.13 above.

[2962] K5.14 above.

Source: Mouseinthecourt.co.uk

knowledge from at least May 2018 that he was participating in a Ponzi scheme through GAD.

Q11.37 D8 had actual knowledge that LCF was being conducted as a Ponzi scheme through LOG by at least July 2018.[2963]

Knowledge: misappropriating bondholder monies

Q11.38 D8 knew about the use of the five major transactions by which the majority of monies invested by bondholders were misappropriated by each of D1, D2, D3, and D4. For the reasons explained in some detail above, D8 knowingly participated in each of the Lakeview SPA,[2964] the Elysian SPA,[2965] the Prime SPA,[2966] the LPE SPA,[2967] and the LPT SPA.[2968] D8 knew that these were uncommercial transactions which served to conceal the misappropriation of bondholder monies to D1, D2, D3 and D4 in agreed ratios.

Q11.39 In particular, on account of D8's role in preparing many legal documents for the purpose of the above transactions, in each case, D8 had actual knowledge of the precise means and contrivances by which the transaction was fraudulent and designed to conceal the misappropriation of LCF's monies. For example, D8's suggestion of rewriting history by inserting CV Resorts into the group structure with retrospective effect to justify future price increases under the Lakeview SPA reveals that (i) D8 knew that the objective was to create window dressing to justify misappropriations and (ii) D8 knew that these activities were wrong and was prepared to create dishonest and misleading documentation in order to conceal the reality of what was going on.

[2963] Q4.27 above; MDR00000570

[2964] Section I6 above.

[2965] Section J5 above.

[2966] Section K5 above.

[2967] Section L5 above.

[2968] Section M5 above.

Source: Mouseinthecourt.co.uk

Q11.40 D8 was involved in other misappropriations and knew that LCF's monies were being used for the personal benefit of D4.[2969]

[2969] N5.5-N5.6 above.

Source: Mouseinthecourt.co.uk

R. THE BREACHES OF DUTY RELIED UPON BY THE CLAIMANTS

R1 Introduction

R1.1 The Claimants principally rely upon breaches of the following fiduciary duties owed to LCF by D1 and/or D4:

(1) Section 171 of the Companies Act 2006.[2970] This is the fiduciary duty placed on a director: (i) to act in accordance with the company's constitution; and (ii) only to exercise powers for the purposes for which they are conferred.

(2) The content of this duty is described in the Claimants' written opening submission on the law at ¶¶46-55.[2971] Circumstances in which a director will breach this duty include causing the company to act unlawfully[2972]; authorizing payments to himself or others without authority to do so[2973]; and misappropriation of company funds by a director[2974].

(3) It is possible for a director to be in breach of the duty owed under section 171 even if that director believes the power is being exercised in the company's best interests.[2975]

(4) Section 172 of the Companies Act 2006.[2976] This is the fiduciary duty placed upon a director to act in the way that he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, having regard to various specified matters.

2970 **[S1/11/2]**.

2971 **[A2/2/17]**.

2972 *Rolled Steel Products (Holdings) Ltd v British Steel Corporation* at 287 **[S2/38/42]**.

2973 *Guinness plc v Saunders* [1990] 2 AC 663 at 692 **[S2/43/30]**.

2974 *Selangor United Rubber Estates Ltd v Cradock (No 3)* [1968] 1 WLR 1555 at 1575 **[S2/27/21]**.

2975 *Keymed (Medical & Industrial Equipment) Limited v Hillman* [2019] EWHC 485 (Ch) at [89] **[S2/147/38]**.

2976 **[S1/11/3]**.

Source: Mouseinthecourt.co.uk

(5) The content of the duty is set out in the Claimants' written opening submissions on the law at ¶¶56-66.[2977] The test is subjective and is considered with whether a director exercised his discretion *bona fide* in what he considered to be the company's best interests.[2978] However, an irrational decision, even if made in good faith, could constitute a breach of this duty.[2979] Furthermore, where there is no consideration of the company's interest by the director or directors an objective test is applied.[2980]

(6) The duty imposed under section 172 requires a director to disclose his own misconduct to the company.[2981]

(7) Where a company is insolvent or bordering on insolvency then, under section 172(3), whilst the duty remains owed to the company, the directors become obliged to have regard to the interests of creditors. Where a company is irretrievably insolvent, then the interests of the creditors should become a paramount consideration in the directors' decision-making.[2982] At all material times LCF was insolvent, as is explained below, and so this duty was engaged.

(8) Section 177 of the Companies Act 2006.[2983] This is the fiduciary duty placed on a director to declare an interest in any proposed transaction or arrangement with the company. It requires a director to make a full and frank disclosure of the precise nature of his interest to the board so that the board may consider the matter as a body.[2984] The content of this duty is set out in the Claimants' written opening submissions on the law at ¶¶84-87.[2985]

2977 **[A2/2/21]**.

2978 *Re Smith & Fawcett Ltd* [1942] 1 Ch 304 at 306 **[S2/20/3]**.

2979 *Hutton v West Cork Railway Co* (1883) LR 23 Ch D 654 at 671 **[S2/7/18]**.

2980 *Re HLC Environmental Projects Ltd* [2014] BCC 337 at [92] **[S2/121/27]**.

2981 *Fassihi v Item Software (UK) Ltd* [2004] BCC 994 at [34]-[68] **[S2/82.1/9]**.

2982 *BTI 2014 LCC v Sequana SA* [2022] 3 WLR 709 at [176] **[S2/167/54]** and [247] **[S2/167/71]**.

2983 **[S1/11/8]**.

2984 *Gwembe Valley Development Company Ltd v Koshy* [2004] 1 BCLC 131 at [59] **[S2/83/20]** and [65] **[S2/83/21]**.

2985 **[A2/2/29]**.

Source: Mouseinthecourt.co.uk

R1.2 In the alternative, the Claimants rely upon breaches of the duties owed by D1 and/or D4 under section 174 of the Companies Act 2006.[2986] This is the duty imposed upon a director to exercise reasonable care, skill and diligence. The content of this duty is described in the Claimants' written opening submissions on the law at ¶¶67-74.[2987]

R1.3 D1 seeks to strike out the claims against him arising from the alleged breaches of his fiduciary duty to LCF on the basis that they are unparticularised. This assertion is simply wrong. Seven particulars are provided in the RRRAPoC at ¶56.[2988] These particulars summarise allegations which are explained in more detail elsewhere in the RRRAPoC. For example, the first particular encompasses the Claimants case on fraudulent trading to which a substantial part of the RRRAPoC is dedicated. The Claimants are obliged in their statements of case to set out the facts on which they rely; this has been done.

R1.4 The suggestion that these particulars disclose no cause of action for breach of fiduciary duty is therefore unsupportable. Further, prior to making his strike-out application during the trial, D1 has never previously sought to claim that the allegations of breach of duty are inadequately particularised and he addressed them in his Defence at ¶68.[2989]

R1.5 This section describes the breaches of duty of D1 and/or D4 relied upon by the Claimants. The details of the proprietary claims arising from these breaches of duty are set out at Section S below. The quantum of the personal claims for breach of duty is addressed at Section V below.

R2 D4's status

R2.1 D4 was a shadow director of LCF.

2986 **[S1/11/5]**.

2987 **[A2/2/25]**.

2988 **[B1/2.1/55]**.

2989 **[B2/1/45]**.

Source: Mouseinthecourt.co.uk

R2.2 A shadow director is defined at section 251(1) of the Companies Act 2006 as "*a person in accordance with whose directions or instructions the directors of the company are accustomed to act*."[2990]

R2.3 The law relating to shadow directors is set out in the Claimants' written opening submissions on the law at ¶¶41-45.[2991] Determining whether a person is a shadow director is a matter of fact and degree.[2992] The purpose of the legislation is to identify those, other than professional advisers, with real influence in the affairs of the company; however, it is not necessary that such influence should be extended over the whole field of its corporate activities. [2993]

R2.4 By section 170(5) of the Companies Act 2006, the general duties owed by a director to the company "*apply to a shadow director to the extent they are capable of so applying*."[2994] The extent of the duties owed by a person in the position of a shadow director will reflect the extent and nature of the instructions given by the shadow director.[2995]

R2.5 Further, or alternatively, D4 was a *de facto* director of LCF.

R2.6 A *de facto* director is a person who assumes to act as a director and who is part of the corporate governing structure of the company but is never formally appointed as a director.

R2.7 The law relating to *de facto* directors is set out in the Claimants' written opening submissions on the law at ¶¶37-40.[2996] A person may be both a shadow director and a *de facto* director; although the two concepts are distinct.[2997] Whether a person is a *de facto*

2990 **[S1/11/11]**.

2991 **[A2/2/15]**.

2992 *Smithton Ltd v Naggar* [2015] 1 WLR 189 at [45] **[S2/133/10]**.

2993 *Secretary of State for Trade and Industry v Deverell* [2001] Ch 340 at [35] **[S2/70/15]**.

2994 **[S1/11/1]**.

2995 *Standish v The Royal Bank of Scotland* [2019] EWHC 3116 (Ch) at [55]-[57] **[S2/150/11]**.

2996 **[A2/2/15]**.

2997 *Smithton v Naggar* at [45] **[S2/150/10]**.

Source: Mouseinthecourt.co.uk

director is a question of fact and degree to be determined objectively and by reference to what that person actually did.[2998]

R2.8 While a *de facto* director is within the definition of a director at section 250 of the Companies Act 2006[2999], whether a *de facto* director is to be fixed with liability for a breach of a duty owed to the company requires the *de facto* director to have been part of the corporate governing structure of the company.[3000]

R2.9 Following his disqualification as a director[3001], D4 ran his businesses through proxies. He used both D1 and D3 to hold his shares in various companies on trust for him and run those companies for him.[3002] So, for example, D1 held D4's shares in LCCL on trust for him[3003] and D3 often appears twice in documents recording shares allocations: once in his own right and once in his role as D4's proxy.[3004]

R2.10 D4 was the sole beneficial owner of LCF at least until the "Golding-SHK Agreement" purported to transfer the beneficial ownership in the shares to D1. As director of LCF, D1 carried on its business on behalf of D4. That D4 was the person in overall control of LCF is to be inferred from the fact that monies drawn from LCF by Sanctuary PCC were paid to D2 (both in his own right and via D10) and D4 himself. D1 can only have made these payments on the instruction of D4.[3005]

R2.11 By the "Golding-SHK Agreement" D4 apparently agreed to transfer the beneficial ownership in the LCF shares to D1.[3006] No consideration was provided for this transfer of shares. Rather, it was intended that LCF would act as the capital raising arm of the London Group, which continued to be owned and controlled by D4 and D2.[3007]

2998 *Smithton v Naggar at* [38] and [40]-[45] **[S2/150/10]**.

2999 **[S1/11/10]**.

3000 *Smithton v Naggar* at [61] **[S2/150/13]**.3

3001 MDR00226310

3002 Day 20/page 94/line 15 – page 95/line 14 **[A5/20/24]**; Day 20/page 116/lines 17-21 **[A5/20/29]**.

3003 MDR00010565; MDR00011009

3004 E.g. MDR00017070 and MDR00016481 clause 5

3005 Section H2 above.

3006 EB0139239; H2.34-H2.36 above.

3007 D8-0001102; D8-0001103

Source: Mouseinthecourt.co.uk

R2.12 In practice, D4 remained in control of LCF and he retained oversight of all aspects of LCF's business. D4 was kept informed about LCF's information memoranda and marketing materials, which ultimately had to be approved by him[3008]; and deciding on LCF's logo.[3009] He was also kept informed, including by D1, of sums invested in LCF.[3010] He was also the person who was ultimately required to approve communications by LCF with its investors.[3011] D4 made decisions about the products offered by LCF without reference to D1.[3012] He also made operation decisions concerning LCF, such as moving the responsibility for dealing with ISA bonds to D6.[3013]

R2.13 D4 also received the largest share of misappropriated monies from LCF. He was paid sums in relation to the Sanctuary scheme[3014]; the Lakeview SPA[3015], the Elysian SPA[3016], the Prime SPA[3017], the LPE SPA[3018] and the LPT SPA[3019]. He also received 4% of D6's commission for a significant period.[3020] D4 received substantial other monies from LCF, including funds to buy a helicopter and a substantial "loan".[3021] It is to be inferred that he directed the release of these monies from LCF to him by D1; otherwise, there is no sensible explanation for his receipt of these monies. In some instances, where relevant documents have been disclosed, D4 can be seen directing D3 to submit drawdown requests to match LCF's available funds.[3022]

3008 MDR00017379; MDR00017414; MDR00017417; MDR00028240; MDR00030461; SUR00003280-0001 H7.3-H7.4, H7.10 and H7.15 above.

3009 MDR00025912; H7.14 above.

3010 MDR00017630; EB0083707; EB0083707; H7.2, L3.10 and L4.1 above.

3011 MDR00020959; MDR00020961; H7.6 above.

3012 H7.11-H7.12 above.

3013 H7.13 and H7.32-I7.33 above.

3014 Section H2 above.

3015 Section I2 above.

3016 Section J2 above.

3017 Section K2 above.

3018 Section L2 above.

3019 Section M2 above.

3020 P3.244-P3.303 above.

3021 Sections N2, N4 and N5 above.

3022 EB0083707; MDR00135953; MDR00135954; EB0083707 MDR00135966; MDR00135968; MDR00007110 page 15; MDR00220330 page 21; MDR00220330 pages 21-22; MDR00008467; MDR00196021; MDR00220286 page 344; L4.1 above.

Source: Mouseinthecourt.co.uk

R2.14 D4's status in relation to LCF can also clearly be seen in LCF's relationship with D6. D4 agreed terms with D6 without the involvement of D1 and, indeed, before D1 had even met D5. D4 was also involved, with D2 but not D1, in negotiations with D5 about an exclusivity agreement between LCF and D6. He was used by D6 to override D1's decisions and to make things happen when D1 was failing to get things done. It was also D4 who ultimately decided the level of D6's commission. The relative status of D1 and D4 in relation to LCF can clearly be seen from the fact that once D4 decided he wanted to be paid a slice of D6's commission this was in a higher amount than the payments made by D6 to D1, which were immediately stopped by D6.[3023]

R2.15 D4's role within LCF can clearly be seen in relation to the IoW deal, which also involved D5 and D7.[3024] D4 was the person who decided the price at which the property would be purchased by a borrower of LCF and how the profit would be allocated. There was no question that the funds would be provided by LCF. The terms of the deal were discussed between D4, D5 and D7. It seems clear that, had the IoW deal gone ahead, D1 would have released funds to Prime RDL at the direction of D4.

R2.16 D4 controlled the activities of LCF relating to the raising of monies and their distribution. Sometimes he did so directly and so acted as a *de facto* director. At other times he acted through D1, who did as he was told. D4 was therefore also a shadow director of LCF.

R2.17 LCF did have other board members in the relevant period: Kobus Huisamen and Katherine Simpson. Neither of them appears to have had any control over the distribution of monies, which was a function held by D1.

R2.18 The extent of his involvement in LCF means that D4 owed LCF duties under sections 171, 172, 174 and 177 of the Companies Act 2006.

[3023] Section H7 above.

[3024] P3.425-P3.443 above.

Source: Mouseinthecourt.co.uk

R3 The insolvency of LCF

R3.1 A company may be insolvent if it is unable to pay its debts as they fall due ("cash flow insolvency") or if the value of its current assets is less than the value of its liabilities, including contingent and prospective liabilities ("balance sheet insolvency").[3025]

R3.2 In the case of balance sheet insolvency, while a company's actual balance sheet is a useful starting point, the liabilities that fall to be taken into account are broader than those which would ordinarily be included in a balance sheet under accounting rules and the value of the company's assets is the realisable value, rather than the value determined by any other standard.

R3.3 LCF paid away 25% of all monies it raised to D6 (and, before D6's engagement, to D7). On this basis alone, LCF was unable to pay its debts (i.e. payment of interest and repayment of capital to bondholders) as they fell due without recourse to funds raised from other bondholders because even a legitimate business would not have been able to generate a high enough return to cover D6's commission and the high interest rates that LCF paid to its bondholders.[3026] LCF was therefore cash flow insolvent from the outset.

R3.4 Further, LCF did not apply much of the remaining funds it raised to legitimate investments but rather paid it out to D1, D2, D3, D4 and others as is described above. This rendered the prospect of LCF being able to repay its creditors from its own funds impossible.

R3.5 LCF has also been balance sheet insolvent from its inception, as can be seen from only a cursory examination of its balance sheets without even the need for further analysis:

(1) In its amended unaudited accounts for the period ended 31.03.14, LCF had net assets on its balance sheet of £10,868.[3027] The bulk of its assets comprised debtors in the sum of £647,430. The principal debtor was Sanctuary PCC, which would

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[3025] See section 123 of the Insolvency Act 1986 **[S1/0/1]** and *BNY Corporate Trustee Services v Eurosail* [2013] 1 WLR 1408 **[S2/118.1/1]**.

[3026] See, for example, Okongwu 1 ¶¶17-23 **[D3/2/10]**.

[3027] **[L1/3/3]**.

Source: Mouseinthecourt.co.uk

have been unable to repay this debt because it was using the funds to pay interest to the Sanctuary investors and D1, D2 and D4, as is described at Section H2 above. Once this is taken into account, LCF's liabilities exceed its assets.

(2) In its audited accounts for the period ended 30.04.15, LCF's balance sheet showed net assets of £40,944.[3028] Its debtors owed it £1,252,396. Again, the bulk of this sum would have been owed by Sanctuary PCC, which was unable to repay it. LCF was therefore balance sheet insolvent.

(3) In its audited accounts for the period ended 30.04.16, LCF's balance sheet showed net assets of £25,592.[3029] Its principal asset consisted receivables in the sum of £6,8848,446. This would have included LCF's lending to L&TD, which L&TD was incapable of repaying, not least because it had already made substantial payments to D1, D2, D3, D10 and D4, as is set out at Section I above. LCF was therefore balance sheet insolvent.

(4) In its audited accounts for the period ended 30.04.17, LCF had net assets on its balance sheet of £298,827.[3030] Its largest asset was a receivable in the amount of £47,900,134. As is set out above at Sections I and J, by this time substantial amounts had been paid out to D1, D2, D3, D4 and others in relation to the Lakeview SPA and the Elysian SPA. LCF's borrowers were consequently incapable of repaying their loans and LCF was balance sheet insolvent.

R3.6 LCF's financial position only worsened following the period covered by its last set of accounts. D1, D2, D3 and D4 extracted very large sums, including via the Prime SPA, the LPE SPA and LPT SPA. In their latest progress report, the LCF Joint Administrators estimate that secured creditors will only recover 10-18% of the sums owed to them.[3031]

[3028] **[L1/6/10]**.

[3029] **[L1/7/12]**.

[3030] **[L1/8/11]**.

[3031] **[H1/10/11]**.

Source: Mouseinthecourt.co.uk

R4 D1 breaches of duty

R4.1 As is set out at Section Q7 above, D1 was at the centre of the fraudulent scheme by which LCF raised money from bondholders under false pretences and distributed that money without justification to various persons, including D1, D2, D3 and D4 through various spurious transactions designed to conceal misappropriations. Due to these misappropriations, LCF could only meet its commitments to existing bondholders with monies raised from new bondholders and thus operated as a Ponzi scheme. After the FCA raided LCF, D1 attempted to conceal his wrongdoing by producing and relying on the MOU and the SPA.

R4.2 D1 breached the duties he owed LCF under section 171 of the Companies Act 2006 as follows:

(1) In raising monies from bondholders through the use of false representations, D1 was causing LCF to act unlawfully and therefore beyond its powers.

(2) In authorising or permitting the misapplication of LCF's monies to himself, D2, D3, D4, D6, D8, D10 and others as is described at Sections H to N above, D1 was exercising his powers for an improper purpose.

(3) In authorising or permitting the use of monies from new bondholders to pay LCF's obligations to existing bondholders, thereby concealing the fraudulent scheme LCF was being used to effect, D1 was causing LCF to act unlawfully, and thus beyond its powers and was exercising his powers for an improper purpose.

(4) In requiring D6 to pay him 0.5% of gross monies raised from new bondholders (on the balance of probabilities, in return for maintaining the level of D6's commission), D1 was acting for an improper purpose.

R4.3 D1 breached the duties he owed to LCF under section 172 of the Companies Act 2006 in the ways set out below. As a director of LCF, D1 acted in bad faith throughout. As is explained at Section R3 above, at all material times LCF was insolvent and D1 therefore owed a duty to give the interests of LCF's creditors

Source: Mouseinthecourt.co.uk

paramount consideration under section 172(3). He did not do so; rather, his conduct ensured that LCF's creditors would lose the majority of the monies owed to them by LCF. At all times D1 ran LCF in his own interests and those of D2, D3 and D4 and not its own interests or those of its creditors.

(1) In knowingly raising monies from bondholders through the use of false representations, D1 was causing LCF to commit unlawful acts giving rise to the prospect of liability for wrongdoing.

(2) In paying 25% (or 22.5% in the case of 5-year bonds) of the gross monies raised to D6, D1 ran LCF unsustainably and ensured that it would at some point default on its obligations to bondholders.

(3) By requiring D6 to pay him 0.5% of gross monies raised in return (on the balance of probabilities, for maintaining the level of D6's commission).

(4) By promising unfeasibly high interest rates to bondholders in order to maximise the sums raised by LCF and without any thought or concern as to how LCF would generate sufficient monies to pay interest at these rates, D1 ensured that LCF would not be able to repay its creditors.

(5) In authorising or permitting the misapplication of LCF's monies to himself, D2, D3, D4, D6, D8, D10 and others as is described at Sections H to N above, and therefore ensuring that LCF would not be able to repay its creditors.

(6) By seeking to conceal the fraudulent scheme, including from LCF's and LOG's auditors and from GCEN, through the use of dishonestly backdated documents.

(7) By seeking to conceal his own misappropriation of monies through his involvement in producing and dishonestly backdating the MOU and the SPA.

(8) By authorising or permitting LCF to lend money against security he knew to be of entirely inadequate value to secure the monies paid out.

Source: Mouseinthecourt.co.uk

(9) In authorising or permitting the use of monies from new bondholders to pay LCF's obligations to existing bondholders, thereby concealing the fraudulent scheme LCF was being used to effect and ensuring its inevitable collapse.

R4.4 D1 breached his duty to LCF under section 177 of the Companies Act 2006 by failing to disclose to the other board members: (i) the fact that he was involved in the implementation of the Golding-SHK Agreement, by which monies raised by LCF would be distributed to D1, D2, D3 and D4 in agreed ratios; and (ii) his arrangement with D6, whereby he would receive from D6 0.5% of gross monies raised.

R4.5 The Claimants assert a proprietary claim to any property of LCF, or its traceable proceeds, received by D1 in breach of the duties described above. The Claimants also seek equitable compensation for the balance of any loss caused to LCF by D1's breaches of the aforementioned duties. The details of the relief sought, including the quantum of any personal claim, is described in Sections S to V below.

R4.6 In the alternative, by: (i) raising money from bondholders on the back of false information; (ii) paying D6 an unsustainably high fee; (iii) promising unfeasibly and unsustainably high interest rates to bondholders; (iii) failing to carry out due diligence on LCF's borrowers to ensure they could repay the borrowed sums; (iv) failing to ensure that the realisable value of the security granted by borrowers was adequate; and (v) paying out LCF's monies to D1, D2, D3 and D4 among others; D1 acted in a way that no reasonable director in his position would act and therefore breached the duty he owed LCF under section 174 of the Companies Act 2006. The Claimants are entitled to damages for the loss caused to LCF by D1's breaches of this duty.

R5 <u>D4 breaches of duty</u>

R5.1 D4 was the person ultimately in charge of LCF and took key decisions in relation to its business. As is explained at Section Q8 above, he had actual knowledge of every material aspect of the fraudulent scheme that LCF was carrying on. D4 had no concern other than raising as much money as possible for himself as quickly as possible.

R5.2 D4 breached the duties he owed LCF under section 171 of the Companies Act 2006 as follows:

Source: Mouseinthecourt.co.uk

(1) In directing or authorising LCF to raise monies from bondholders through the use of false representations, D4 was causing LCF to act unlawfully and therefore beyond its powers.

(2) In authorising or directing the misapplication of LCF's monies to himself, D1, D2, D3, D6, D8, D10 and others as is described at Sections H to N above, D4 was exercising his powers for an improper purpose.

(3) In authorising or directing the use of monies from new bondholders to pay LCF's obligations to existing bondholders, thereby concealing the fraudulent scheme LCF was being used to effect, D4 was causing LCF to act unlawfully, and thus beyond its powers and was exercising his powers for an improper purpose.

(4) In requiring D6 to pay him 1% of gross monies raised from new bondholders (on the balance of probabilities, for maintaining the level of D6's commission), D4 was acting for an improper purpose.

R5.3 D4 breached the duties he owed to LCF under section 172 of the Companies Act 2006 in the ways set out below. As a *de facto* director and/or shadow director of LCF, D4 acted in bad faith throughout. As is explained at Section R3 above, at all material times LCF was insolvent and D4 therefore owed a duty to give the interests of LCF's creditors paramount consideration under section 172(3). He did not do so; rather, his conduct ensured that LCF's creditors would lose the majority of the monies owed to them by LCF. At all times D4 ran LCF in his own interests and those of D1, D2 and D3 and not its own interests or those of its creditors.

(1) In directing or authorising LCF to raise monies from bondholders through the use of false representations, D4 was exposing LCF to claims from bondholders.

(2) In agreeing with D6 that 25% (or 22.5% in the case of 5-year bonds) of the gross monies raised to D6, D4 caused LCF to enter into an unsustainable arrangement and ensured that it would at some point default on its obligations to bondholders.

Source: Mouseinthecourt.co.uk

(3) By permitting D6 to repay loans made personally to it by D4 by charging LCF a reduced commission.

(4) By requiring D6 to pay him 1% of gross monies raised from new bondholders (on the balance of probabilities, for maintaining the level of D6's commission).

(5) By authorising or directing unfeasibly high interest rates to bondholders in order to maximise the sums raised by LCF and without any thought or concern as to how LCF would generate sufficient monies to pay interest at these rates, D4 ensured that LCF would not be able to repay its creditors.

(6) In authorising or permitting the misapplication of LCF's monies to himself, D1, D2, D3, D6, D8, D10 and others as is described at Sections H to N above, and therefore ensuring that LCF would not be able to repay its creditors.

(7) By seeking to conceal the fraudulent scheme, including from LCF's and LOG's auditors and from GCEN, through the use of dishonestly backdated documents.

(8) By authorising or directing LCF to lend money against security he knew to be of entirely inadequate value to secure the monies paid out.

(9) In authorising or directing the use of monies from new bondholders to pay LCF's obligations to existing bondholders, thereby concealing the fraudulent scheme LCF was being used to effect and ensuring its inevitable collapse.

R5.4 D4 breached his duty to LCF under section 177 of the Companies Act 2006 by failing to disclose to the other directors the fact that he was involved in the implementation of the Golding-SHK Agreement, by which monies raised by LCF would be distributed to D1, D2, D3 and D4 in agreed ratios; and (ii) his arrangement with D6, whereby he would receive from D6 1% of gross monies raised.

R5.5 The Claimants assert a proprietary claim to any property of LCF, or its traceable proceeds, received by D4 in breach of the duties described above. The Claimants also seek equitable compensation for the balance of any loss caused to LCF by D4's breaches

Source: Mouseinthecourt.co.uk

of the aforementioned duties. The details of the relief sought, including the quantum of any personal claim, is described in Sections S to V below.

R5.6 In the alternative, by: (i) raising money from bondholders on the back of false information; (ii) agreeing to pay D6 an unsustainably high fee; (iii) promising unfeasibly high interest rates to bondholders; (iii) failing to carry out due diligence on LCF's borrowers to ensure they could repay the borrowed sums; (iv) failing to ensure that the realisable value of the security granted by borrowers was adequate; and (v) paying out LCF's monies to D1, D2, D3 and D4 among others; D1 acted in a way that no reasonable director in his position would act and therefore breached the duty he owed LCF under section 174 of the Companies Act 2006. The Claimants are entitled to damages for the loss caused to LCF by D4's breaches of this duty.

R6 Alternative case

R6.1 The Claimants' alternative case on breach of duty is that D2 and D3 breached the duties they owed to LOG under sections 171, 172 and 177 of the Companies Act 2006 in relation to the LPE SPA, described at Section L above, the LPT SPA described at Section M above and miscellaneous payments made by LOG described at Section N above. It may be that this alternative case is ultimately unnecessary, but it is described briefly here in the interests of completeness.

R6.2 In authorising or permitting the misapplication of monies drawn by LOG against its facility with LCF to make payments to D1, D2, D3 and D4 without the authority of LOG's board, D2 and/or D3 breached the duties owed under sections 171 and 172.

R6.3 In seeking to conceal this misapplication of LOG's monies by executing the LPE SPA and the LPT SPA and by subsequently executing backdated facility documents and the novation agreements, D2 and/or D3 breached the duties they owed under section 172.

R6.4 In failing to provide full disclosure to LOG's board of the Golding-SHK Agreement and the true effect of the LPE SPA and the LPT SPA, D2 and/or D3 breached the duties they owed under section 177.

Source: Mouseinthecourt.co.uk

R6.5 The Claimants assert proprietary claims against D1, D4 and D8 in relation to the monies they received that were drawn against LOG's facility with LCF (or the traceable proceeds of those monies). The Claimants also assert claims in knowing receipt against those persons in relation to monies received by them from LOG which have since been dissipated. Further, or alternatively, by reason of the matters set out in Sections L to O, the Claimants assert that D1, D4 and D8 dishonestly assisted D2 and D3 in breaching the fiduciary duties they owed to LOG.

Source: Mouseinthecourt.co.uk

S. PROPRIETARY CLAIMS

S1 Introduction

S1.1 This section first addresses the arguments raised by D1 in relation to his strike-out application on the effect of loan agreements on proprietary claims. It then describes the knowledge of D2 and D3 of the fraudulent scheme carried on by LCF, which is relevant to the state of mind of some of the intermediary companies through which LCF's monies passed. There is then a summary of the relevant principles of tracing before the Claimants' proprietary claims against the Defendants are set out in detail.

S1.2 The information on which the Claimants' proprietary claims, described at Sections S5 to S9 below, are based are at K0 in the trial bundle.

S2 Effect of loan agreements on proprietary claims

S2.1 D1 argues that the Claimants' proprietary claims against D1 must fail because they cannot show that D1 received any sums in which LCF had a subsisting beneficial interest.[3032] D1 says that LCF had no such subsisting beneficial interest because when it lent money to borrowers, the borrowers became beneficial owners of the money and hence any proprietary interest which LCF had in the money was extinguished.[3033]

S2.2 In his written opening submissions, D1 relied upon extracts from *Civil Fraud (1st Edn)* to support this proposition and, in particular, [12-015]:

> *"… if assets are transferred to the defendant under an ostensibly binding contract between the claimant and the defendant, they are no longer (from the point of transfer) the claimant's assets, and no action in knowing receipt will lie, even if the contract was entered into in an obvious breach of fiduciary duty, of which the defendant knew. So long as the contract subsists, the defendant is entitled to rely upon his contract with the claimant to justify his receipt of the assets. In order to pursue an action in knowing receipt in such circumstances it is necessary, first, to set aside the contract (which it will frequently be possible to do, though the claimant will lose the benefit thereof)."*

[3032] D1 Written Opening Submissions ¶140 **[A2/4/51]**.

[3033] D1 Written Opening Submissions ¶¶153-154 **[A2/4/54]**.

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S2.3 D1 says that the authority for this passage is the judgment of Lord Nicholls in *Criterion Properties plc v Stratford UK Properties LLC* [2004] 1 WLR 1846 at [4]:[3034]

> "*I respectfully consider the Court of Appeal in Akindele's case fell into error on this point. If a company (A) enters into an agreement with B under which B acquires benefits from A, A's ability to recover these benefits from B depends essentially on whether the agreement is binding on A. If the directors of A were acting for an improper purpose when they entered into the agreement, A's ability to have the agreement set aside depends upon the application of familiar principles of agency and company law.* ***If, applying these principles, the agreement is found to be valid and is therefore not set aside, questions of 'knowing receipt' by B do not arise.*** *So far as B is concerned there can be no question of A's assets having been misapplied. B acquired the assets from A, the legal and beneficial owner of the assets, under a valid agreement made between him and A. If, however, the agreement is set aside, B will be accountable for any benefits he may have received from A under the agreement. A will have a proprietary claim, if B still has the assets. Additionally, and irrespective of whether B still has the assets in question, A will have a personal claim against B for unjust enrichment, subject always to a defence of change of position. B's personal accountability will not be dependent upon proof of fault or 'unconscionable' conduct on his part. B's accountability, in this regard, will be 'strict'.*"

S2.4 D1's argument is wrong and should be rejected.

S2.5 D1's strike-out application appears to be based on a misapprehension by D1 that the proprietary claim against him by LCF is a claim in knowing receipt. It is not; it is a proprietary claim arising out of the fact that D1 holds assets misappropriated by him from LCF in breach of fiduciary duty on constructive trust for LCF.[3035]

S2.6 The existence of a constructive trust does not require that the claimant demonstrates that it has a subsisting beneficial interest in the property in the hands of the defendant. In the case of a fiduciary, which D1 is, a constructive trust arises simply from the receipt of any unauthorised profit by the fiduciary in breach of his fiduciary duty or as a result of his fiduciary position: *FHR European Ventures v Cedar Capital Partners* [2015] AC 250, per Lord Neuberger at [40][3036] and [46][3037]. Hence, for example, a fiduciary will hold a bribe on trust for his principal, notwithstanding that the principal had no equitable

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[3034] **[S2/82/3]**.

[3035] RRRAPoC ¶66 **[B1/2.1/61]**.

[3036] **[S2/129/23]**.

[3037] **[S2/129/24]**.

Source: Mouseinthecourt.co.uk

proprietary interest in the bribe prior to the fiduciary's receipt of it. A constructive trust may also arise where property is obtained by fraud: *Westdeutsche Landesbank Girozentrale v Islington LBC* [1996] AC 669 per Lord Browne-Wilkinson at 716C-D[3038].

S2.7 If a fiduciary transfers a claimant's property in breach of duty to a *bona fide* purchaser for value without notice, the claimant's equitable interest in the property will be extinguished. However, if such a recipient transfers the property to the defaulting fiduciary, then the defaulting fiduciary holds the property on constructive trust for the claimant: *Byers v Saudi National Bank* [2024] 2 WLR 237, per Lord Hodge at [2]-[3][3039] and Lord Briggs at [24] [3040].

S2.8 In his second skeleton argument in support of his strike-out application, D1 seeks (at ¶10(1)) to distinguish the decision in *Byers* on the ground that that case was not concerned with the situation where a director misapplies company property in breach of duty.[3041] However, the decision of the Court of Appeal in *Belmont Finance Corpn v Williams Furniture Ltd (No 2)* [1980] 1 All ER 393 is binding authority for the proposition that the directors of a limited company are treated as if they were trustees of the funds of the company in their hands: per Buckley LJ at 405c-f.[3042] Both Lord Briggs and Lord Burrows accepted that this was so: *Byers* at [31][3043], [58]-[61][3044] and [179]-[188][3045].

S2.9 The Claimants' case is that D1 acted in breach of duty to LCF and is therefore a defaulting fiduciary. D1 therefore holds on constructive trust any monies held by him which he paid away from LCF in breach of duty and it is legally irrelevant how many other persons' hands those monies passed through or what value was given or what

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3038 **[S2/55/48]**.

3039 **[S2/179/4]**.

3040 **[S2/179/9]**.

3041 **[P10/5/4]**.

3042 **[S2/34/13]**.

3043 **[S2/179/11]**.

3044 **[S2/179/17]**.

3045 **[S2/179/50]**.

Source: Mouseinthecourt.co.uk

knowledge was possessed by the intermediate recipients. D4, as a shadow or *de facto* director of LCF, is in the same position.

S2.10 The judgment of Lord Nicholls in *Criterion Properties* does not assist D1. The issue in *Criterion Properties* was whether a "poison pill" agreement entered into by Criterion's directors in breach of fiduciary duty was enforceable. At first instance and in the Court of Appeal, the issue had been analysed through the lens of knowing receipt, with the courts considering whether it was unconscionable for the counterparty to the "poison pill" agreement to hold Criterion to it. The House of Lords disagreed and considered that the correct approach was to consider whether Criterion's directors had actual or apparent authority to execute the agreement. The case was not concerned with the status of company property misapplied by a company director and then paid over to him by an intermediate recipient.

S2.11 The Claimants also assert proprietary claims against those Defendants who were recipients of LCF's property, or its traceable proceeds but who were not defaulting fiduciaries. However, D1's arguments are equally inapplicable to such Defendants.

S2.12 No proprietary claim lies where trust property has been transferred to a *bona fide* purchaser for value without notice because such a transfer extinguishes or overrides the proprietary equitable rights of the beneficiary: *Byers* per Lord Hodge at [2][3046].

S2.13 This much appears to be common ground. However, D1 argues, on the basis of Lord Nicholls' judgment in *Criterion Properties*, that a proprietary claim (and hence also a claim in knowing receipt, which can only be pursued if the recipient takes the trust property subject to the beneficiary's subsisting equitable interest: *Byers* per Lord Hodge at [6][3047]) can subsist only if any contract giving effect to the transfer is set aside. This is incorrect. There is no requirement for the contract to be set aside.

S2.14 **First**, a person acting fraudulently cannot insulate himself from a proprietary claim by purchasing trust property from a *bona fide* purchaser for value without notice: *Wilkes v*

[3046] **[S2/179/4]**.

[3047] **[S2/179/4]**.

Source: Mouseinthecourt.co.uk

Spooner [1911] 2 KB 473, per Vaughn Williams LJ at 484[3048]. In such a situation there is no possibility that the transfer of trust property to the *bona fide* purchaser for value without notice could be set aside. Nonetheless, the beneficiary may pursue a proprietary claim against the fraudulent recipient. The rationale for this was explained by Jessel MR in *Re Stapleford Colliery Company* (1880) 14 Ch D 432 at 445:[3049]

> "*The only exception, and the well-known exception, to the rule which protects a purchaser with notice taking from a purchaser without notice is that which prevents a trustee buying back trust property which he has sold, or, a fraudulent man who has acquired property by fraud saying he sold it to a* bonâ fide *purchaser without notice and has got it back again. Those are cases to shew that a person shall not take advantage of his own wrong.*"

S2.15 **Second**, the underlying rationale of the *bona fide* purchaser without notice for value defence is that in such an instance the beneficiary's equitable interest is extinguished or overridden: *Byers* per Lord Hodge at [2][3050]. Conversely, where the purchaser has notice of the beneficiary's interest, then that interest is unaffected by the transfer: *Byers* per Lord Briggs at [18][3051]. The suggestion of Lord Nicholls in *Criterion*, echoed in *Civil Fraud*, is that the beneficiary has no interest unless and until the contract of transfer is set aside. That is obviously contrary to well-established authority and is wrong.

S2.16 **Third**, the speech of Lord Nicholls in *Criterion* is not applicable to the current case. In *Criterion* an issue was whether the transfer of rights under an executory contract could give rise to a receipt of assets. Lord Scott held (at [27][3052]) that it did not but noted that whether there has been a knowing receipt could become a relevant question when the contract is executed and assets are transferred under it. The majority of the House of Lords agreed with Lord Scott. To the extent that Lord Nicholls's speech is inconsistent, then it is not binding and should not be followed.

S2.17 **Fourth**, it is unclear exactly what Lord Nicholls meant in the passage from *Criterion* relied upon by D1. Indeed, in *Byers* Lord Burrows considered that Lord Nicholls'

3048 **[S2/12.1/12]**.

3049 **[S2/6.1/14]**.

3050 **[S2/179/4]**.

3051 **[S2/179/7]**.

3052 **[S2/82/10]**.

Source: Mouseinthecourt.co.uk

criticism of *BCCI v Akindele* [2001] Ch 437 could not be supported. He explained (at [195]-[197][3053]):

> "*195. On the face of it, Lord Nicholls' speech may be thought to indicate that the leading case of BCCI v Akindele (which concerned an executed contract) and all other cases on directors acting in breach of fiduciary duty to their companies, by entering into contracts with defendants under which the company's assets have been transferred to the defendants, have been wrongly reasoned in so far as they have applied the law on knowing receipt.*
>
> *196. If Lord Nicholls was going so far, in my respectful view he was going too far. The better view is that in these types of situations, there are various possible claims in line with the analysis set out in paras 191-192 above …*
>
> *197 … For the same reason it is far from clear that Lord Nicholls' criticism of the Court of Appeal can be supported. It would appear that Lord Nicholls's reasoning has not subsequently been relied on in the case law as casting doubt on the approach to knowing receipt in BCCI v Akindele; and in Thanakharn v Akai Holdings Ltd [2010] HKCFA 64, at para 128, Lord Neuberger, sitting in the Hong Kong Court of Final Appeal, described Lord Nicholls' criticism as "an uncharacteristically obscure remark". It may be, therefore, that Homer nodded. Of course, this is not to deny that the "unconscionability" test adopted in BCCI v Akindele is unsatisfactory for the different reason set out in para 101 above.*"

S2.18 **Finally**, even in instances where a proprietary claim will ordinarily only lie on the setting aside of the contract (for example, fraudulent misrepresentation), where the contract is not merely induced by fraud but is an instrument of fraud, then the court is entitled to disregard it and the beneficial interest in the relevant property remains with the innocent victim of the fraud: see, for example, *Global Currency Exchange Network ltd v Osage 1 Ltd* [2019] 1 WLR 5865, per Andrew Henshaw QC (sitting as a deputy High Court judge) at [40]-[48][3054] and *Lewin on Trusts (20th Edn)* at [8-031][3055].

S3 D2/D3 knowledge

S3.1 As the Court is aware, the Claimants have settled their claims against D2 and D3. However, the knowledge and participation of these persons in the fraudulent scheme involving LCF remains relevant for two reasons. First, in relation to the Claimants'

3053 **[S2/179/54]**.

3054 **[S2/151.1/13]**.

3055 **[S3/9/2]**.

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receipt-based claims, monies were transferred via companies the knowledge of which was, by attribution, that of D2 and/or D3. Second, the Claimants' alternative claim, described at Section R6 above, is predicated upon breaches by D2 and D3 of the fiduciary duties they owed to LOG as its directors.

S3.2 D2 was involved in the Sanctuary scheme; indeed, it was he who set up the Sanctuary roadshow to raise further funds from the Sanctuary investors. He knew that he received some of the monies raised from the Sanctuary investors and he also knew, through his involvement at that time with SAFE, that monies borrowed by Sanctuary PCC from SAFE were used to make payments to him and also to pay interest to the Sanctuary investors.[3056]

S3.3 As a director of L&TD, D2 was involved in backdating facility documents and letters in order to deceive LCF's auditors. D2 knew that L&TD had borrowed monies from LCF: (i) before any facility agreement was put in place; and (ii) in excess of that facility limit once it was granted.[3057]

S3.4 D2 was a business partner of D4 and D3 was D4's factotum. D2 owned, through D10, a minority share in LCCL. Both received a stream of payments under the Lakeview SPA that they knew were unconnected to the actual value of the Lakeview site. D2 and D3 both also knew that the retrospective nature of these increases was concealed by backdating agreements.[3058]

S3.5 D2 and D3 were both signatories to the Golding-SHK Agreement and were therefore aware of its terms. Under the Golding-SHK Agreement, D2 held a 45% share in the London Group of businesses and D3 held a 5% share. These shares were subsequently adjusted to 42.5% and 7.5% respectively.[3059]

S3.6 D2 and D3 were involved in the Elysian SPA and the Prime SPA and received very substantial payments purportedly in relation to these transactions. They knew that there

[3056] Sections E2 and H2 above.

[3057] I4.36 above.

[3058] Sections G2 and I2 above.

[3059] H2.34 above.

Source: Mouseinthecourt.co.uk

was no justification for these payments because the assets that were purportedly the subject of the transfers were of negligible value.[3060]

S3.7 D2 and D3 were involved in every aspect of the LPE SPA and the LPT SPA. They knew that the payments under these transactions were not justified by the assets purportedly being sold under each of them and so, in early 2019, they took steps to conceal their benefit from these transactions, including through the execution of backdated documents and misleading the LOG board about the date of execution of such documents.[3061]

S3.8 D2 remained involved in the affairs of LCF after he had resigned as a *de jure* director.[3062]

S3.9 D2 and D3 received miscellaneous other payments from LCF for which they knew there was no justification.[3063]

S3.10 In short, at all material times, D2 and D3 had actual knowledge that LCF was being run as a fraudulent scheme by which money raised from its bondholders was distributed to D1, D2, D3 and D4 without any proper justification.

S4 Proprietary tracing claims

S4.1 A substantial proportion of the monies paid out of LCF in breach of fiduciary duty was used in order to fund payments to the personal bank accounts of D1, D2, D3, D4, D5, D6, D7, D8, D9, and D10. The Claimants have compromised their claims against D2, D3, and D10, and therefore only maintain their claims against D1, D4, D5, D6, D7, D8 and D9.

LCF's entitlement to trace in equity

S4.2 LCF is entitled to all of the traceable proceeds of the monies paid out of LCF by D1 and/or D4 in breach of the fiduciary duties they owed to LCF. Where a director disposes of a company's assets in breach of fiduciary duty directly to a third party, the company

[3060] Sections F2, F3, J2 and K2 above.

[3061] Sections L2, M2 and O5 above.

[3062] Section H7 above.

[3063] Sections N2, N7 and N8 above.

Source: Mouseinthecourt.co.uk

can trace the assets or its proceeds in equity as though they were trust assets into the hands of any third-party recipients, unless they are *bona fide* purchasers for value without notice.[3064]

S4.3 As is explained in Section S2 above, there are two instances where even the interposition of a *bona fide* purchaser for value without notice does not affect the ability of LCF to pursue a proprietary claim. The first applies to D1 and D4 and is that where the defaulting fiduciary acquires assets misapplied by them in breach of trust from a *bona fide* without notice purchaser for value. The second applies to D5, D6, D7, D8 and D9 and is that where the end recipient is part of a fraudulent scheme, he cannot rely upon the fact that he has acquired misapplied property from a *bona fide* purchaser for value without notice to defeat LCF's proprietary claim.

LCF's entitlement to trace through borrowing companies

S4.4 The total amounts paid out of LCF in breach of fiduciary is the sum of at least £212,232,423.26.

S4.5 LCF paid the total net sum of at least £211,344,196.93[3065] to CV Resorts, D4, D10, GAD, GCEN, Green Electricity, GRP, FSES, HFEC, L&TD, LCM, LOG, London Power Consultants, LPC, Media GPS, Prime RDL, Sands Equity, Surge Financial, and WCGL (i.e. Elysian RGL). The further sum of at least £888,226.33[3066] was paid out of SAFE to One Monday in breach of fiduciary duty.

S4.6 LCF can trace through the connected borrowing companies which received LCF's funds and paid them to other borrowing companies in order to fund payments to D1, D4, D5, D6, D7, D8, and D9. LCF is entitled to trace in this way simply by virtue of the fact that its monies were used to fund payments to connected borrowers who in turn made payments to these Defendants. When monies paid out of LCF in breach of fiduciary duty were transferred to another borrowing company, or onwards to a Defendant, the

[3064] Claimants' written opening submissions on the law ¶149 **[A2/2/54]**.

[3065] **[K0/1]**.

[3066] **[K0/7, sheet 7]**.

Source: Mouseinthecourt.co.uk

recipient held those monies subject to LCF's continuing equitable interest, unless the recipient was a *bona fide* purchaser for value without notice.

S4.7 No Defendant in these proceedings is able to establish (or has sought to establish) the *bona fide* purchaser defence in respect of any transfer of monies originating from LCF paid via a connected company, by successfully demonstrating (i) good faith, (ii) value, and (iii) lack of notice. As a result, the starting point is that all monies originating from LCF which were paid to a borrowing company were held subject to LCF's subsisting equitable interest at all times.

The tracing rules which apply to tracing through borrowing companies

S4.8 The borrowing companies were all affected by notice that the funds originating from LCF were held in a fiduciary capacity and misapplied by LCF in breach of fiduciary duty. This has three consequences in relation to LCF's tracing claims.

S4.9 **First**, the Court will rebuttably presume that all the monies in the bank accounts of borrowing companies belongs to LCF, which is the innocent Claimant in respect of its misapplied funds.[3067] In the absence of any evidence of any other funds belonging to the borrowing companies, LCF can simply trace payments through multiple bank accounts. The Court treats all of the intermediate bank accounts as "charged" in favour of LCF, because the money is "*derived from a fund which is treated as if it is subject to a charge*" in favour of LCF.[3068]

S4.10 **Second**, no interest of any of the borrowing companies may be asserted in the monies or property sought to be traced into unless and until the misapplied money has been refunded.[3069] This is the case even if, in fact, the borrowing company's own funds were mixed with funds belonging to LCF. Notice of LCF's subsisting interest confers LCF priority over any interest of the borrowing company.

[3067] *Re Tilley's WT* [1967] Ch 1179 at 1183 **[S2/25/5]**; Claimants' written opening submissions on the law ¶159 **[A2/2/56]**.

[3068] *El Ajou v Dollar Land Holdings Plc (No 1)* [1993] 3 All ER 717 at 735-736 **[S2/47/19]** (upheld on this point on appeal [1994] 1 BCLC 464 **[S2/49/1]**); Claimants' written opening submissions on the law ¶160 **[A2/2/56]**.

[3069] *Sinclair v Brougham* [1914] AC 398 at 442 **[S2/13/45]**; *Re Diplock* [1948] Ch 465 at 534 **[S2/21/70]**.

Source: Mouseinthecourt.co.uk

S4.11 **Third**, where a borrowing company withdrew or dissipated monies from the fund charged in favour of LCF, the withdrawn or dissipated monies are presumed to have been the borrowing company's monies (rather than LCF's monies).[3070] If there was any mixture of monies originating from a different source, LCF is entitled to locate its subsisting equitable interest in the payments which were made through multiple borrowing companies which were used ultimately to fund payments to the Defendants, rather than monies which were withdrawn or dissipated.

S4.12 The requirement of notice is satisfied where: (i) on the facts known to the recipient, a reasonable person should have appreciated that a proprietary right probably existed; or (ii) the facts known to the recipient would have led a reasonable person to consider that there was "*a serious possibility of a third party having a* [proprietary] *right*" or "*serious cause to question the propriety of the transaction*", and had enquiries or advice been sought, this would have revealed the probable existence of a proprietary right.[3071]

S4.13 The circumstances in which each borrowing company or connected company had notice is briefly addressed further below.

Inference based on a series of transactions involving the borrowing companies

S4.14 The drawings of funds from LCF formed part of a connected series of steps by which funds were paid ultimately to D1, D2, D3, D4 and D10 (as D2's nominee). The familiar sequence of steps which ordinarily took place within a day or small number of days was that: (i) a borrowing company asked LCF to make an advance of monies ostensibly pursuant to a loan agreement; (ii) the monies were paid by LCF to the borrowing company or (often) by LCF directly to another company without passing through any account of the borrowing company; and (iii) the recipient transferred those monies or some of them to D1, D2, D3 and D4.

S4.15 The steps identified above were taken as part of a co-ordinated scheme, whereby drawings from LCF were deliberately intended to be used to fund payments to the

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[3070] *Re Hallett's Estate* (1880) 13 Ch D 696 **[S2/6/1]**; Claimants' written opening submissions on the law ¶161 **[A2/2/57]**.

[3071] *Serious Fraud Office v Litigation Capital Ltd* [2021] EWHC 1272 (Comm) at [145] **[S2/162.1/50]**; Claimants' written opening submissions on the law ¶¶179-182 **[A2/2/63]**.

Source: Mouseinthecourt.co.uk

Defendants through intermediary companies. This is evident from (*inter alia*): **(i)** the close proximity in time of the payments between intermediary companies, and from intermediary companies to the Defendants; **(ii)** the frequency of the repeated pattern of payments and the ultimate use of the monies to fund payments to the Defendants in pre-agreed ratios; **(iii)** the fact that the intermediary companies were under the common ownership and/or control of the same group of individuals, and their associates, namely D1, D2, D3, D4, D10, and D8; **(iv)** the link between the preparation and timing of the transactions used to provide an ostensible justification for the payment of monies from LCF, particularly the Lakeview SPA, the Elysian SPA, the Prime SPA, the LPE SPA and the LPT SPA, and the continuation of payments through intermediary companies to the Defendants; **(v)** the fact that the intermediary companies were interchangeable, as appears from (a) the substitution of London Group LLP (whose bank account was closed) with LPC, which was then used to receive payments from LOG and distribute them to D1, D2, D3 and D4 in the same way as London Group LLP;[3072] and (b) the use of Sands Equity as a "*payment intermediary*" to handle payments for other intermediary companies, because it had a good relationship with Metro Bank and the facility "*for large sums (£2m+) to pass through the bank account*";[3073] **(vi)** the lack of any genuine business activity or independent source of income on the part of the intermediary companies.

S4.16 As a result, it does not matter whether the sequence of steps always took place in strict chronological order. The Court is entitled to (and should) conclude that (i) payments by borrowing companies to the Defendants were premised on the expectation of future drawings from LCF, and (ii) the payments through connected borrowing companies to Defendants were part of a co-ordinated scheme with an intended destination at the outset for monies originating from LCF.[3074]

S4.17 In any event, as a matter of fact, the vast majority, if not all, of the monies which were paid through borrowing companies ultimately originated from LCF. For this further reason, the timing of onward payments through borrowing companies to the Defendants has no bearing on the question whether the payments were funded with LCF's monies,

[3072] L2.7-L2.8 above.

[3073] D2D10-00035447

[3074] Claimants' written opening submissions on the law ¶¶166–168 **[A2/2/60]**.

Source: Mouseinthecourt.co.uk

because on the evidence available, the bank accounts of the connected borrowing companies were exclusively funded by monies originating from LCF.

Loan agreements with connected borrowers do not provide a justification for "value"

S4.18 LCF entered into a number of loan agreements with connected borrowers, and a number of connected borrowers, in turn, entered into loan agreements with each other. This was a recurring feature of the Lakeview SPA, the Elysian SPA, the Prime SPA, the LPE SPA, and the LPT SPA, all of which were considered above. A number of loan agreements were also entered into between connected borrowers and (in particular) D4).

S4.19 None of loan agreements on which the Defendants have relied in these proceedings involves the giving of "value", either at all, or for the purpose of the *bona fide* purchaser defence.

S4.20 A defendant cannot rely on the bona fide purchaser defence unless the consideration or purchase price has actually been paid.[3075] The consideration must have been "executed" in order to be capable of providing value: an unfulfilled promise does not involve the provision of "value" for this purpose.[3076] A mere promise by a borrower to repay a loan is unexecuted consideration, because the loan has not been repaid.

No scope to rely on the *bona fide* purchaser defence in any event

S4.21 Even if, contrary to the Claimants' primary case, a Defendant establishes the three elements of the *bona fide* purchaser defence in relation to any connected company or Defendant, the Defendants are nevertheless disabled from relying on the defence in order to justify their receipts.

[3075] Claimants' written opening submissions on the law ¶176 **[A2/2/62]**.

[3076] See also *Snell's Equity*, 34th ed., [4-022] ("*The purchaser must have given some value in the form of* ***executed*** *consideration*"; emphasis added) **[S3/10/2]** and *Civil Fraud*, 1st ed., [23-029] ("*the 'value' must be an executed consideration rather than an unfulfilled promise*") **[S3/7.1/2]**, citing *Taylor Barnard v Tozer* [1984] 1 EGLR 21 **[S2/35.1/1]**. And see *Great Investments Ltd v Warner* (2016) 335 ALR 542 at [109], referring to "*considerable older precedent which establishes that "value" is not provided for the purposes of the doctrine where a promise is executory, not executed*" **[S2/134.1/25]**.

Source: Mouseinthecourt.co.uk

S4.22 This is because an exception to the defence applies to a person acting fraudulently in acquiring property, who cannot insulate himself from a proprietary claim by purchasing property from a *bona fide* purchaser for value without notice, as was noted above.[3077]

S4.23 The Claimants' case is that all of D1, D4, D5, D6, D7, D8 and D9 knowingly and dishonestly participated in the fraudulent trading of LCF and either knew (by actual or blind-eye knowledge) that the monies they received were paid out of LCF pursuant to a fraudulent scheme. Accordingly, the Defendants are unable to rely on the *bona fide* purchaser defence in relation to any intermediate transfer of funds between companies connected to LCF or companies connected to D6.

Tracing into the Defendants' assets acquired using funds originating from LCF

S4.24 The Claimants are entitled to all of the property and other assets belonging to D1, D4, D5, D6, D7, D8, D9, since on the evidence available, all of those assets were acquired with monies originating from LCF. All of these Defendants are wrongdoers in the relevant sense and have notice of the fact that the monies they received had been paid from LCF in breach of fiduciary duty.

S4.25 D1, D4, D5, D6, D7, D8 and D9 all meet the relatively low threshold of notice for this purpose. In any event, all of these Defendants are separately liable in knowing receipt and (on the facts) satisfy the higher knowledge threshold of knowledge or unconscionability. Further, all of these Defendants meet the knowledge threshold for knowing participation in fraudulent trading under section 246ZA of the Insolvency Act 1986.

S4.26 This has two consequences for LCF's tracing claims.

[3077] *Wilkes v Spooner* [1911] 2 KB 473 at 484 ("*A purchaser for valuable consideration without notice can give a good title to a purchaser from him with notice.* ***The only exception is that a trustee who has sold property in breach of trust, or a person who has acquired property by fraud, cannot protect himself by purchasing it from a bona fide purchaser for value without notice***", emphasis added) **[S2/12.1/12]**. See also *Byers v Saudi National Bank* [2024] 2 WLR 237 per Lord Briggs at [84] **[S2/179/26]**.

Source: Mouseinthecourt.co.uk

S4.27 **First**, as noted above, the Court will presume that the all the monies in the bank accounts of any Defendant belongs to LCF, which is the innocent Claimant in respect of its misapplied funds, unless and until that Defendant establishes otherwise.[3078]

S4.28 **Second**, when a Defendant received monies subject to LCF's subsisting equitable interest and used them to acquire assets, but otherwise withdrew or dissipated some monies, LCF is entitled locate its subsisting equitable interest in the monies used to acquire the assets rather than the monies which were dissipated: *Re Oatway* [1903] Ch 356.[3079]

S4.29 As a result, LCF is entitled to subsisting equitable interests in all of the assets acquired by the Defendants which may have been funded by LCF's monies. Since all of D1, D4, D5, D6, D7, D8 and D9 have notice, none can discharge the burden of establishing that they are *bona fide* purchasers for value without notice in respect of any asset.

The factual evidence on tracing payments through intermediary companies

S4.30 The Claimants have undertaken a significant forensic exercise to identify the destination of monies paid out of LCF in breach of fiduciary duty. The Claimants have obtained (and considered) a considerable number of bank statements from LCF and its connected companies for that purpose.

S4.31 More recently, as the Court will be aware, the Claimants have obtained additional bank statements relating to various intermediary companies under the *Bankers Trust* jurisdiction, again in order to identify the destination of funds ultimately paid out of LCF in breach of fiduciary duty.

S4.32 The information contained in the bank statements enable the Claimants to demonstrate with a high degree of confidence that all of the monies received by the Defendants is ultimately traceable to LCF.

[3078] *Re Tilley's WT* [1967] Ch 1179 at 1183 **[S2/25/5]**; Claimants' written opening submissions on the law ¶159 **[A2/2/56]**; *Sinclair Investments (UK) Ltd v Versailles Trade Finance Trade Finance Ltd* [2012] Ch 453 at [138] and [148] **[S2/108.1/39]**.

[3079] Claimants' written opening submissions on the law ¶163 **[A2/2/57]**.

Source: Mouseinthecourt.co.uk

S4.33 However, the routes by which those monies were routed are complicated, and usually involve contributions from various intermediary companies to other intermediary companies, which were used ultimately to fund payments to the Defendants. There is an extremely large number of payments.

S4.34 The Claimants can show that monies originating from LCF were used to fund personal payments to the Defendants in two ways.

S4.35 **First**, the Claimants rely on the factual proposition that companies connected with LCF did not have any material independent source of income other than monies paid to them from LCF. As a general proposition, where money flowed through intermediary companies which are connected with LCF, it follows that the money must have been (at least very substantially) monies originating from LCF.

S4.36 In this regard, the Claimants rely on (i) the evidence of Mr Hudson, explained above in connection with the Ponzi scheme, who explains in detail that the connected borrowers which he considered had no real source of monies other than LCF;[3080] and (ii) the documentary evidence presented above, enabling the Court to conclude on the balance of probabilities that LCF connected borrowers did not generate any real income.

S4.37 **Second**, the Claimants are also able to show in a more granular fashion that later payments to the Defendants were, in fact, funded by payment flows which are ultimately traceable to LCF.

S4.38 In order to describe the flow of funds, the Claimants have adopted the following approach below:

(1) The starting point is the total payments received by a Defendant from a particular company (whether a company connected with LCF, or a company connected with D5 and D6, as applicable). The Claimants adopt the "gross" payment figures, because under the rules of tracing, any payments made by a Defendant (with notice) in the opposite direction will be presumed to be the Defendant's own monies, rather than LCF's monies.

[3080] Hudson 3 **[C1/5/1]**.

Source: Mouseinthecourt.co.uk

(2) The Claimants then identify the date range within which those payments were made from the connected company to the Defendant.

(3) The Claimants then explain how the payments made within that date range were funded. For that purpose, the Claimants can show two things: (i) the amounts traceable to LCF which the connected company received *before* the date range in which it made payments to the Defendant, and (ii) the amounts traceable to LCF which the connected company received *during* the date range in which it made onward payments to the Defendant, i.e. which funded those onward payments on an ongoing basis.

(4) In many instances, the flow of funds involves additional steps. It was often the case that payments from an intermediary company to a Defendant had been funded by *another* intermediate company, or multiple intermediary companies, which are known to have received funds from LCF.

(5) Where this is the case, the Claimants are able to explain how onward payments by an intermediary company were funded by receipts from a previous intermediary company. In order to show this, the Claimants set out how the previous intermediary company was funded *before* and *during* the period in which it made onward payments to the next intermediary.

(6) For that purpose, the Claimants adopt the same approach as above: (i) the amounts traceable to LCF which the previous intermediary company received *before* the date range in which it made onward payments to the next intermediary, and (ii) the amounts traceable to LCF which the previous intermediary company received *during* the date range in which it made onward payments to the next intermediary, i.e. which funded those onward payments to the next intermediary company on an ongoing basis.

(7) Many of the intermediary companies were involved in payment flows which were not necessarily directed to funding payments to the Defendants personally. For example, pursuant to the Ponzi scheme, intermediary companies made payments back to LCF, or to each other with a view to making payments back to LCF.

Source: Mouseinthecourt.co.uk

Further, the payment flows between two intermediary companies went in both directions: each paid (and received monies from) the other.

(8) In order to obviate the question whether an intermediary had any real source of funds other than LCF, the Claimants adopt the "net" payment figures, in order to demonstrate that one intermediary company funded the other within a particular date range. This means that it does not matter whether the intermediary company had some other source of funds. (As above, where an intermediary company does have some other source of funds, it would be presumed to dissipate its own monies first, rather than LCF's monies, under the rules of tracing. That would entitle the Claimants to rely on "gross" figures.)

(9) In this way, the Claimants are able to: (i) start from the date ranges in which a company made payments to a Defendant; (ii) show how payments made *before* and *during* that date range were made by an intermediary company; (iii) where the intermediary company was funded by another intermediary company, show how the earlier intermediary company had been funded, by showing the payments made *before* and *during* the date range in which the previous intermediary company funded the next intermediary; and (iv) in each case, the Claimants are able to show how the intermediary companies were ultimately funded by monies paid out of LCF.

S4.39 The information available is voluminous in the context of fraudulent activity involving the misappropriation and laundering of monies. It enables the Court to conclude with a high degree of likelihood, and in any event on the balance of probabilities, that all of the monies received by the Defendants were in fact funded by payments out of LCF. As a result, the Claimants are entitled to trace into all of the traceable proceeds of the monies received by each Defendant.

Remedies

S4.40 LCF is entitled to declaratory relief to the effect that any assets held by the Defendants acquired with monies deriving from LCF belong to it and should be transferred to it.

Source: Mouseinthecourt.co.uk

S4.41 Further, where any of the Defendants is shown to have assets which represent the traceable proceeds of LCF's monies which are recoverable on the basis set out above, LCF will be entitled to orders for the immediate delivery up of those assets to LCF.

S4.42 In some instances, as explained below, Defendants have failed to provide adequate disclosure of assets. To enable LCF to identify the present whereabouts of the traceable proceeds of its property (as a precursor to recovering it), LCF is entitled to such accounts and/or inquiries as may be necessary to achieve that objective.

S4.43 First, in the case of D1 and D4, a director who makes an unauthorised profit through a breach of fiduciary duty is liable to account for it to the company.[3081] Once the company has established that the director has received its property, the burden is on the director to show that the receipt was proper.[3082]

S4.44 Secondly, in the case of D5, D6, D7, D8 and D9, persons who dishonestly assist in a breach of fiduciary duty or knowingly receive property misapplied in breach of fiduciary duty may also be ordered to give an account.[3083]

S4.45 The Claimants therefore seek an order in relation to each of D1, D4, D5, D6, D7, D8 and D9 that they give an account of the sums they received from LCF and such directions as may be necessary for an inquiry into the present whereabouts of any property acquired with monies deriving from LCF.

S5 D4

S5.1 All of the payments to D4 from companies connected with LCF were funded by monies which are traceable to LCF, as explained below.

[3081] See, for example, *Ultraframe (UK) Ltd v Fielding* [2005] EWHC 1638 (Ch) at [1550] **[S2/87/409]** and [1588] **[S2/87/422]**. See also Claimants' written opening submissions on the law ¶¶114-115 **[A2/2/43]**.

[3082] *Gilman & Soame Ltd v Young* [2007] EWHC 1245 (Ch) at [82] **[S2/89/18]**.

[3083] *Novoship (UK) Ltd v Mikhaylyuk* [2015] QB 499 at [93] **[S2/131/31]**; *Ultraframe (UK) Ltd v Fielding* at [1577] **[S2/87/419]**.

Source: Mouseinthecourt.co.uk

S5.2 The Claimants' primary case is that D4 was a *de facto* and/or shadow director of LCF, at all material times, and owed LCF fiduciary obligations as is explained at Section R2 above. The receipts by D4 were in breach of those fiduciary obligations.

S5.3 Consequently, those monies were immediately held by D4 on constructive trust for LCF upon receipt by him, by virtue of his fiduciary duties to LCF.

S5.4 As a result, on the Claimants' primary case, it is not necessary to show that LCF had a subsisting equitable proprietary interest in the monies in the hands of intermediate recipients.

S5.5 However, and in any event, as explained further below, LCF did have a subsisting equitable proprietary interest in the monies in the hands of the intermediate recipients, because none of those intermediate recipients was a *bona fide* purchaser for value without notice. They were connected companies which were not (i) acting *bona fide*, (ii) did not provide value, and (iii) had notice by way of attribution.

S5.6 D4 also cannot establish that he was a *bona fide* purchaser for value without notice. D4 had notice that the monies had been paid out of LCF in breach of fiduciary duty, including as a result of his participation and knowledge in the fraudulent trading of LCF as set out above.[3084]

S5.7 As is also explained below, D4 did not give any value for his receipts.

Payments from FSES to D4

S5.8 FSES, also known as River Lodge UK, paid a total of £791,128 to D4 between 09.01.18 and 27.07.18.[3085]

[3084] Section Q8 above.

[3085] MDR00224827; £470,000 on 09.01.18; £1,128 on 13.06.18; £250,000 on 03.07.18; £70,000 on 27.07.18.

Source: Mouseinthecourt.co.uk

S5.9 This was funded by a payment from LCF to FSES directly of £904,050 on 14.12.17,[3086] before FSES made the onward payment to D4.

S5.10 FSES was on notice that the monies had been paid out of LCF in breach of fiduciary duty. For this purpose, LCF relies on the facts and circumstances known to D4 because, although the sole *de jure* director and shareholder of FSES was Rafael Ariza-Sanctuary,[3087] D4 was the directing mind and will of FSES at all material times: (i) D4 gave instructions to D8 and Darragh O'Dea in connection with FSES' affairs from its incorporation onwards, as appears from emails dated 20.01.17 onwards into which D4 was copied, and into which Rafael Ariza-Sanctuary was not copied;[3088] (ii) D4 gave instructions in connection with FSES opening a bank account;[3089] (iii) D4 "*required*" documents concerning FSES to be executed;[3090] (iv) communications between LCF and FSES were addressed to D4's personal address at Home Farm, Warren Road, Crowborough;[3091] (v) D4 was in substance considered to be the owner and controller of the shares, and on 11.09.17, D8 emailed D4 ("*Dear Spencer*") to say that "*I note that all the shares in the English company are owned by Rafael* ***I do think that need*** **[sic]** ***to have some form of trust arrangement with Rafael to control the shares***" (emphasis added),[3092] and when D8 later noted that Rafael Ariza-Sanctuary owned the shares in FSES, D8's reaction was to ask "*have you got a trust deed from him?*";[3093] (vi) D4 owned (at least) 50% of the shares in FSES, which were held on trust for him by Rafael Ariza-Sanctuary,[3094] in circumstances where, as explained above, D4 was disqualified from having any direct or indirect role in the management of companies; and (vii) Rafael Ariza-Sanctuary himself acknowledged that he was put in place by D4, and when he was

3086 MDR00007049 page 9.

3087 **[A1/5/33]**.

3088 D2D10-00026227; D8-0009021

3089 D8-0009301

3090 D2D10-00035160

3091 D1-0006137; D1-0006479; D1-0007166

3092 D2D10-00033179

3093 D8-0015736

3094 D2D10-00035161

Source: Mouseinthecourt.co.uk

contacted by a journalist on 15.0.19, he made this point to D3: "*I had no idea about LCF and **what Spencer got me into I'm starting to think I was used**"*(emphasis added).[3095]

S5.11 FSES did not give value for its receipts from LCF. The loan agreement between LCF and FSES signed on or around 09.10.17[3096] does not assist D4, because (i) FSES' purely executory promise to repay the loan is not "value" for these purposes, and (ii) in any event, FSES had notice in the relevant sense.

S5.12 It is irrelevant that at various times D4 made payments to FSES which (in total) exceeded the amounts paid from FSES to himself.[3097] As explained above, where D4 dissipated monies, including by making payments to fund connected companies such as FSES, the dissipated monies are presumed to have been D4's own monies originating from a different source (rather than the monies paid to him by LCF).

S5.13 No basis has been suggested on which D4 gave value for his receipts from FSES.

Payments from GCEN to D4

S5.14 GCEN paid a total of £8,796,527.50 to D4 between 22.06.16 and 27.11.18.[3098]

S5.15 GCEN was LCF's payment agent. Monies held by GCEN were collected by GCEN from bondholders on LCF's behalf and belonged beneficially to LCF.[3099] As a result, payments from GCEN to D4 were, in substance, direct payments from LCF to D4.

S5.16 No basis has been suggested on which D4 gave value for his receipts from GCEN.

3095 EB0115711

3096 MDR00006313; MDR00007510; MDR00224398; MDR00006314; MDR00007535; MDR00106011; MDR00106012

3097 **[A1/6/64 – 69]**. Between 13.07.17 and 03.08.18, D4 paid to FSES monies from his personal accounts (the gross sum of £2,060,596.93, and £1,270,596.93 on a net basis) as well as monies from his HFEC accounts (the gross sum of £616,500, and £615,372 on a net basis). The total net sum paid from D4 to FSES is therefore £1,885,968.93 **[K0/4, sheet 1]**.

3098 **[K0/11, sheet 4]**.

3099 RRRAPoC ¶¶ 10, 12 **[B1/2.1/4]** and ¶17(12) **[B1/2.1/15]**.

Source: Mouseinthecourt.co.uk

Payment from Green Electricity to D4

S5.17 Green Electricity is the company that was known throughout the period in question as Leisure and Tourism Limited. It is the company which (among other things) received monies from SAFE/LCF to make interest payments to the Sanctuary investors throughout the relevant period. It changed its name to Green Electricity Limited on 6 May 2022. Given that there are certain other companies with "Leisure" and "Tourism" in their names, it is referred to below under its current name.

S5.18 Green Electricity paid the sum of £13,023.86 to D4 between 28.06.18 and 29.11.18.

S5.19 As is explained below, this was funded by LCF's monies in four ways:

(1) Green Electricity was funded by One Monday (in the net sum of £623,148.06), which was ultimately funded by LCF (as SAFE);

(2) Green Electricity was funded by Sands Equity (in the net sum of £91,798.62), which was ultimately funded by LCF;

(3) Green Electricity was funded by LCF directly (in the net sum of £1,739,155[3100]); and

(4) Green Electricity was funded by Prime RDL (in the net sum of £718,386.29), which was ultimately funded by LCF.

S5.20 It is helpful to list them in chronological order.

S5.21 **First,** Green Electricity was funded by One Monday, which (as above) was funded by LCF (as SAFE).

S5.22 Once SAFE began selling bonds, the monies which were invested were paid to One Monday, at the request of Sanctuary PCC. For example: **(i)** On 25.10.13, at the request

[3100] This includes money paid by LCF and GCEN (LCF's payment agent) to Green Electricity.

Source: Mouseinthecourt.co.uk

of Sanctuary PCC, Buss Murton paid £22,412.28 from the SAFE client account to One Monday.[3101] **(ii)** On 08.11.13, at the request of Sanctuary PCC, Buss Murton paid £16,000 from the SAFE client account to One Monday.[3102] **(iii)** On 25.11.13, at the request of Sanctuary PCC, Buss Murton paid £5,000 from the SAFE client account to One Monday.[3103] **(iv)** On 26.11.13, at the request of Sanctuary PCC, Buss Murton paid £10,000 from the SAFE client account to One Monday.[3104] **(v)** On 13.12.13, at the request of Sanctuary PCC, Buss Murton paid £18,400 from the SAFE client account to One Monday.[3105] **(vi)** On 19.12.13, at the request of Sanctuary PCC, Buss Murton paid £48,000 from the SAFE client account to One Monday.[3106] **(vii)** On 03.01.14, at the request of Sanctuary PCC, Buss Murton paid £55,000 from the SAFE client account to One Monday.[3107] **(viii)** On 07.01.14, at the request of Sanctuary PCC, Buss Murton paid £40,000 from the SAFE client account to One Monday.[3108] **(ix)** On 28.01.14, at the request of Sanctuary PCC, Buss Murton paid £58,209.05 from the SAFE client account to One Monday.[3109]

S5.23 The Claimants only have incomplete bank statements for SAFE and One Monday during this period, however, from the documents and information they have available, the Claimants have identified that One Monday received at least £898,076.33[3110] of SAFE funds in the period 01.10.13 to 01.07.15.

S5.24 One Monday then funded Green Electricity. Between 07.10.13 and 21.08.15, One Monday paid Green Electricity the net total of £623,148.06,[3111] which included SAFE's monies as above.

3101 MDR00007896; MDR00007919; MDR00015987 row 9; D2D10-00008623 row 67

3102 MDR00007897; MDR00007919; MDR00015987 row 11

3103 MDR00007898; MDR00007919; MDR00015987 row 14

3104 MDR00007899; MDR00007919; MDR00015987 row 15; D2D10-00008623 row 110

3105 MDR00007900; MDR00015987 row 21; D2D10-00008623 row 134

3106 MDR00007901; MDR00015987 row 28; D2D10-00008623 row 140

3107 MDR00007902; MDR00015987 row 38; D2D10-00008623 row 159

3108 MDR00007903; MDR00015987 row 41; D2D10-00008623 row 165; D2D10-00006245; D2D10-00006246

3109 MDR00007904; MDR00015987 row 47; D2D10-00008623 row 199

3110 The Claimants have also identified that in the period of 20.08.13 to 20.08.15, One Monday sent £76,581.55 back to LCF. The Claimants do not have a full set of One Monday's bank statements but understand that One Monday did receive funds from other sources.

3111 **[K0/22, sheet 6]**

Source: Mouseinthecourt.co.uk

S5.25 **Second,** Green Electricity was funded by Sands Equity, which was funded by LCF.

S5.26 Sands Equity paid Green Electricity the total net sum of £91,798.62 between 15.09.17 and 08.01.18, which was before the period in which Green Electricity made onward payments to D4.

S5.27 As explained in more detail below, Sands Equity received monies from LCF in a number of different ways. But by 08.01.18, it had received a net total of £258,253.39 from LCF.

S5.28 **Third**, Green Electricity was funded by LCF directly.

S5.29 There were two respects in which this took place.

S5.30 The first is that LCF began making payments to Green Electricity during the period in which Green Electricity was making onward payments to D4: the first payment was made on 29.08.18 and continued until 12.11.18 (before the end of the onward payments to D4). These payments total £1,739,155.[3112]

S5.31 The second is that GCEN made a payment directly to Green Electricity. On 17.09.18, within the period when Green Electricity was making payments to D4, GCEN paid to Green Electricity the sum of £47,349.00. As noted above, GCEN collected monies on behalf of LCF as its payment agent and so these in substance were further payments from LCF to Green Electricity.

S5.32 As a result, the total direct payments from LCF to Green Electricity (used to fund onward payments to D4) is £1,786,504.

S5.33 **Fourth,** Green Electricity was funded by Prime RDL, which was funded by LCF.

S5.34 Prime RDL paid Green Electricity the total net sum of £761,679.54, between 14.06.18 and 22.10.19. But up to and including 29.11.18, it had paid a net sum of £718,386.29.

[3112] **[K0/1, sheet 6]**

Source: Mouseinthecourt.co.uk

S5.35 In turn, Prime RDL was funded by LCF. Before 29.11.18, LCF paid to Prime RDL the net sum of £2,430,365.39.

S5.36 The Claimants can trace through Green Electricity because Green Electricity did not trade (and therefore appears to have had no other real source of income other than LCF), as Mr Hudson explains in his evidence.[3113] There is no suggestion that Green Electricity gave any value for the sums that it received. It follows that the monies which were used by Green Electricity to pay D4 (and others) came from, and belonged to, LCF.

S5.37 In any event, Green Electricity was not acting *bona fide* and/or was on notice that monies had been paid from LCF (including as SAFE) in breach of fiduciary duty: the bank statements of Green Electricity reveal that considerable payments were made to companies connected with D1, D2, D3 and D4,[3114] and its directors (Michael Peacock and Henry Patrick Hume-Kendall) each have links to D2. Further, as noted above, Green Electricity is the company which (under the name Leisure and Tourism Limited) was an integral part of the Sanctuary Ponzi scheme which received monies from new SAFE/LCF investors to fund interest payments to existing Sanctuary investors.

S5.38 Further, no basis has been suggested on which D4 gave value for his receipts from Green Electricity and in any event, he was not a *bona fide* purchaser for value without notice.

Payments from LCCL to D4

S5.39 LCCL paid a gross total of £109,454.17 to D4 between 06.03.14 and 03.06.16.[3115]

S5.40 Initially, when monies from SAFE investors were being paid to Buss Murton, Buss Murton transferred monies to One Monday which transferred monies to LCCL.[3116]

[3113] Hudson 3 ¶40.9 **[C1/5/28]**.

[3114] **[A1/5/63]**.

[3115] **[K0/15, sheet 3]**.

[3116] MDR00015987; D2D10-00008623 e.g. rows 120, 144, 150, 155, 163 etc.

Source: Mouseinthecourt.co.uk

S5.41 Subsequently, from around 28.08.15 onwards, LCF made payments to L&TD, which transferred monies to LCCL. Between 28.08.15 and 02.12.16, LCF paid the net total sum of £17,674,806.50 to L&TD; and L&TD paid £4,070,674 to LCCL.

S5.42 The Court should find that: (i) SAFE funded payments to LCCL via One Monday in sufficient sums to trace into payments to D4 from 06.03.14 onwards; and (ii) from around 28.08.15 onwards, LCF paid monies to L&TD, which in turn funded LCCL, in sufficient sums to trace into subsequent payments to D4.

S5.43 LCCL was on notice that monies had been paid of LCF (including as SAFE). For this purpose, LCF relies on the facts and circumstances known to: (i) D1, who was a director of LCCL from 18.12.12 until 27.03.14, and again from 12.03.14 until 15.08.15; (ii) D2, who was a director of LCCL from 11.06.13 until 14.03.17; (iii) D8, who was a director of LCCL from 18.12.12 until 12.03.18;[3117] and, to the extent necessary, (iv) D4, who appears on the evidence to have been a *de facto* director of LCCL.

S5.44 L&TD was also on notice that the monies had been paid out of LCF in breach of fiduciary duty, as explained immediately below.

S5.45 No basis has been suggested on which D4 gave value for his receipts from LCCL and in any event he was not a *bona fide* purchaser for value without notice.

Payments from L&TD to D4

S5.46 L&TD paid a total of £8,969,721.50 to D4 between 05.10.15 and 04.05.17.[3118]

S5.47 L&TD was funded by monies paid from LCF: (i) up to and including 05.10.15, LCF paid to L&TD a net total of £367,650; and (ii) between 06.10.15 and 04.05.17, LCF paid to L&TD a net total of £26,464,735.73. This gives rise to a combined net total of £26,832,385.73.

[3117] **[A1/5/63]**.

[3118] **[A1/6/95] - [A1/6/100]**

Source: Mouseinthecourt.co.uk

S5.48 As explained further below, monies paid from LCF to L&TD were also used to fund payments to D4 through other borrowing companies.

S5.49 L&TD was on notice that the monies had been paid out of LCF in breach of fiduciary duty. For this purpose, LCF relies on the facts and circumstances known to: (i) D1, who was a director of L&TD until 12.02.16, such that L&TD had knowledge of all the facts known to D1 as at 12.02.16; (ii) D2, who was a director of L&TD between 23.01.15 and 04.05.18; (iii) D8, who was a director and/or company secretary of L&TD until 12.03.18;[3119] and, to the extent necessary, (iv) D4, who appears on the evidence to have been a *de facto* director of L&TD.

S5.50 L&TD did not give value for the receipt of monies from LCF. The Lakeview SPA is not relevant to the analysis, because L&TD was not party to the Lakeview SPA. Further, the loan agreement between LCF and L&TD does not assist D4 because (i) L&TD's purely executory promise to repay the loan is not "value" for these purposes, as explained above, and (ii) L&TD had notice in the relevant sense.

S5.51 In any event, L&TD received from LCF a gross total of £4,498,741.27 prior to 30.03.16, the earliest date on which the first facility agreement between LCF and L&TD was executed. The facility agreement between LCF and L&TD was created to justify monies which had already been paid from LCF to L&TD and which were already subject to LCF's equitable interest, and so cannot be relied upon as providing "value" at the time of receipt by L&TD.

S5.52 No basis has been suggested on which D4 gave value for his receipts from L&TD and in any event, he was not a *bona fide* purchaser for value without notice.

[3119] **[A1/5/67]**.

Source: Mouseinthecourt.co.uk

Payments from LCF to D4

S5.53 LCF paid a total of £8,342,207.46 to D4 between 27.11.15 and 04.12.18.[3120] (In this period, D4 also paid £348,125.17 to LCF, pursuant to the Ponzi scheme described above, which under the rules of tracing is presumed to represent D4's own monies.)

S5.54 This money was paid directly from LCF to bank accounts held by D4.

S5.55 First, LCF paid monies to bank accounts in D4's name in the total sum of £2,293,342.50 between 27.11.15 and 04.12.18.[3121]

S5.56 Secondly, LCF paid monies to bank accounts in the name of Home Farm Equestrian Centre (or HFEC) in the total sum of £6,048,864.96 between 22.04.16 and 18.01.18.[3122] To be clear, "HFEC" is merely a trading name for D4 as a sole trader. As a result, the payments from LCF to "HFEC" are further personal payments to D4.

S5.57 D4 did not give value for his receipts from LCF. It does not assist D4 that some of these payments were considered to have been paid as loans to D4: (i) D4's purely executory promise to repay a loan is not "value" for these purposes, as explained above; (ii) D4 had notice in the relevant sense, as above.

S5.58 In any event, D4 received a gross total of £1,444,425 into his personal and HFEC bank accounts prior to 03.10.16, the earliest date on which a facility agreement between LCF and D4 was executed. (It was falsely backdated to 20.11.15.[3123]) The loan agreement with D4 was created to justify monies which had already been paid from LCF to D4 and which were already subject to LCF's equitable interest, and so cannot be relied upon as providing "value" at the time of receipt by D4.

3120 **[A1/6/95] - [A1/6/100]**.

3121 **[A1/6/438] - [A1/6/440]**.

3122 **[A1/6/441] - [A1/6/444]**.

3123 **[A1/7/17]**.

Source: Mouseinthecourt.co.uk

Payments from LCM to D4

S5.59 LCM paid a total of £30,000.00 to D4 on 07.04.17.[3124] This was funded by a payment from LCF to LCM directly of £94,800 the same day.[3125]

S5.60 LCM was on notice that the monies had been paid out of LCF in breach of fiduciary duty. For these purposes, LCF relies on the facts and circumstances known to D1, who was a director of LCM from 29.06.16 onwards.[3126]

S5.61 D4 did not give any value for the receipt of monies from LCM. The loan agreement ostensibly dated 1 November 2018[3127] does not assist D4: even on its face, D4 would have received the monies subject to LCF's equitable interest before the date of the loan agreement, such that it cannot be relied upon as providing "value" at the time of receipt by D4. [3128] Further: (i) D4's purely executory promise to repay a loan is not "value" for these purposes, as explained above; and (ii) D4 had notice in the relevant sense, as above.

Payments from London Group LLP to D4

S5.62 London Group LLP paid a total of £6,886,675 to D4 between 01.12.17 and 23.05.18.[3129] These monies were funded entirely by monies paid from LCF, as explained below.

S5.63 There were two key routes by which monies paid by London Group LLP to D4 were funded by LCF in this period: (i) London Group LLP was funded by GAD, in the total net sum of £5,640,000; and (ii) London Group was funded by LOG, in the total net sum of £13,192,400.

S5.64 As explained further below, these companies in turn received funds traceable to LCF from other intermediate sources. GAD received monies from L&TD (which in turn was

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3124 **[A1/6/448]**.

3125 **[A1/6/228]**.

3126 **[A1/5/74]**.

3127 MDR00194431

3128 N4.22-N4.30 above.

3129 **[A1/6/454]** - **[A1/6/456]**.

Source: Mouseinthecourt.co.uk

funded by LCF), as well as monies from LCF directly. LOG received monies from GRP (which in turn was funded by LCF), as well as monies from LCF directly.

S5.65 **First**, the monies paid from London Group LLP to D4 were funded through GAD.

S5.66 All of the payments from GAD to London Group LLP were made within the period in which London Group LLP made onward payments to D4. GAD paid a net total of £5,640,000 to London Group LLP between 08.12.17 and 29.01.18,[3130] therefore falling within the period between 01.12.17 and 23.05.18 in which London Group LLP made payments to D4. There is no basis for suggesting that London Group LLP gave value for the receipt of monies from GAD.

S5.67 In turn, the monies which GAD had paid to London Group LLP during this date range were funded by LCF through two routes.

S5.68 The first route is that LCF made payments to GAD directly:

(1) LCF made direct payments to GAD: (i) up to and including 01.12.17, LCF had paid GAD a net total of £2,290,301.56; and (ii) between 02.12.17 and 23.05.18, LCF had paid to GAD a net total of £9,506,792.57.[3131] This gives rise to a combined net total of £11,797,094.13.

(2) GAD was on notice that the monies had been paid out of LCF in breach of fiduciary duty. For this purpose, LCF relies on the facts and circumstances known to: (i) D1, who was a director of GAD until 15.08.15, such that GAD had knowledge of all the facts known to D1 as at 15.08.15; (ii) D2, who was a director of GAD between 11.03.15 and 07.12.17, such that GAD had knowledge of all the facts known to D2 as at 07.12.17; (iii) D3, who was a director of GAD between 01.10.15 and 07.12.17, such that GAD had knowledge of all the facts known to

[3130] **[A1/6/37]**. No payments were made from London Group LLP to GAD after 29.01.18.

[3131] From 24.05.18 onwards, LCF paid to GAD £268,627.50, the same figure on a gross or net basis.

Source: Mouseinthecourt.co.uk

D3 as at 07.12.17; (iv) D8, who was a director and/or company secretary of GAD until 19.11.18.[3132]

(3) There is no basis for suggesting that GAD gave any value for these receipts from LCF. Pursuant to the Ponzi scheme, monies were paid from GAD back to LCF, in order to meet LCF's interest liabilities to bondholders. However, this does not change whether any monies retained by GAD and paid to London Group LLP continued to be subject to LCF's subsisting equitable interest. As above, LCF is entitled to locate its equitable interest in monies paid to other borrowing companies (and used ultimately to acquire assets), rather than monies withdrawn or dissipated.

S5.69 The second route is that GAD was funded <u>indirectly</u> by L&TD *before* and *during* the period in which GAD made onward payments to London Group LLP. In turn, L&TD was funded by LCF, as explained below:

(1) GAD was funded by L&TD: all of the payments made from L&TD to GAD were made by 13.04.17, which is before the start of the period during which GAD made onward payments to London Group LLP (from 01.12.17 onwards). L&TD paid to GAD a net total of £1,399,094.53.[3133] As above, GAD was on notice that the monies had been paid out of LCF in breach of fiduciary duty. GAD did not give value for its receipts from L&TD.

(2) In turn, *before* and *during* the period in which L&TD made onward payments to GAD (which funded London Group LLP, and then D4), L&TD was funded by LCF: (i) up to and including 18.09.15, LCF had paid to L&TD the net sum of £149,650; and (ii) between 19.09.15 and 13.04.17, LCF paid to L&TD a net total of £26,076,134.59.[3134] This gives rise to a combined net total of £26,225,784.59. As explained above, L&TD was on notice that the monies had been paid out of

[3132] **[A1/5/34]**.

[3133] **[K0/16, sheet 7]**. No payments were made from L&TD to GAD before 28.09.15 or after 15.05.17.

[3134] From 14.04.17 onwards, LCF had paid to L&TD £592,912.62 on a net basis.

Source: Mouseinthecourt.co.uk

LCF in breach of fiduciary duty, and did not give value for the receipt of monies to it.

S5.70 **Second**, the monies paid from London Group LLP to D4 were funded through LOG.

S5.71 London Group LLP was funded by LOG. The first payment from LOG to London Group LLP was made on 05.02.18. In the period from 05.02.18 until 23.05.18 (i.e. within the period in which London Group LLP made onward payments to D4), LOG paid to London Group LLP a net total of £13,192,400. London Group LLP did not give value for its receipts from LOG.

S5.72 In turn, the monies paid from LOG to London Group during this date range were funded by LCF in two main ways.

S5.73 The first is that LCF made payments to LOG directly:

(1) LCF made direct payments to LOG: (i) up to and including 05.02.18, the date of the first payment from LOG to London Group LLP, LCF had paid to LOG a net total of £16,445,568.85; and (ii) between 06.02.18 and 23.05.18, LCF had paid to LOG a net total of at least £17,610,446.97.[3135] This gives rise to a combined net total of £34,056,015.82.

(2) LOG was on notice that the monies had been paid out of LCF in breach of fiduciary duty. For this purpose, LCF relies on the facts and circumstances known to: (i) D2, who was a director of LOG until 26.03.19, and (ii) D3, who was a director of LOG from 17.11.15 onwards, and (iii) D8, who was the company secretary of LOG from 24.10.17 until 14.02.18.[3136]

(3) LOG did not give any value for these receipts. The loan agreement between LCF and LOG does not assist D4 because (i) LOG's purely executory promise to repay

[3135] LCF did not make any payments to LOG from 24.05.18 onwards.

[3136] **[A1/5/34]**.

Source: Mouseinthecourt.co.uk

the loan is not "value" for these purposes, as explained above; and (ii) LOG had notice in the relevant sense.

S5.74 Second, LOG had also been funded by GRP, which had been funded by LCF:

(1) LOG had been funded by GRP: GRP made payments to LOG between 04.08.16 and 16.01.17, which is before the date of the first onward payment from LOG to London Group LLP. GRP paid a net total of £722,500 to LOG in this period.[3137] As explained above, LOG was on notice that the monies had been paid out of LCF in breach of fiduciary duty. LOG did not give value for its receipts from GRP.

(2) In turn, the monies paid from GRP were funded by monies paid from LCF: in the period up to and including 04.08.16 (the date of the first onward payment from GRP to LOG), LCF had paid to GRP a net total of £2,211,556.03. No payments from LCF to GRP were made during the period when GRP was funding LOG.

(3) GRP was on notice that the monies had been paid out of LCF in breach of fiduciary duty. For this purpose, LCF relies on the facts and circumstances known to: (i) D2, who was a director of GRP from 30.12.14 until 05.05.17, and from 06.12.17 onwards; (ii) D3, who was a director of GRP between 28.08.15 and 05.05.17, and from 06.012.17 onwards; (iii) D8, who was the company secretary of GRP from 28.08.15 until 12.03.18; (iv) Mark Ingham, who was a director of GRP from 05.05.17 until 06.12.17; and (v) Tom McCarthy, who was a director of GRP from 05.05.17 until 06.12.17.[3138]

(4) GRP did not give value for any of its receipts from LCF. The Elysian SPA does not assist D4: the transaction purported to deal with shares in GRP, but GRP was not to give anything, and in any event the preference shares were not issued, as explained above. The changes to the lending arrangements that accompanied the Elysian SPA do not assist D4 either: (i) GRP did not enter into any facility agreement with LCF; (ii) even then, the purely executory promise of GRP's

[3137] **[A1/6/49]**. GRP did not make any payments to LOG prior to 04.08.16 or after 16.01.17.

[3138] **[A1/5/41]**.

Source: Mouseinthecourt.co.uk

subsidiaries to repay loans to LCF is not "value" for these purposes, as explained above; and (iii) in any event, GRP had notice in the relevant sense.

S5.75 Finally, London Group LLP was on notice that the monies it had received (£5,640,000 through GAD, and £13,192,400 through LOG) had been paid out of LCF in breach of fiduciary duty. For this purpose, LCF relies on the facts and circumstances known to D2 and D3, who were the members of London Group LLP at all material times.[3139] As above, London Group LLP did not give value for its receipts from GAD or LOG.

S5.76 As a result, LCF's equitable interest subsisted through payments (i) from LCF through L&TD and/or GAD, and London Group LLP, which were used to fund payments to D4; and (ii) from LCF through GRP and/or LOG, which were used to fund payments to D4.

S5.77 No basis has been suggested on which D4 gave value for his receipts from London Group LLP and in any event he was not a *bona fide* purchaser for value without notice.

Payments from LOG to D4

S5.78 LOG paid a total of £340,321.50 to D4 between 04.10.16 and 27.10.17.[3140] These monies were funded by monies paid from LCF, as explained below.

S5.79 The monies paid from LOG prior to and during this period were funded by LCF in two main ways. These payment routes were considered above. LOG received payments from LCF directly (the net total of which was £12,001,750.52) and payments from GRP which had been funded by LCF (the net total of which was £722,500).

S5.80 **First**, LCF made payments to LOG directly: (i) prior to 04.10.16, when payments from LOG to D4 began, LCF had paid to LOG a net total of £1,511,648.34; and (ii) between 05.10.16 and 27.10.17, LCF had paid to LOG a net total of £10,490,102.18.[3141] This gives rise to a combined net total of £12,001,750.52.

[3139] **[A1/5/76]**.

[3140] **[A1/6/482]**.

[3141] From 28.10.17 onwards, LCF paid to LOG £22,054,265.30 on a net basis.

Source: Mouseinthecourt.co.uk

S5.81 As explained above, LOG was on notice that monies had been paid out of LCF in breach of fiduciary duty. As also explained above, LOG did not give any value for its receipts from LCF.

S5.82 **Second**, LCF made payments to GRP, which funded payments to LOG.

S5.83 LOG had been funded by GRP in the period from 04.10.16 and 27.10.17: (i) the first payment from GRP to LOG was made on 04.08.16, and in the period up to the start of onward payments from LOG to D4 (i.e. until 04.10.16), GRP paid to LOG a net total of £67,500; and (ii) during the period in which LOG was making payments to D4, i.e. between 05.10.16 and 27.10.17, GRP paid to LOG £655,000.[3142] The last payment from GRP to LOG took place on 16.01.17, well within this period. This gives rise to a total of £722,500 (noted above).

S5.84 As explained above, LOG was on notice that the monies had been paid out of LCF in breach of fiduciary duty. As also explained above, LOG did not give value for its receipts from GRP.

S5.85 In turn, the monies paid from GRP were funded by monies paid from LCF, as explained above (in connection with payments made to D4 from London Group LLP). As also explained above, GRP was on notice that the monies had been paid out of LCF in breach of fiduciary duty and did not give value for its receipts from LCF.

S5.86 No basis has been suggested on which D4 gave value for his receipts from LOG and in any event he was not a *bona fide* purchaser for value without notice.

[3142] **[A1/6/49]**. GRP did not make any payments to LOG prior to 04.08.16 or after 16.01.17.

Source: Mouseinthecourt.co.uk

Payments from London Power Consultants to D4

S5.87 London Power Consultants paid a total of at least £1,033,125 to D4 between 22.05.18 and 01.08.18.[3143] These monies were entirely funded by monies paid from LCF, as explained below.

S5.88 The payments from London Power Consultants to D4 in the period from 22.05.18 to 01.08.18 were funded directly by LCF in two respects: from LCF directly (the net sum of £2,952,077.50), and from GCEN, which collected monies and held them on behalf of LCF (the net sum of £1,452,052.50).

S5.89 First, LCF made payments directly to London Power Consultants: (i) prior to 22.05.18, i.e. the date of the start of onward payments from London Power Consultants to D4, LCF had paid to London Power Consultants £1,500,025[3144] and (ii) between 23.05.18 and 01.08.18, LCF had paid to London Power Consultants £1,452,052.50 (from the LCF Bond Account).[3145] This gives rise to a total of £2,952,077.50.

S5.90 Second, GCEN made payments to London Power Consultants. GCEN collected monies on behalf of LCF as its payment agent, and as explained above, these were in substance further direct payments from LCF to London Power Consultants. GCEN did not make any payments to London Power Consultants prior to 22.05.18, but funded London Power Consultants whilst payments were being made to D4. GCEN began making payments to London Power Consultants on 05.06.18, and in the period to 01.08.18, paid a total of £1,452,052.50 to London Power Consultants (from the GCEN LCF Distribution Account).[3146]

S5.91 London Power Consultants was on notice that the monies had been paid out of LCF in breach of fiduciary duty. For this purpose, LCF relies on the facts and circumstances

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3143 **[A1/6/482]**.

3144 **[A1/6/267]**.

3145 **[A1/6/267]**. After 01.08.18, LCF made only one further payment to London Power Consultants, of £40,125.00 on 04.09.18.

3146 **[A1/6/44]**. After 01.08.18, GCEN made only one further payment to London Power Consultants, of £40,125.00 on 04.09.18 (identical in amount to the payment made directly from LCF to London Power Consultants at the same time).

Source: Mouseinthecourt.co.uk

known to D3, who was the director of London Power Consultants at all material times.[3147]

S5.92 London Power Consultants did not give any value for the receipt of monies from LCF. The fact that some monies paid to London Power Consultants were ostensibly borrowed from LCF by Prime RDL, but paid to London Power Consultants instead, does not change the fact that London Power Consultants gave no value for its receipts. In any event, (i) the purely executory promise of Prime RDL's subsidiaries to repay loans is not "value" for these purposes, as explained above, and (ii) London Power Consultants had notice in the relevant sense.

S5.93 No basis has been suggested on which D4 gave value for his receipts from London Power Consultants and he was not a *bona fide* purchaser for value without notice.

Payments from LPC to D4

S5.94 LPC paid a total of at least £1,371,000 to D4 between 31.08.18 and 03.12.18.[3148] These monies were funded entirely by monies paid from LCF, as explained below.

S5.95 Prior to and during the period when LPC was making payments to D4, LPC was funded by LCF by payments made directly from LCF: (i) up to and including 31.08.18, the date on which LPC began payments to D4, LCF had paid to LPC £1,801,150;[3149] and (ii) between 01.09.18 and 03.12.18, when LPC was making payments to D4, LCF paid to LPC £11,453,232.[3150] This gives rise to a combined net total of £13,254,382.

S5.96 LPC was on notice that the monies it received from LCF had been paid out of LCF in breach of fiduciary duty. For this purpose, LCF relies on the facts and circumstances known to: (i) D2, who was a director of LPC at all material times, (ii) D3, who was a

[3147] **[A1/5/80]**.

[3148] **[A1/6/487]**.

[3149] **[A1/6/268]**.

[3150] After 16.11.18, LCF paid to LPC £800,059.78.

Source: Mouseinthecourt.co.uk

director of LPC at all material times, and (iii) D8, who was the company secretary of LPC until 14.02.18.[3151]

S5.97 LPC did not give value for its receipts from LCF. LPC was not party to any loan agreement with LCF on which D4 might rely, and instead received funds as a volunteer. Neither the LPE SPA or the LPT SPA can assist D4, because LPC was not party to the documents in either transaction.

S5.98 No basis has been suggested on which D4 gave value for his receipts from LPC and in any event he was not a *bona fide* purchaser for value without notice.

Payment from One Monday to D4

S5.99 One Monday paid D4 the sum of £32,824 between 29.11.13 and 02.07.14. This was funded by LCF (as SAFE), and the same rationale applies to the payments made by One Monday to D1 noted below. (The prior payment to D4 by One Monday (via Clydesdale Properties Ltd) [3152] was funded using the additional deposits from Sanctuary investors: the Claimants have no proprietary claim to those monies and accordingly they are not relevant at this stage of the analysis. The equitable proprietary claim is confined to monies originating from SAFE/LCF.)

S5.100 Once SAFE began selling bonds, the monies from SAFE investors were paid to Buss Murton, which transferred them to One Monday. For example: **(i)** On 25.10.13, Buss Murton paid £22,412.28 from the SAFE client account to One Monday.[3153] **(ii)** On 08.11.13, Buss Murton paid £16,000 from the SAFE client account to One Monday.[3154] **(iii)** On 25.11.13, Buss Murton paid £5,000 from the SAFE client account to One Monday.[3155] **(iv)** On 26.11.13, Buss Murton paid £10,000 from the SAFE client account to One Monday.[3156] **(v)** On 13.12.13, Buss Murton paid £18,400 from the SAFE client

[3151] **[A1/5/82]**.

[3152] D2D10-00008623 row 47

[3153] MDR00007896; MDR00007919; MDR00015987 row 9; D2D10-00008623 row 67

[3154] MDR00007897; MDR00007919; MDR00015987 row 11

[3155] MDR00007898; MDR00007919; MDR00015987 row 14

[3156] MDR00007899; MDR00007919; MDR00015987 row 15; D2D10-00008623 row 110

Source: Mouseinthecourt.co.uk

account to One Monday.[3157] **(vi)** On 19.12.13, Buss Murton paid £48,000 from the SAFE client account to One Monday.[3158] **(vii)** On 03.01.14, Buss Murton paid £55,000 from the SAFE client account to One Monday.[3159] **(viii)** On 07.01.14, Buss Murton paid £40,000 from the SAFE client account to One Monday.[3160] **(ix)** On 28.01.14, Buss Murton paid £58,209.05 from the SAFE client account to One Monday.[3161]

S5.101 The Claimants only have incomplete bank statements for SAFE and One Monday during this period, however, from the documents and information they have available, the Claimants have identified that One Monday received at least £898,076.33[3162] of SAFE funds in the period 01.10.13 to 01.07.15.

S5.102 One Monday was on notice that monies had been paid of LCF (including as SAFE). For this purpose, LCF relies on the facts and circumstances known to: (i) D1, who was a director of One Monday from 09.05.12 until 02.02.16; and (ii) D3, who was a director of One Monday from 14.08.13 until 24.07.15.[3163]

Payments from Sands Equity to D4

S5.103 Sands Equity paid a total of £5,014,375 to D4 between 19.05.17 and 01.12.17.[3164] These monies were funded entirely by monies paid from LCF, as explained below.

S5.104 Sands Equity was one of the principal payment intermediaries, and paid (and received) sums from numerous different sources. The Claimants concentrate below on the most

[3157] MDR00007900; MDR00015987 row 21; D2D10-00008623 row 134

[3158] MDR00007901; MDR00015987 row 28; D2D10-00008623 row 140

[3159] MDR00007902; MDR00015987 row 38; D2D10-00008623 row 159

[3160] MDR00007903; MDR00015987 row 41; D2D10-00008623 row 165; D2D10-00006245; D2D10-00006246

[3161] MDR00007904; MDR00015987 row 47; D2D10-00008623 row 199

[3162] The Claimants have also identified that in the period of 20.08.13 to 20.08.15, One Monday sent £76,581.55 back to LCF. The Claimants do not have a full set of One Monday's bank statements but understand that One Monday did receive funds from other sources.

[3163] **[A1/5/91]**.

[3164] **[A1/6/508]** - **[A1/6/509]**.

Source: Mouseinthecourt.co.uk

significant net payment flows,[3165] and which, in any event, were sufficient to fund the onward payments to D4.

S5.105 There were three principal routes by which monies paid by Sands Equity were funded by LCF. It is convenient to list them in chronological order, by reference to when each routes began to be used in order to fund payments to Sands Equity:

(1) Sands Equity was funded by GRP (in the net sum of £14,678,771), which was ultimately funded by LCF;

(2) Sands Equity was funded directly by LCF (in the net sum of £258,253.39)[3166]; and

(3) Sands Equity was funded by GAD (in the net sum of £1,883,270), which was ultimately funded by LCF.

S5.106 Each is set out in turn below.

S5.107 **First**, LCF's monies were paid to Sands Equity through GRP (in the net sum of £14,678,771).

S5.108 GRP began to make payments to Sands Equity on the same day that Sands Equity began to make payments to D4, on 19.05.17.[3167] In the period to 01.12.17, GRP paid to Sands Equity the net sum of £14,678,771.[3168] In fact, all of these payments to GRP had been made by 27.10.17, well within this period, because no payments were made from 28.10.17 to 01.12.17. It is therefore possible to be more precise: GRP funded Sands Equity between 19.05.17 and 27.10.17.

[3165] For example, CV Resorts made a payment of £25,000 to Sands Equity on 30.11.17 **[A1/6/36]**.

[3166] This includes money paid by LCF and GCEN (LCF's payment agent) to Sands Equity.

[3167] Ignoring the payment by GRP of £1 to Sands Equity on 28.02.17. This is the same date on which the company's name became "Sands Equity Capital Limited", having previously been called CV Hotels Limited.

[3168] **[K0/12, sheet 7]**. GRP did not make any payments to Sands Equity after 27.10.17. (Between 15.01.18 and 29.03.18, Sands Equity paid £70,000 to GRP.)

Source: Mouseinthecourt.co.uk

S5.109 In turn, prior to and during the period when GRP was making payments to Sands Equity (from 19.05.17 to 27.10.17), GRP had been and was funded by LCF in two ways: payments from LCF directly (in the net sum of £20,389,745.82) and payments from L&TD which were funded by LCF (in the net sum of £26,832,385.72). This gives rise to a combined net total of £47,222,031.54.

S5.110 The first is that GRP was funded by LCF directly:

(1) LCF made direct payments to GRP: (i) up to and including 19.05.17, i.e. by the date when GRP began making payments to Sands Equity, LCF paid to GRP the net total of £3,663,431.03; and (ii) between 20.05.17 and 27.10.17,[3169] during which time GRP was funding Sands Equity, LCF paid to GRP the net total of £16,726,314.79. This give rise to a combined net total of £20,389,745.82.[3170]

(2) As explained above, GRP was on notice that monies had been paid out of LCF in breach of fiduciary duty and did not give any value for its receipts from LCF.

S5.111 The second is that GRP was funded by L&TD, which in turn was funded by LCF:

(1) GRP was funded by L&TD. L&TD made payments to GRP in the period from 25.04.16 to 15.05.17, which predates the start of the onward payments from GRP to Sands Equity. In that period, L&TD paid to GRP the net total of £3,822,824.[3171]

(2) In turn, in the period when L&TD was funding GRP, L&TD was funded by LCF: (i) up to and including 25.04.16, when L&TD began making onward payments to GRP, LCF paid to L&TD a net total of £4,253,199.69; and (ii) between 26.04.16 and 15.05.17, during which time L&TD was funding GRP, LCF paid to L&TD a net total of £22,579,186.04. This gives rise to a combined net total of £26,832,385.72.

[3169] LCF did not make any payments to GRP after 27.10.17.

[3170] **[A1/6/179]** – **[A1/6/183]**.

[3171] **[K0/16, sheet 8]**.

Source: Mouseinthecourt.co.uk

S5.112 As explained above, L&TD and GRP were on notice that monies had been paid out of LCF in breach of fiduciary duty. As also explained above, L&TD did not give any value for its receipts from LCF.

S5.113 GRP also did not give any value for its receipts from L&TD. The Elysian transaction does not assist D4: (i) almost all of the monies paid from L&TD to GRP had already been received by GRP before the transaction documents were executed on or around 29 April 2017; and (ii) GRP was not party to any loan agreement with L&TD, on which D4 might rely, and instead received funds as a volunteer.

S5.114 **Second**, LCF paid monies directly to Sands Equity.

S5.115 There were two respects in which this took place.

S5.116 The first is that LCF itself paid monies directly to Sands Equity. Between 31.05.17 and 01.12.17, when Sands Equity was making payments to D4, LCF paid to Sands Equity £258,253.39.[3172] The last of these payments took place on 27.10.17.

S5.117 The second is that GCEN made payments directly to Sands Equity. As noted above, GCEN collected monies on behalf of LCF as its payment agent, and so these were in substance further direct payments from LCF to Sands Equity. Payments from GCEN to Sands Equity began on 12.07.17, soon into the period when Sands Equity was making payments to D4. From 12.07.17 until 01.12.17, GCEN paid a net total of £292,283.66.

S5.118 As a result, the total direct payments from LCF to Sands Equity (used to fund onward payments to D4) is at least £550,537.05.

S5.119 **Third**, LCF's monies were paid to Sands Equity through GAD (in the net sum of £1,883,270).

[3172] **[A1/6/270]**. LCF did not make any payments to Sands Equity before 31.05.17 or after 27.07.17.

Source: Mouseinthecourt.co.uk

S5.120 During the period when Sands Equity was making payments to D4 (from 19.05.17 to 01.12.17), GAD made payments to Sands Equity in the net sum of £1,883,270.[3173] These payments took place between 03.11.17 and 01.12.17.

S5.121 In making onward payments to Sands Equity, GAD had been and was funded by LCF through two routes: payments from LCF directly (the net total of which was £2,462,403.32), and payments from L&TD, which in turn had been funded by LCF (the net total of which was ££1,399,094.53).

S5.122 The first route is that GAD was funded by LCF directly:

(1) In the period up to and including 03.11.17, whilst LCF had paid £454,950 to GAD on a gross basis, LCF had not funded GAD on a net basis: monies had flowed from GAD to LCF pursuant to the Ponzi scheme.

(2) However, during the period when GAD was funding onward payments to Sands Equity, LCF did fund GAD on a net basis. In the period between 04.11.17 and 01.12.17, LCF paid to GAD the net total of £2,462,403.32.

(3) As explained above, GAD was on notice that monies had been paid out of LCF in breach of fiduciary duty. As also explained above, GAD did not give any value for its receipts from LCF.

S5.123 The second route is that GAD was funded by L&TD, which was funded by LCF:

(1) GAD was funded by L&TD. Payments were made from L&TD to GAD in the period from 18.09.15 to 03.11.17, in the net sum of £1,399,094.53. All of those payments had been made as at the date on which GAD began making payments to Sands Equity (i.e. 03.11.17).[3174]

[3173] **[K0/10, sheet 4]**. Before these payments began, between 07.06.17 and 29.06.17, Sands Equity had paid to GAD a total of £47,900.

[3174] **[K0/16, sheet 7]**. L&TD did not make any payments to GAD before 18.09.15 or after 13.04.17.

Source: Mouseinthecourt.co.uk

(2) In turn, L&TD was funded by LCF, as noted above: (i) up to and including 18.09.15, when L&TD began making onward payments to GAD, LCF paid to L&TD the net sum of £149,650; and (ii) between 19.09.15 and 03.11.17, LCF had paid to L&TD the net sum of £26,669,036.21. This gives rise to a net total of £26,818,686.21. This amply funded the sum paid by L&TD to GAD, as above.

S5.124 As explained above, L&TD and GAD were on notice that monies had been paid out of LCF in breach of fiduciary duty. As also explained above, L&TD did not give any value for its receipts from LCF, and GAD did not give any value for its receipts from L&TD.

S5.125 Sands Equity was on notice that the monies had been paid out of LCF in breach of fiduciary duty. For this purpose, LCF relies on the facts and circumstances known to (i) D1, who was a director of Sands Equity from 21.08.14 until 15.08.15, (ii) D8, who was a director of Sands Equity between 21.08.14 and 12.03.18, and from 04.18 onwards, (iii) D2, who was a director of Sands Equity between 28.01.15 and 04.05.18,[3175] and (iv) D4, who as above was ultimately in control of Sands Equity at all material times.

S5.126 No basis has been suggested on which D4 gave value for his receipts from Sands Equity. As above, these give rise to a total sum of £5,014,375.

Payments from D6 to D4

S5.127 D6 paid a total of £1,698,375.50 to D4 between 18.08.15 and 08.11.18.[3176]

S5.128 Almost all of this sum (£1,669,375.50) represents payments made to D4 calculated on the basis of the sum equal to 1% of LCF's gross receipts from new bondholders in the previous month, which were made between 23.11.17 and 08.11.18.

S5.129 These monies were funded entirely by monies paid from LCF. As explained in further detail below, when monies were paid from LCF to D6, LCF continued to have a

[3175] **[A1/5/98]**.

[3176] **[A1/6/515]** - **[A1/6/516]**.

Source: Mouseinthecourt.co.uk

beneficial interest in those monies.[3177] As also explained below, D6 was on notice that the monies had been paid out of LCF in breach of fiduciary duty.

S5.130 D4 did not give value for his receipts from D6, which were paid by reference to 1% of new bondholder monies. As explained above, D4 submitted invoices to D6, which referred to "*fundraising consultancy*". However, this does not explain the payments: (i) D5 has accepted that the monies were not paid to D4 in return for fundraising consultancy; (ii) even if (as D5 asserts) the monies were paid to D5 as a retrospective introduction fee, there was no new value provided by D4 at the time of receipt; (iii) the monies were therefore paid to D4 unconditionally, without the provision of any new value; and (iv) there is no evidence that D4 in fact provided any value to D6.

S5.131 It might be said that D4 gave value for the payment to him of £25,000 from D6 on 18.11.15, on the basis that it represented the repayment of a loan. However, D4 was on notice at all material times that monies had been paid out of LCF in breach of fiduciary duty, such that D4 cannot rely on the *bona fide* purchaser defence.

Assets acquired by D4 with LCF's monies

S5.132 For the reasons explained above, D4 received £43,428,758.50 which is traceable to LCF.

S5.133 D4 cannot establish a lack of notice or good faith. On the contrary, for the reasons explained above, D4 was on notice that the funds had been paid out of LCF in breach of fiduciary duty and had actual knowledge of the same, including as a result of (i) his position as a *de facto* and/or shadow director of LCF, and (ii) his participation and knowledge in the fraudulent trading of LCF as set out above.[3178]

S5.134 D4 cannot establish that he gave value for his receipts, and D4 did not give value for his receipts.

[3177] See Section S7 below.

[3178] Section Q8 above.

Source: Mouseinthecourt.co.uk

S5.135 Accordingly, LCF is entitled to all of D4's assets which were acquired with monies he received which (i) are traceable to LCF, or (ii) were paid to him within the scope of his fiduciary position as above.

S5.136 LCF is entitled to all of D4's disclosed assets, for two reasons.

S5.137 **First**, D4 has accepted that the assets disclosed pursuant to both the worldwide freezing order and the proprietary freezing order were acquired with monies either deriving from LCF or which had been mixed with monies deriving from LCF.

S5.138 The worldwide freezing order was made against D4 on 24.08.20 and was continued on 07.09.20.[3179] This obliged D4 to give disclosure of all of his assets exceeding £1,000 in value.[3180]

S5.139 Following this, D4 served evidence providing disclosure of his assets: (i) a first affidavit dated 04.09.20,[3181] (ii) a second affidavit dated 13 November 2020,[3182] and (iii) a third affidavit dated 24 June 2021.[3183]

S5.140 The Claimants then obtained a proprietary freezing order against D4 on 28.06.21.[3184] D4 consented to the order expressly on the basis that the assets contained in the asset disclosure referred to above was acquired either with monies deriving from LCF, or with monies mixed with monies deriving from LCF (emphasis added), as provided by the fifth and sixth recitals to the order:[3185]

> ***"AND UPON the Respondent serving (i) his first affidavit dated 4 September 2020, (ii) his second witness statements dated 13 November 2020 and (iii) his third affidavit dated 24 June 2021 (collectively, "the Asset Disclosure***

[3179] **[F2/4/1]**.

[3180] **[F2/4/11]** at paragraph 12.

[3181] **[N4/2/1]**.

[3182] **[N4/3/1]**. The proprietary injunction order refers to "*his second witness statements* [sic] *dated 13 November 2020*", but this is plainly a reference to D4's second affidavit dated 13 November 2020. There is no witness statement from D4 dated 13 November 2020.

[3183] **[N4/4/1]**.

[3184] **[F3/4/1]**.

[3185] **[F3/4/2]**.

Source: Mouseinthecourt.co.uk

Evidence") *containing a statement of truth which records his understanding that proceedings for contempt of court may be brought against him if he has made a false statement and the Applicants relying on that statement of truth*

AND UPON the Respondent accepting that (a) the assets identified in the Asset Disclosure Evidence were acquired *and (b) the payments identified in Section B of Schedule C were made* ***with monies deriving from the First Claimant or have been mixed with such assets and/or monies****. For the avoidance of doubt, the Respondent's acceptance of the same is without prejudice to: (i) his ability to assert by way of defence that the Applicants are not entitled to assert a proprietary interest in the assets identified in the Asset Disclosure Evidence; and (ii) the Applicants' burden of establishing a proprietary tracing claim in respect of such monies through to the Respondent's assets identified in the Asset Disclosure Evidence*"

S5.141 For the reasons explained above, as a result of the rules of tracing, LCF is entitled to presume that wherever mixed funds were used by D4 to acquire an asset, the asset was acquired using LCF's monies (rather than any monies belonging to D4 from a different source). As also explained above, LCF is entitled to locate its subsisting equitable interest in those assets.

S5.142 In any event, D4 has been debarred from defending the proceedings, and is not entitled to seek to prove that (i) any of his disclosed assets was acquired with monies not originating from LCF, or that (ii) any mixture of monies traceable to LCF with monies not originating from LCF was insufficient to acquire his disclosed assets.

S5.143 **Second**, on the balance of probabilities, all of D4's assets were in fact acquired using monies traceable to LCF.

S5.144 The amount of monies originating from LCF that was received by D4 far exceeds the value of the assets which D4 has disclosed. D4 received at least £43,428,758.50 of monies deriving from LCF, in the period before LCF's collapse. The assets disclosed by D4 include a large number of extremely expensive items, including a number of properties, luxury cars and other vehicles, and jewellery and watches.

S5.145 Absent any explanation as to how D4 could have come to acquire such items in these quantities, it is to be inferred that D4 purchased them using the very substantial monies which he had received from LCF.

Source: Mouseinthecourt.co.uk

S5.146 The conclusion which follows is that all of D4's disclosed assets referred to above were acquired with LCF's monies, and that LCF is beneficially entitled to all of those assets in full.

S5.147 The Claimants therefore invite the Court to declare that D4 holds the assets listed in those schedules on trust for LCF, and that the same should be delivered up to LCF's Joint Administrators.

S5.148 The Claimants also seek declarations that (i) D4 received the sum of £43,428,758.50 which was at all times held subject to LCF's subsisting equitable interest, and (ii) LCF is entitled to the traceable proceeds of those monies, less the sum of any realisations from D4's disclosed assets. This relief is sought in view of the possibility that D4 has failed to disclose all of his assets.

S6 D1

S6.1 All of the payments to D1 from companies connected with LCF were funded by monies which are traceable to LCF, as explained further below.

S6.2 D1 was a *de jure* director of LCF and its CEO. D1 held the monies he received on constructive trust for LCF the moment he received them, as a result of his fiduciary obligations to LCF. These receipts resulted directly or indirectly from the breaches of fiduciary duty described at Section R4 above.

S6.3 Consequently, those monies were immediately held by D1 on constructive trust for LCF upon receipt by him, by virtue of his continuing fiduciary duties to LCF.

S6.4 As a result, on the Claimants' primary case, it is not necessary to rely on tracing funds from LCF through connected companies to D1 in order to establish the proprietary claims against D1.

S6.5 In any event, as is explained below, the monies received by D1 are traceable to monies paid out of LCF in breach of fiduciary duty. None of the connected companies used to fund payments to D1 was a *bona fide* purchaser for value without notice (nor was D1).

Source: Mouseinthecourt.co.uk

S6.6 For the most part, funds flowed to D1 in a similar way to D4, and so the tracing exercise set out above in relation to D4 can be relied on in relation to D1.

S6.7 In these proceedings, D1 has sought to rely on the "MOU/SPA" dated 15.07.15 in order to justify the receipt of monies to him from the numerous connected companies considered in further detail below. The MOU/SPA was considered in detail above.[3186] It provides no justification for D1's receipt of payments: (i) the MOU/SPA were later fabrications which were created after the FCA raid on 10.12.18, and did not exist at the time of D1's receipts, and therefore provide no basis for justifying D1's receipt of funds at the time; (ii) LCF was not party to the "MOU/SPA", which on its face was entered into between D1, D2, and D3; and (iii) on their own terms, the "MOU/SPA" do not provide for any value to be provided to LCF, and contain no explanation as to why any payments of 5% to D1 should be funded ultimately by LCF.

S6.8 D1 is also unable to rely on the various SPA transactions for the reasons given above.

Payments from GCEN to D1

S6.9 GCEN paid a total of £1,698,596 to D1 between 22.06.18 and 27.11.18.[3187] As explained above in relation to D4, these were in substance direct payments from LCF to D1.

S6.10 There was no justification for these receipts and D1 has not given any justification for these receipts, other than the 2015 "MOU/SPA",[3188] which cannot be relied upon in order to justify these receipts for the reasons explained above.[3189] Further, the LPT SPA and LPE SPA transactions cannot justify D1's receipt for the reasons given above.

[3186] Section O2 above.

[3187] **[A1/6/45]**.

[3188] Thomson ¶174 **[C2/1/57]**.

[3189] Section O2 above.

Source: Mouseinthecourt.co.uk

Payments from L&TD to D1

S6.11 L&TD paid a total of at least £991,361.11 to D1 between 18.02.16 and 04.05.17.[3190]

S6.12 As explained above in relation to D4, the monies paid from L&TD to D1 during this period were entirely funded by monies paid from LCF.

S6.13 As explained above in relation to D4, L&TD was on notice that the monies had been paid out of LCF in breach of fiduciary duty, and L&TD did not give any value for the receipt of monies from LCF.

S6.14 There was no justification for these receipts and D1 has not given any justification for these receipts, other than the 2015 "MOU/SPA",[3191] which cannot be relied upon in order to justify these receipts.[3192] Further, neither the Lakeview SPA nor any other transaction can justify D1's receipts.

Payments from LCM to D1

S6.15 LCM paid a total of £30,000.00 to D1 on 07.04.17.[3193]

S6.16 As noted above, this was funded by a payment from LCF to LCM directly of £94,800 the same day.[3194]

S6.17 As explained above in relation to D4, LCM was on notice that the monies had been paid out of LCF in breach of fiduciary duty.

S6.18 D1 did not give value for his receipts from LCM. D1 has suggested in his witness statement that this payment was made "*for my work on the company set up and*

[3190] **[A1/6/86] - [A1/6/89]**.

[3191] Thomson ¶175 **[C2/1/57]**.

[3192] Section O2 above.

[3193] **[A1/6/446]**.

[3194] **[A1/6/228]**.

Source: Mouseinthecourt.co.uk

developing a network of regulated distributors".[3195] However, D1 cannot meet the burden of establishing "value": (i) D1's evidence is unreliable and cannot be accepted at face value; (ii) there is no documentary record of the services to which D1 refers; (iii) D1's comments do not purport to explain why money was paid from LCF to LCM; (iv) D1's explanation cannot justify provision of services twice, i.e. from LCM to LCF, and again from D1 to LCM.

Payments from London Group LLP to D1

S6.19 London Group LLP paid a total of at least £882,000 to D1 between 08.12.17 and 20.04.18.[3196]

S6.20 As explained above in relation to D4, the monies paid from London Group LLP to D1 during this period were entirely funded by monies paid from LCF.

S6.21 As also explained above in relation to D4: (i) the intermediate companies which received funds originating from LCF were all on notice that the monies had been paid out of LCF in breach of fiduciary duty, and (ii) none of those intermediate companies gave value for their receipts.

S6.22 There was no justification for these receipts and D1 has not given any justification for these receipts, other than the 2015 "MOU/SPA",[3197] which cannot be relied upon in order to justify these receipts.[3198] Further, none of the SPA transactions can justify these receipts.

Payments from London Power Consultants to D1

S6.23 London Power Consultants paid a total of at least £195,000 to D1 between 22.05.18 and 07.06.18.[3199]

[3195] Thomson ¶168 **[C2/1/56]** and ¶176 **[C2/1/57]**.

[3196] **[A1/6/449]** - **[A1/6/450]**.

[3197] Thomson ¶177 **[C2/1/57-58]**.

[3198] Section O2 above.

[3199] **[A1/6/479]**.

Source: Mouseinthecourt.co.uk

S6.24 As explained above in relation to D4, the monies paid from London Power Consultants to D1 during this period were entirely funded by monies paid from LCF.

S6.25 As also explained above in relation to D4, London Power Consultants was on notice that the monies had been paid out of LCF in breach of fiduciary duty, and London Power Consultants did not give any value for the receipt of monies from LCF.

S6.26 There was no justification for these receipts and D1 has not sought to provide any justification for these receipts.[3200] Further, neither the MOU/SPA nor the various SPA transactions can justify these receipts for reasons given above.

Payments from LPC to D1

S6.27 LPC paid a total of at least £315,000 to D1 between 12.09.18 and 16.11.18.[3201]

S6.28 As explained above in relation to D4, the monies paid from London Group LLP to D1 during this period were entirely funded by monies paid from LCF.

S6.29 As also explained above in relation to D4: (i) the intermediate companies which received funds originating from LCF were all on notice that the monies had been paid out of LCF in breach of fiduciary duty, and (ii) none of those intermediate companies gave value for their receipts.

S6.30 There was no justification for these receipts and D1 has not given any justification for these receipts, other than the 2015 "MOU/SPA",[3202] which cannot be relied upon in order to justify these receipts.[3203] Further, none of the SPA transactions can justify these receipts.

[3200] Thomson ¶178 **[C2/1/58]**.

[3201] **[A1/6/484]**.

[3202] Thomson ¶179 **[C2/1/58]**.

[3203] Section O2 above.

Source: Mouseinthecourt.co.uk

Payments from Media GPS to D1

S6.31 According to D1's witness statement, he received £646,000 from Media GPS.[3204] The Claimants are content to adopt this statement of his receipts. At least £587,500 can be verified from the available bank statements in the period from 06.07.16 to 11.12.17.[3205]

S6.32 These monies were funded entirely by monies paid from LCF, as explained below, in two ways: (i) LCF made payments to D6, which funded payments to Media GPS; and (ii) monies were paid from LCF to Media GPS directly.

S6.33 **First**, LCF made payments to D6, which funded payments to Media GPS.

S6.34 As explained in further detail below, when monies were paid from LCF to D6, LCF continued to have a beneficial interest in those monies.[3206] As also explained below, D6 was on notice that the monies had been paid out of LCF in breach of fiduciary duty.

S6.35 In turn, D6 made payments to Media GPS in the sum of £403,381.48 between 14.06.16 and 06.09.17.[3207] These payments correspond to the "invoices" submitted by D1 to D6, calculated on the basis of the sum equal to 0.5% of LCF's gross receipts from new bondholders in the previous month.

S6.36 **Second**, LCF made payments to Media GPS directly. Between 25.11.16 and 11.12.17, LCF paid to Media GPS £275,000. Media GPS had no source of monies other than payments deriving from LCF.

S6.37 As a result, Media GPS was funded by a total of £678,381.48 of LCF's monies, with which to fund onward payments to D1 of £646,000.

S6.38 Media GPS was on notice that the monies had been paid out of LCF in breach of fiduciary duty. For this purpose, LCF relies on the facts and circumstances known to

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[3204] Thomson ¶180 **[C2/1/58]**.

[3205] **[A1/6/489]** - **[A1/6/491]**.

[3206] See Section S7 below.

[3207] **[A1/6/513]** - **[A1/6/514]**.

Source: Mouseinthecourt.co.uk

D1. The sole shareholder and director of Media GPS is Ronald Thomson, D1's father.[3208] But D1's knowledge is plainly to be attributed to Media GPS for this purpose: (i) D1 acted and made agreements ostensibly on its behalf and was therefore a *de facto* director or other agent of Media GPS, as D1 explained to D5 from the outset on 14.06.16 ("***As agreed I've raised an invoice*** *for professional fees …*");[3209] (ii) D1 submitted all of the "invoices" on behalf of Media GPS to D6 (thereby acting as an agent of Media GPS); (iii) D1 corresponded with D5 and D6 in connection with making payments to Media GPS;[3210] (iv) third parties recognised that D1 controlled Media GPS and dealt with him ("*Andy's invoice has been paid"*[3211]); and (v) D1 recounts in his witness statement that he made decisions in relation to payments made through Media GPS ("*I did that for two reasons*", "*I intended that that company would vehicle* [sic] *I would use*[3212]). He was clearly a *de facto* director or other agent of Media GPS whose knowledge should be attributed to it on the basis of the usual principles of agency.

S6.39 Media GPS did not give any value for its receipts from LCF. D1 cannot meet the burden of demonstrating that value was provided.

S6.40 In his oral evidence, D1 asserted that the payments to Media GPS were justified because his father carried out proofreading for LCF.[3213] However, this cannot be accepted: (i) D1's oral evidence cannot be accepted at face value; (ii) this explanation is inconsistent with the assertion in D1's witness statement that Media GPS was a payment vehicle for D1, which proceeds on the assumption that monies paid to Media GPS were in fact LCF's monies (but paid "*from LCF through a company called Media GPS*"[3214]); and (iii) there are no contemporaneous documents to corroborate D1's assertions. In any event, Media GPS had notice in the relevant sense.

3208 **[A1/5/90]**.

3209 SUR00026165-0001

3210 SUR00029677-0001; SUR00029693-0001; SUR00029732-0001

3211 SUR00029823-0001

3212 Thomson ¶160 **[C2/1/54]**.

3213 N3.6 above.

3214 Thomson ¶160 **[C2/1/54]**.

Source: Mouseinthecourt.co.uk

S6.41 Equally, Media GPS did not give any value for its receipts from D6. D1 cannot meet the burden of demonstrating that value was provided, and in any event, D1's own evidence is that Media GPS was a payment vehicle for D1.[3215] In any event, Media GPS had notice in the relevant sense.

S6.42 There was no justification for these receipts by D1, and D1's explanations for these receipts cannot be accepted. D1 describes these payments as a "*combination of Christmas bonuses from LFC* [sic] *and consultancy earnings from Surge*".[3216] D1's assertion about Christmas bonuses cannot be accepted:[3217] (i) these sums were not included in LCF's accounts, and are inconsistent with the accounts filed by Ernst & Young for the year ended 30.04.17, which stated that D1 did not receive any remuneration in the previous year ("*Directors' remuneration for the year was £nil (2016: £nil)*");[3218] (ii) these monies were not paid out of LCF's profits, but from bondholder monies received by LCF; (iii) D1 explained in oral evidence that the payments were entirely discretionary,[3219] and were not required to be paid by LCF pursuant to any previous arrangement; and (iv) D1's own evidence is that that he did not have an employment contract with LCF and that his income was paid through the director's loan account, so there was no contractual basis for these "bonuses".[3220]

S6.43 D1's assertion about consultancy payments from D6 cannot be accepted either:[3221] (i) the payments from Media GPS were calculated on the basis of 0.5% of gross new bondholder monies for the previous month, which D1 ultimately accepted in cross-examination,[3222] and therefore had nothing to do with provision of services to D6; (ii) in his oral evidence, D1 was unable to give a consistent explanation of the payments to him from D6, erroneously seeking to describe them as calculated on the basis of D6's revenue on multiple occasions ("*Surge would remunerate because I upskilled Surge as*

[3215] Thomson ¶162 **[C2/1/55]**.

[3216] Thomson ¶180 **[C2/1/57]**.

[3217] N3.6 above.

[3218] **[L1/8/18]**.

[3219] Day 26/page 151/line 22 – Day 26/page 154/line 9 **[A5/26/38]**.

[3220] Thomson ¶157 **[C2/1/54]**.

[3221] P3.163-P3.169 above.

[3222] Day 26/page 159/line 3 – Day 26/page 159/line 16 **[A5/26/40]**; SUR00029677-0001.

Source: Mouseinthecourt.co.uk

well … Media GPS would be paid a percentage of their revenue";[3223] "*That is the revenue Surge receives in the agreement … Paul offered half a per cent of their revenue*"[3224]); (iii) D1's explanation was inconsistent with D5's different explanation based on D1 acting as a consultant for Blackmore,[3225] and not consulting for D6,[3226] which was also implausible. This leaves the Court unable to accept that there was a legitimate explanation for these payments on the evidence available.

S6.44 **Payments from Sands Equity to D1**

S6.45 Sands Equity paid a total of £593,750 to D1 between 19.05.17 and 01.12.17.[3227]

S6.46 As explained above in relation to D4, the monies paid from Sands Equity to D1 during this period were entirely funded by monies paid from LCF.

S6.47 As also explained above in relation to D4: (i) the intermediate companies which received funds originating from LCF were all on notice that the monies had been paid out of LCF in breach of fiduciary duty, and (ii) none of those intermediate companies gave value for their receipts.

S6.48 There was no justification for these receipts and D1 has not given any justification for these receipts, other than the 2015 "MOU/SPA",[3228] which cannot be relied upon in order to justify these receipts.[3229] Further, none of the SPA transactions can justify the receipts.

Assets acquired by D1 with LCF's monies

S6.49 D1 received at least £5,351,707.11 of LCF's monies.

[3223] Day 26/page 158/line 8 – Day 26/page 158/line 11 **[A5/26/40]**.

[3224] Day 26/page 158/line 22 – Day 26/page 159/line 2 **[A5/26/40]**.

[3225] Day 30/page 62/line 11 – Day 30/page 90/line 19 **[A5/30/16]**.

[3226] Day 30/page 90/line 20 – Day 30/page 92/line 25 **[A5/30/23]**.

[3227] **[A1/6/503]**.

[3228] Thomson ¶181 **[C2/1/58]**.

[3229] Section O2 above.

Source: Mouseinthecourt.co.uk

S6.50 All of these monies were received by D1 subject to LCF's equitable interest. For the reasons explained above, the monies were immediately held by D1 on constructive trust for LCF upon receipt by him, by virtue of his continuing fiduciary duties to LCF. In any event, as also explained above, all of those monies are in fact traceable to LCF.

S6.51 LCF is entitled to all of D1's assets which were acquired with these monies, including any monies which may have been mixed with LCF monies.

S6.52 This results from the rules of tracing referred to above. D1's continuing fiduciary duties to LCF mean that LCF is entitled to presume that D1 withdrew or dissipated his own monies (rather than LCF's monies).[3230] Further, when D1 used monies to acquire assets, LCF is entitled to locate its subsisting equitable interest in the monies used by D1 to acquire assets and therefore the asset which was acquired, rather than the dissipated monies.[3231]

S6.53 D1 has not sought to rebut that presumption by seeking to demonstrate that any of his assets was acquired with monies not originating from LCF.

S6.54 In any event, he cannot now do so. D1 accepts that all of his assets were acquired with monies traceable from LCF or mixed with such funds. This is the basis on which D1 expressly consented to the proprietary injunction order which was made against him on 13.07.21 ("*UPON the Respondent accepting that he has no assets that are not directly derived from funds over which the Applicants assert a proprietary claim or that have been mixed with such funds*").[3232]

S6.55 D1 has repeated this concession when relying on the *Marino* jurisdiction, in order to vary the proprietary freezing order in order to permit payments for the purpose of D1's legal expenses. D1's concession was recorded expressly in the order of Mr Justice Miles on 13 October 2023 ("*UPON ... the First Defendant accepting that he has no assets that*

[3230] *Re Hallett's Estate* (1880) 13 Ch D 696 **[S2/6/1]**; Claimants' written opening submissions on the law ¶161 **[A2/2/57]**.

[3231] *Re Oatway* [1903] Ch 356 **[S2/11/1]**; Claimants' written opening submissions on the law ¶163 **[A2/2/57]**.

[3232] **[F3/1/2]**.

Source: Mouseinthecourt.co.uk

are not directly derived from funds over which the Claimants assert a proprietary claim or that have been mixed with such funds"[3233]).

S6.56 As a result, LCF is entitled to presume that D1 only ever used LCF's monies to acquire the assets which he retains. The amount of monies originating from LCF that was received by D1 greatly exceeds the value of the assets which D1 has disclosed.

S6.57 The conclusion which follows is that all of D1's assets were acquired with LCF's monies, and that LCF is beneficially entitled to all of those assets in full.

S6.58 D1's assets are listed in the schedules and affidavits in response the worldwide freezing order made against him on 24.08.20, and the proprietary freezing order made against him on 13.07.21: (i) an asset disclosure schedule dated 28.08.20;[3234] (ii) a first affidavit dated 03.09.20[3235] and its exhibit;[3236] (iii) a second affidavit dated 20.09.21[3237] and its exhibit.[3238]

S6.59 The Claimants therefore invite the Court to declare that D1 holds the assets listed in those schedules on trust for LCF, and that the same should be delivered up to LCF's Joint Administrators.

S7 D5 and D6

D6

S7.1 LCF paid to D6 the total sum of £61,025,702.18, which was paid in the period from 17.03.15 to 07.12.18.[3239]

[3233] **[F3/7/2]**.

[3234] **[N1/1/1]**.

[3235] **[N1/2/1]**.

[3236] **[N1/3/1]**.

[3237] **[O1/6/1]**.

[3238] **[O1/7/1]**.

[3239] **[K0/1, sheet 18]**

Source: Mouseinthecourt.co.uk

S7.2 D6's receipts were the result of the 25% commission, which was paid by LCF to D6. throughout the course of LCF's lifetime. The commission was plainly extravagant and unjustifiable for the reasons already given above.

S7.3 The monies paid by way of commission were paid in breach of fiduciary duty by D1 and D4, as explained above. On normal tracing principles, LCF is entitled to follow and trace its monies unless and until the recipient establishes that they are a *bona fide* purchaser for value without notice.

S7.4 The burden of proof in relation to establishing this rests on D6, and it cannot discharge that onus, in view of D5's knowledge, which is to be attributed to D6 at all material times as noted above.

S7.5 As the Claimants explain in detail at Section Q9 above, at all material times D5 knew of LCF's fraudulent trading. On the basis of all of the same evidence relied upon in that context, D6 was in any event on "notice" at all material times that the monies paid from LCF to D6 had been paid in breach of fiduciary duty.

S7.6 D6 is therefore unable to establish an absence of notice.

S7.7 The overwhelming majority of funds received by D6 originated from LCF.

S7.8 On the evidence presently available, D6's other client (Blackmore) paid the total sum of £8,020,627.28 to D6. However, the presence of other sources of income has no bearing on LCF's proprietary claims, because under the rules of tracing, it will be presumed that D6 dissipated monies from a source other than LCF before it dissipated LCF's monies, which exceed £60 million. As above, LCF is entitled to locate its subsisting equitable interest in the monies held by a recipient which were used ultimately to acquire assets.

S7.9 The relief sought in relation to D6 includes a declaration that all monies received by D6 from LCF were held subject to LCF's equitable interest, and that the Claimants are entitled to the traceable proceeds of all such sums.

Source: Mouseinthecourt.co.uk

S7.10 The destination of monies from D6 outwards is important, because the lion's share of D6's income came from LCF, as D5 accepted in his evidence.[3240]

S7.11 To this end, as the Court is aware the Claimants have obtained a number of bank statements from companies connected with D5 and D6 under the *Bankers Trust* jurisdiction, which were believed to have received funds from D6.

S7.12 The Claimants have analysed the bank statements and prepared line listings which show the destination of payments to these connected companies, including the gross and net payment flows.[3241] This is based on compiling information from bank statements and each entry is based on the assessment of at least one bank statement.

S7.13 This has enabled the Claimants to prepare a schedule which estimated the sums paid to D5 and persons connected with him.[3242] In cross-examination, D5 accepted the broad figures included in that schedule, and that he received in the region of £11 million:[3243]

> 18 Q. We got bank statements for various companies you're
> 19 associated with?
> **20 A. Yes, sir.**
> 21 Q. We have analysed them. Can we go to <A1/15>, please.
> 22 We need to open it in native format. Then we need to go
> 23 to tab 3. We need to get rid of this funny thing in the
> 24 middle. Let's just see if you accept these numbers. If
> 25 you don't, that's fine, we can give your legal team
>
> 2 can tell us. But, broadly speaking, does it look right
> 3 that you had about £715,000 out of Aston Beckworth?
> **4 A. Yes, sir.**
> 5 Q. And about £353,000 out of RPDigitalServices.
> **6 A. Yes, sir.**
> 7 Q. Somewhere in the region of 8.6 from Surge Financial?
> **8 A. Yes, I believe that's now about right, yes.**
> 9 Q. And about 1.4 from Surge Group?
> **10 A. Yes, sir.**
> 11 Q. So the total of 11 million is about right?
> **12 A. Yes, sir.**

[3240] Day 31/page 186/lines 18 – Day31/187/line 5 **[A5/31/47]**

[3241] **[K0/6]**.

[3242] **[A1/15]**.

[3243] Day 31/page 184/line 18 – Day 31/page 185/line 13 **[A5/31/46]**.

Source: Mouseinthecourt.co.uk

S7.14 As matters stand, the Claimants are able to show that D5 personally received certain minimum sums which are traceable to LCF, which are set out below, and the Claimants therefore seek orders against D5 to that extent.

Payments from D6 to D5

S7.15 D6 paid a gross total of at least £5,903,700 to D5 between 30.03.15 and 22.08.22.[3244]

S7.16 When LCF transferred monies to D6, they were received (and at all times held) subject to LCF's prior equitable interest: they were held by D6 on trust for LCF.

S7.17 Consequently, when D6 transferred those monies to D5, D5 received them subject to LCF's prior equitable interest.

S7.18 D5 had notice that the monies had been paid in breach of fiduciary duty, as a result of his participation in and knowledge of LCF's fraudulent trading, which was explained in detail above. He cannot therefore claim to be a *bona fide* purchaser for value without notice. In any event, D5 bears the onus of explaining any value provided for his receipts and has failed to do so.

Payments from Surge Group to D5

S7.19 Surge Group paid a gross total of at least £1,411,768.73 to D5 between 13.03.18 and 25.07.22.[3245]

S7.20 These payments from Surge Group were funded by D6 (and therefore LCF).

S7.21 These payments were funded by D6 directly. In the period to 25.07.22, D6 directly paid Surge Group the gross sum of £11,284,900 (£10,247,690 on a net basis).[3246]

[3244] **[K0/6, sheet 4]**. This figure excludes amount paid by D6 via various third parties for D5's benefit.

[3245] **[K0/35, sheet 2]**

[3246] **[K0/6, sheet 13].**

Source: Mouseinthecourt.co.uk

S7.22 It is does not appear that Surge Group conducted any other business or generated any other income. Payments into Surge Group from D6 represent almost the entirety of its receipts as evident from its bank statements.

S7.23 During the same period (i.e up to and including 25.07.22), other companies connected with D5 and D6 made payments to Surge Group using funds deriving from LCF:

(1) Aston Beckworth paid the net sum of £10,534.25 to Surge Group;[3247]

(2) InfoConnection paid the net sum of £28,600 to Surge Group;[3248]

(3) RP Digital paid the net sum of £136,522.75 to Surge Group;[3249] and

(4) Service Box paid at least the net sum of £638,294.80 to Surge Group.[3250]

S7.24 Surge Group was on notice that the monies had been paid out of LCF in breach of fiduciary duty. For this purpose, LCF relies on the facts and circumstances known to D5, who was a director of Surge Group from 07.07.17 onwards and therefore at all material times.

S7.25 No basis has been suggested on which Surge Group gave value for its receipts from D6, and the same applies to the payment flows between the other D5/D6 connected companies.

Payments from RP Digital to D5

S7.26 RP Digital paid the total of at least £355,950 to D5 between 25.11.15 and 05.02.20.[3251]

S7.27 The monies from RP Digital had been funded by D6.

[3247] **[K0/29, sheet 5].**

[3248] **[K0/31, sheet 1].**

[3249] **[K0/32, sheet 5].**

[3250] **[K0/33, sheet 6]**. The gross sum paid was £877,794.80.

[3251] **[K0/32, sheet 2]**. The total is the same on a gross or net basis.

Source: Mouseinthecourt.co.uk

S7.28 In the period to 05.02.20, D6 directly paid RP Digital the gross total of £19,168,340 (£17,179,703.06 on a net basis). Hence, the payments to RP Digital were directly funded by D6.[3252]

S7.29 During the same period (i.e up to and including 05.02.20), other companies connected with D5 and D6 made payments to Surge Group using funds deriving from LCF:

(1) InfoConnection paid the net sum of £161,400 to RP Digital;[3253]

(2) Service Box paid the net sum of £190,000 to RP Digital;[3254]

(3) Crucial Group paid the net sum of £64,160 to RP Digital;[3255] and

(4) View Property Group paid the net sum of £71,000 to RP Digital.[3256]

S7.30 RP Digital was on notice that the monies had been paid out of LCF in breach of fiduciary duty. For this purpose, LCF relies on the facts and circumstances known to D5, in the following circumstances:

(1) RP Digital had been set up by D5 and his friend Ronak Patel and was controlled by D5 and Steve Jones.[3257]

(2) RP Digital made payments on behalf of D6 which represented aspects of D6's conduct of business, such as payments to Google and Facebook.[3258] Steve Jones was a director of RP Digital, whilst also being a finance director of D6, and Steve Jones did not (to the Claimants' knowledge) have any other occupation.

3252 **[K0/6, sheet 10]**.

3253 **[K0/31, sheet 2]**.

3254 **[K0/33, sheet 7]**.

3255 **[K0/30, sheet 1]**.

3256 **[K0/36, sheet 1]**. This figure accounts for sums received by all of the View Property Group companies.

3257 P2.93 above.

3258 P2.93 above.

Source: Mouseinthecourt.co.uk

(3) RP Digital was involved in making payments for the personal benefit of D5, apparently at the direction of D5, as an alternative to making a payment from D6 directly ("***I had to send Paul another £30k from RPD yesterday for his car*** *so I topped up with £30k from Surge*").[3259] There is no evidential basis for suggesting that D5 provided any value in return for these payments.

(4) RP Digital did not appear to have any other business of its own. It operated as a payment intermediary between D6 and others and was used among other things to make personal payments to D5, Steve Jones, and Aston Beckworth (which was owned by D5 and Kerry Venn).[3260]

S7.31 No basis has been suggested on which RP Digital gave value for its receipts from D6, and the same applies to the payment flows between the other D5/D6 connected companies.

Payments from Aston Beckworth to D5

S7.32 Aston Beckworth paid a gross total of at least £715,388 to D5 between 13.07.16 and 11.11.23.[3261]

S7.33 The monies from Aston Beckworth had been funded by D6.

S7.34 **First,** the principal source of funding for Aston Beckworth was RP Digital, which as above received very considerable sums from D6 directly.

S7.35 RP Digital made payments to Aston Beckworth between 09.06.16 and 03.04.20. In that period, RP Digital paid Aston Beckworth the gross sum of £2,250,900 (£2,192,300 on a net basis).[3262] These payments were all made within the period during which Aston Beckworth was making onward payments to D5.

[3259] P2.100 above.

[3260] P2.94-P2.102 above.

[3261] **[K0/29, sheet 1]**.

[3262] **[K0/32, sheet 1]**.

Source: Mouseinthecourt.co.uk

S7.36 As explained above, RP Digital was on notice that the monies had been paid out of LCF in breach of fiduciary duty.

S7.37 **Second,** a second source of the monies paid from Aston Beckworth to D5 was Service Box.

S7.38 Service Box paid £100,350 to Aston Beckworth in total, between 27.09.19 and 20.07.22.[3263]

S7.39 Service Box was on notice that the monies had been paid out of LCF in breach of fiduciary duty. For this purpose, LCF relies on the facts and circumstances known to D5, who was a director from 25.10.17 until 29.04.19.[3264]

S7.40 In turn, Service Box had received substantial funds from D6: in the period up to and including 20.07.22, D6 had paid Service Box the net sum of £799,000.[3265]

S7.41 **Third**, the payments from Aston Beckworth to D5 were also funded by a small amount of direct payments from D6, which made a net contribution of at least £68,750 in the period up to and including 11.11.23.[3266]

S7.42 Aston Beckworth was on notice that the monies had been paid out of LCF in breach of fiduciary duty. For this purpose, LCF relies on the facts and circumstances known to D5, at all material times (not merely following his appointment as a director from 11.04.18[3267]) in the following circumstances:

(1) Aston Beckworth was a company owned by D5 and Kerry Venn;[3268]

[3263] **[K0/33, sheet 1]**.

[3264] **[A1/5.1/11]**.

[3265] **[K0/6, sheet 11]**.

[3266] **[K0/6, sheet 1].**

[3267] **[A1/5.1/3]**

[3268] SUR00120839-0001

Source: Mouseinthecourt.co.uk

(2) Aston Beckworth made payments on behalf of D6 which represented aspects of D6's conduct of business in some way, at least as at 03.08.17. This appears from the episode in which Ashleigh Newman-Jones was in charge of making various payments in connection with D6 and RP Digital. Ashleigh Newman-Jones was an employee of D6 and was given control of D6's bank account ("*Top it up with £50k (+ vat) invoices from Surge as and when needed*"). One of his instructions was to ensure that Aston Beckworth maintained a positive balance ("***Top up funds to Aston Beckworth when drops below £10k, funds from RP Digital***").

(3) D5 was appointed as a director of Aston Beckworth from 11.04.18. Prior to that time, the sole director of Aston Beckworth was Mark Partridge.[3269] But as above, it appears that Mark Partridge did not control the bank account: it was controlled by Steve Jones, who was the finance director of D6, and who in that capacity was subject to the ultimate direction of D5. In those circumstances, it is likely that D5 was in fact in control of Aston Beckworth's bank account.

(4) Aston Beckworth was involved in making payments for the personal benefit of D5, apparently at the direction of D5. For example, the Claimants believe that these include (i) the purchase of a Breitling watch of £5,850 on 05.09.16,[3270] and (ii) the hire of a Range Rover in the period 09.08.16 to 29.12.16.[3271]

(5) Aston Beckworth did not appear to have any other business of its own. It operated as a payment intermediary, including to make personal payments to D5.

S7.43 No basis has been suggested on which Aston Beckworth gave value for its receipts from D6, and the same applies to the payment flows between the other D5/D6 connected companies. There is no basis for suggesting that D5 gave value to Aston Beckwith: the evidence shows that it was just a way of routing monies to D5.

[3269] **[A1/5.1/3]**

[3270] [**K0/29, sheet 2**]. The payment narrative is "3856 04SEP16 BREITLING BTQ 515 BLUEWATER GB".

[3271] SUR00155035-0001

Source: Mouseinthecourt.co.uk

Assets acquired by D5 with LCF's monies

S7.44 For the reasons explained above, D5 received at least £8,386,806.73 which is traceable to LCF.

S7.45 D5 cannot establish a lack of notice and good faith. On the contrary, for the reasons explained above, D5 was on notice that the funds had been paid out of LCF in breach of fiduciary duty and had blind-eye and actual knowledge of the same.

S7.46 D5 equally cannot establish that he gave value for his receipts and D5 did not give value for his receipts. Accordingly, LCF is entitled to all of D5's assets which were acquired with monies he received which are traceable to LCF.

S7.47 On the balance of probabilities, all of D5's remaining assets are more likely than not to have been acquired using monies traceable to LCF: (i) as explained above, D5 was suffering from financial difficulties in early 2015, prior to his involvement with D6 and LCF; (ii) as a result of his involvement with D6, D5 became personally very wealthy, which would enable him to acquire property and assets; (iii) in the intervening period, it will be presumed that where D5 did dissipate monies, he dissipated his own monies, rather than LCF's monies; and (iv) there is no explanation of any other source of wealth.

S7.48 The Claimants therefore seek a declaration that any assets held by D5 represent the traceable proceeds of LCF's property which LCF is entitled to recover and that such assets should delivered up to LCF's Joint Administrators forthwith.

S7.49 This will include (for example) a property owned by D5 at "The Lakes by Yoo", Plot 6.08, Clearwater Lake, The Lakes, Lechlade. It has title number GR420831 ("**Plot 6.08**").

(1) As appears on the public title entry at the Land Registry, D5 acquired the title to Plot 6.08 following an agreement dated 19.12.2017 with Coln Park Lakes

Source: Mouseinthecourt.co.uk

Construction LLP. The agreement is also referred to in various other documents.[3272]

(2) It was paid for by D5. D5 made a payment of £1,150,977.08 on 19.12.17 to Charles Russell Speechlys,[3273] who were the solicitors acting on behalf of Coln Park Lakes Construction LLP.[3274]

(3) The payment from D5 was funded by D6. On 15.12.17, only a few days before, D6 made a payment of £1,150,000 to D5.[3275] It is plain, therefore, that D5 did not use monies from any other source to acquire Plot 6.08.

(4) In any event, D5 had separately received huge sums from D6 by the time of the purchase of Plot 6.08,[3276] and as explained below, D5 also received sums traceable to D6 from other connected companies.

(5) For the reasons explained above, all receipts by D5 from D6 were subject to LCF's prior equitable interest. When D5 used these sums to acquire Plot 6.08, he did so with LCF's monies. LCF therefore owns the entire beneficial interest in Plot 6.08.

Claim for an account and an inquiry against D5

S7.50 D5 has failed to co-operate with the Claimants in providing disclosure of his assets. Therefore, the Claimants seek an order that D5 give an account of the sums he received in the relevant period that originated with LCF, in order to discover the present whereabouts of any or any further assets acquired with LCF's monies.

S7.51 The Claimants have prepared a schedule of companies connected to D5:[3277] (i) Aston Beckworth Limited; (ii) The Crucial Group Ltd; (iii) InfoConnection Limited; (iv)

3272 SUR00161762-0001; SUR00147829-0001

3273 **[K3(e)(i)/2/68]**; SUR00128929-0001 page 68

3274 SUR00147801-0001; SUR00147802-0001

3275 **[A1/6/523]**. The payment reference is: FT17349CHTQD Outward CHAPS Payment Paul Careless Dividend.

3276 **[A1/6/517]** - **[A1/6/523]**.

3277 **[A1/5.1/2]**.

Source: Mouseinthecourt.co.uk

RPDigital Services Limited; (v) Service Box Group Limited (vi) S J Consulting Services Limited; (vii) Surge Group Plc: (viii) View Property Group Limited; (ix) View Property SPV1 Limited; (xi) View Property SPV2 Limited; (xii) View Property SPV3 Limited; (xiii) View Property SPV4 Limited; (xiv) View Property SPV5 Limited; (xv) View Property SPV6 Limited; (xvi) View Property SPV7 Limited; (xvii) View Property SPV8 Limited; (xviii) View Property SPV9 Limited; and (xix) View Property SPV10 Limited.

S7.52 D5 accepted that he was connected in one way or another with all of these companies.[3278]

S7.53 The companies connected with D5 and D6 made numerous payments to each other. For example, Aston Beckworth was a company which was funded indirectly by D6, because its main source of funds was RP Digital, which in turn received large sums from D6 as above. In total, RP Digital paid to Aston Beckworth a net sum of £2,192,300.

S7.54 D5 also accepted that he had taken money from each of these companies:

> 11 Q. So you decide how much money you wanted to take and then
> 12 work out which companies to take it from?
> **13 A. Steve Jones was the financial director of all of those**
> **14 companies. He had a consultancy called -- so he billed**
> **15 from all of them.**
> 16 Q. You took money via all of them as well, didn't you?
> **17 A. Yes. (…)**

S7.55 D5 acknowledged that the monies which he received had first come from D6:[3279]

> 6 MR JUSTICE MILES: Did the monies that came to you from
> 7 these other companies, like Aston Beckworth, did they
> 8 come from Surge to Aston Beckworth?
> **9 A. Yes, my Lord.**
> 10 MR JUSTICE MILES: So it goes Surge, company, you?
> **11 A. Yes, my Lord.**
> 12 MR JUSTICE MILES: Right.

S7.56 As a result, D5 has accepted that monies paid ultimately from D6 were paid to him from the companies listed above. Assets held by D5 are more likely than not to represent the traceable property of LCF's monies in D5's hands.

[3278] Day 31/page 181/lines 11-17 **[A5/31/46]**.

[3279] Day 31/page 186/lines 6-12 **[A5/31/47]**.

Source: Mouseinthecourt.co.uk

S7.57 However, the Claimants believe that LCF's monies are likely to have been used to acquire further assets of which the Claimants are presently unaware.

S7.58 **First,** from the Claimants' review of the bank statements which they have obtained pursuant to the *Bankers Trust* jurisdiction, the Claimants have identified further transactions from companies connected with D5 which (i) did not directly result in payments to D5, but (ii) may have been used to acquire some item of property or otherwise for the benefit of D5.

S7.59 D5 used D6 for his own personal expenditure. The sum of £728,138 was paid by D6 to SDK Law on 09.11.16[3280] for the purpose of personal property. D5's solicitors have confirmed that this was the use to which those funds were put.[3281]

S7.60 D5 also used D6's monies for luxury items. D6 made payments of £99,000[3282] and £5,000[3283] on 08.09.16 and 09.09.16 which relate to D5's purchase of a Ferrari,[3284] in exchange for his Aston Martin. He later needed a replacement car key,[3285] and to service it,[3286] and decided to use monies from D6 for that purpose too.

S7.61 It is believed that D5 bought another car using D6's funds on 27.04.17, costing £95,000.[3287] He also appears to have bought a luxury watch on 16.11.17 for £4,490.[3288]

S7.62 D5 therefore appears to have used D6's bank account as his personal piggy bank. The lack of a clear distinction between D5's own assets, and those acquired by a company

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3280 **[K0/6, sheet 5]** FT163144R8TJ Outward CHAPS Payment SDK LAW CLIENTS KJN / KENNEDY

3281 **[Q5/3/1]**.

3282 **[K0/6, sheet 5]** FT16252HKNXS Outward Faster Payment TOM HARTLEY CARS P CARELESS LF64OYR

3283 **[K0/6, sheet 5]** FT16253L6XVN Outward Faster Payment Tom Hartley Cars P CARELESS LF64OYR

3284 SUR00041798-0001

3285 **[K0/6, sheet 5]** FT16315VQMN0 Outward Faster Payment Meridien Modena Paul Careless Key; SUR00048811-0001

3286 SUR00053617-0001

3287 **[K0/6, sheet 5]** FT17117DJKMW Outward Faster Payment Synter Cars Ltd P Careless GY64CGZ; SUR00072194

3288 **[K0/6, sheet 5]** WATCHES OF SWITZERLAND LONDON 0461 WOS - Regent Street Groun

Source: Mouseinthecourt.co.uk

he controlled such as D6, also appears from the fact that he paid the proceeds of sale of his Ferrari (some £210,000) into D6's account rather than his own.[3289]

S7.63 Other companies were, the Claimants believe, used for the same purpose.

S7.64 As already noted above, the Claimants believe that Aston Beckworth was used to acquire a Breitling watch costing £5,850, and the hire of a Land Rover in the period 09.08.16 to 29.12.16.[3290] There is also evidence that Surge Group made various payments which appear to be for D5's personal benefit, such as on luxury cars.[3291]

S7.65 The total funds which the Claimants believe was used for D5's personal benefit, whether or not to acquire assets, is £3,527,550.19. This includes £3,394,517.69 from D6[3292] and £127,947.50 from Aston Beckworth.[3293]

S7.66 This figure does not account for a further category of payments which appear to have been used for D5's personal benefit. Further information is considered required in order to determine whether this is the case.

S7.67 As a result of the lack of voluntary asset disclosure from D5, the Claimants require orders to enable them to ascertain the present whereabouts of the traceable proceeds of LCF's monies, whether as the result of expenditure by D5 directly or by companies connected with D5 and D6.

S7.68 **Second**, the Claimants have identified that D5 used monies originating from LCF for other purposes, such as to make payments to his family, including from companies connected with him as above, as well as himself.

3289 SUR00119986-0001

3290 **[K0/29, sheet 2].**

3291 **[K0/35, sheet 3]** BTON EXECUTIVE CAR 600000000337151368 PAUL CARELESS. The payment was made on 16.02.18 for £585.

3292 **[K0/6, sheet 5]**.

3293 [**K0/29, sheet 2]**.

Source: Mouseinthecourt.co.uk

S7.69 These include payments to Andra Careless, who received a total of £350,832.89 from D5 and companies connected with D5 (£217,032.89 from Aston Beckworth,[3294] £29,800 from Service Box,[3295] £2,000 from SJ Consulting,[3296] £1,000 from Surge Group,[3297] and £101,000 from D5 directly.[3298])

S7.70 In the schedule put to D5 in cross-examination, the Claimants also estimated that sums of £106,500 were paid to David Careless, D5's brother, £279,000 to Phil Careless, D5's late father, and £95,891.97 Matthew Hallam, D5's cousin.[3299]

S7.71 In addition, the Claimants continue to discover companies linked to D5 which received monies which are likely to be traceable to D6 (and therefore, LCF). This includes Surge Air Limited, of which D5 is a director along with Steve Jones. Surge Air received monies from the connected companies noted above. It received £191,000 from Surge Group,[3300] £70,000 from Service Box[3301], and £41,500 from RP Digital.[3302]

S7.72 The Claimants therefore seek (i) an order that D5 give an account of the monies he received from LCF and (ii) an inquiry into the present whereabouts of any assets acquired with monies from LCF which passed through D6.

S8 D7 and D9

Payments received by D7

S8.1 As explained above in relation to D6, all of the monies paid by LCF to D6 were received (and held) subject to LCF's equitable interest.

3294 **[K0/29, sheet 3]**.

3295 **[K0/33, sheet 2]**.

3296 **[K0/34, sheet 1]**.

3297 **[K0/35, sheet 4]**.

3298 **[K0/5, sheet 1]**.

3299 **[A1/15]**.

3300 **[K0/35, sheet 6]**.

3301 **[K0/33, sheet 5]**.

3302 **[K0/32, sheet 4]**.

Source: Mouseinthecourt.co.uk

S8.2 D6 made a number of payments to D7. Between 07.09.15 and 01.09.17, D6 paid £224,270 to D7 directly.[3303]

S8.3 LCF is therefore entitled to follow and trace its monies unless and until the recipient establishes that they are a *bona fide* purchaser for value without notice.

S8.4 D7 was also paid the total gross sum of £127,328.06 from Buss Murton's client account from 30.09.13 onwards and throughout 2014.[3304] These are payments from LCF (as SAFE): (i) the Buss Murton client account was held on behalf of LCF (as SAFE), and so represents funds belonging to LCF; and (ii) the only explanation for commission payments to D7 during this period is D7's activities selling SAFE's bonds, and as above, he knew that SAFE was a Ponzi scheme.

S8.5 In his Defence, D7 asserts that he is a *bona fide* purchaser.[3305] But in view of D7's actual knowledge of LCF's fraudulent trading at all material times, as set out in detail above, D7 cannot establish this. In any event, he has failed to adduce any evidence at trial with which to do so and therefore cannot discharge the burden.

S8.6 The Claimants therefore claim declarations that they are entitled to the traceable proceeds of those monies. In view of the lack of visibility over D7's assets, the Claimants seek an account and inquiries.

S8.7 The Claimants therefore seek (i) an order that D7 give an account of the monies he received from LCF and (ii) an inquiry into the present whereabouts of any assets acquired with monies from LCF which passed through D6.

[3303] **[A1/6/525]** - **[A1/6/526]**.

[3304] **[K0/7, sheet 3]**. One payment was made in each of 2015 and 2018.

[3305] Defence of the Seventh and Ninth Defendants ¶34 **[B2/7/13]**.

Source: Mouseinthecourt.co.uk

Payments received by D9

S8.8 D9 is a company of which D7 is the sole director and shareholder, and as above, D7's knowledge is to be attributed to D9 at all material times. D9 was a vehicle for D7 through which he sought to provide services as a sales agent.[3306]

S8.9 D6 made a number of payments to D9. Between 03.12.15 and 29.03.19, D6 paid a gross total of £2,325,281.81 to D9.[3307]

S8.10 As above, D9 asserts that it was a *bona fide* purchaser.[3308] But in view of D7's actual knowledge of LCF's fraudulent trading at all material times, as set out in detail above, which is to be attributed to D9, D9 cannot establish this. In any event, D9 has failed to adduce any evidence at trial with which to do so and cannot discharge the burden.

S8.11 According to its published accounts, D9's net assets did not exceed £71,934 in 28.02.17 or £219,291 in 28.02.18, despite D9 receiving large commission payments from D6. The Claimants infer that D9 paid all of the monies which it received to its sole shareholder and director, D7, shortly after they had been received.

S8.12 The Claimants therefore seek declaratory relief and accounts and inquiries in the same way as in relation to D7 above.

S8.13 The Claimants therefore seek (i) an order that D9 give an account of the monies it received from LCF and (ii) an inquiry into the present whereabouts of any assets acquired with monies from LCF which passed through D6.

S9 D8

S9.1 All of the payments to D8 from companies connected with LCF were funded by monies which are traceable to LCF, as explained further below.

3306 Defence of the Seventh and Ninth Defendants ¶4 **[B2/7/2]**.

3307 [**A1/6/527**] - **[A1/6/533]**.

3308 Defence of the Seventh and Ninth Defendants ¶34 **[B2/7/13]**.

Source: Mouseinthecourt.co.uk

S9.2 None of the connected companies used to fund those payments was a *bona fide* purchaser for value without notice.

S9.3 D8 also cannot establish that he was a *bona fide* purchaser for value without notice. D8 had notice that the monies had been paid out of LCF in breach of fiduciary duty, including as a result of his participation and knowledge in the fraudulent trading of LCF as set out above.[3309] D8 was one of the principal enablers of the fraudulent transactions used to misappropriate monies from LCF, and was an officer of a significant number of the connected companies through which funds were routed.

S9.4 As is also explained below, there is no suggested basis on which D8 gave value for his receipts in each case. D8 has declined to give any evidence at the trial, and therefore, could not discharge the burden of proving that he gave value in any event.

S9.5 The Claimants infer that all monies paid to D8 from connected borrowers are traceable to LCF:

(1) It appears that all of the payments to D8 were on account of his involvement with D2 and D4's activities.

(2) The London Group companies did not have any independent source of income other than LCF, save certain sums in relation to LOG as explained above, and therefore D8 was paid with monies originating from LCF.

Payments from Countrywide to D8

S9.6 Countrywide paid a total of £331,843.48 to D8 between 19.01.18 and 30.12.22.[3310] (Countrywide is the company previously known as "LV Management Limited", under the control of D2, and which was involved in D4's early schemes.) Most of these payments were made from late 2018 onwards.

[3309] Section Q11 above.

[3310] **[K0/8, sheet 3]**.

Source: Mouseinthecourt.co.uk

S9.7 These monies were funded by LCF in five ways, which are set out below in chronological order.

S9.8 **First**, Countrywide was funded by Sands Equity, which was funded by LCF.

S9.9 Sands Equity made payments to Countrywide. Between 14.08.17 and 30.08.17, Sands Equity paid Countrywide the net sum of £50,000.[3311]

S9.10 As explained above in relation to D4, the monies paid to Sands Equity before and during this period were funded by monies paid from LCF.

S9.11 **Second**, Countrywide was funded by London Group LLP, which was funded by LCF.

S9.12 London Group LLP funded Countrywide, and between 01.12.17 and 13.04.18, it paid Countrywide the net sum of £128,000.[3312]

S9.13 As explained above in relation to D4, the monies paid to London Group LLP before and during this period were funded by monies paid from LCF.

S9.14 **Third**, Countrywide was funded by London Power Consultants, which was funded by LCF.

S9.15 London Power Consultants made payments to Countrywide between 07.06.18 and 01.08.18, in the net sum of £100,130.50.[3313] As at the start of these payments, Countrywide had only paid £12,148.44 to D8.

[3311] **[K0/24, sheet 1]**.

[3312] **[K0/18, sheet 1]**.

[3313] **[K0/19, sheet 1]**.

Source: Mouseinthecourt.co.uk

S9.16 As explained above in relation to D4, the monies paid to London Power Consultants before and during this period were funded by monies paid from LCF.

S9.17 **Fourth**, Countrywide was funded by LPC, which was funded by LCF.

S9.18 LPC made payments to Countrywide. Between 31.08.18 to 18.12.18, LPC paid £388,392.08 to Countrywide.[3314]

S9.19 As explained above in relation to D4, the monies paid to LPC before and during this period were funded by monies paid from LCF.

S9.20 **Fifth**, Countrywide was funded by D2, who was funded by LCF.

S9.21 By 04.09.18, Countrywide had paid the sum of £122,211.13 to D8. Between 04.09.18 and 08.01.19, D2 made payments to Countrywide and did so in the net sum of £443,000.[3315]

S9.22 As explained above, D2 received vast sums of money which originated from LCF. From GCEN alone, D2 had been paid a total of £7,708,302.50 from LCF by 04.09.18.[3316]

S9.23 D2 was on notice that the monies had been paid out of LCF in breach of fiduciary duty, as explained above.

S9.24 Finally, Countrywide was also on notice that the monies had been paid out of LCF in breach of fiduciary duty. For this purpose, LCF relies on the facts and circumstances known to D2, who was a director of Countrywide from 31.08.05 until 08.01.19 (and company secretary until 26.05.19).

[3314] **[K0/20, sheet 1]**.

[3315] **[K0/8, sheet 1]**.

[3316] **[K0/11, sheet 2]**.

Source: Mouseinthecourt.co.uk

S9.25 No basis has been suggested on which D8 gave value for his receipts from Countrywide, and D8 has not adduced any evidence to enable him to do so. Further and in any event he was not a *bona fide* purchaser for value without notice.

S9.26 As explained above in relation to D4, the monies paid to LPC before and during this period were funded by monies paid from LCF.

Payments from GRP to D8

S9.27 GRP paid a total of £50,228.35 to D8 between 03.01.17 and 17.08.17.[3317]

S9.28 As explained above in relation to D4, the monies paid to GRP before and during this period were funded by monies paid from LCF.

S9.29 No basis has been suggested on which D8 gave value for his receipts from GRP. Further and in any event he was not a *bona fide* purchaser for value without notice.

Payments from Green Electricity to D8

S9.30 Green Electricity (formerly known as Leisure and Tourism Limited) paid a total of £32,733.50 to D8 between 08.08.19 and 30.07.20.[3318]

S9.31 This was funded by LCF's monies. As explained above in relation to D4, Green Electricity had been funded by LCF. LCF had paid Green Electricity £1,739,155 directly the time that Green Electricity began making onward payments to D8.

S9.32 No basis has been suggested on which D8 gave value for his receipts from Green Electricity. Further and in any event he was not a *bona fide* purchaser for value without notice.

[3317] **[A1/6/55-56]**.

[3318] **[K0/13, sheet 3]**.

Source: Mouseinthecourt.co.uk

Payments from LCCL to D8

S9.33 LCCL paid a total of £191,114.35 to D8 between 13.03.15 and 02.12.16.[3319]

S9.34 As explained above in relation to D4, part way through this period, from 28.08.15 onwards, LCCL was being funded by L&TD. Between 28.08.15 and 02.12.16, L&TD paid to LCCL the net sum of £3,516,024.82.[3320]

S9.35 As also explained above in relation to D4, those payments were funded by LCF, because (based on available bank statements) LCF funded L&TD during this period.

S9.36 LCCL was on notice that monies had been paid out of LCF (including as SAFE), as already explained above. Further, L&TD was also on notice that the monies had been paid out of LCF in breach of fiduciary duty, as explained above.

S9.37 No basis has been suggested on which D8 gave value for his receipts from LCCL. Further and in any event he was not a *bona fide* purchaser for value without notice.

Payments from London Group LLP to D8

S9.38 London Group LLP paid a total of £26,688.69 to D8 between 20.12.17 and 01.05.18.[3321]

S9.39 As explained above in relation to D4, the monies paid to London Group LLP before and during this period were funded by monies paid from LCF.

S9.40 No basis has been suggested on which D8 gave value for his receipts from London Group LLP. Further and in any event he was not a *bona fide* purchaser for value without notice.

[3319] **[K0/15, sheet 4]**.

[3320] **[K0/19, sheet 9]**.

[3321] **[A1/6/457]**.

Source: Mouseinthecourt.co.uk

Payments from LOG to D8

S9.41 LOG paid a total of £103,215.75 to D8 between 07.06.17 and 24.05.18.[3322]

S9.42 As explained above in relation to D4, the monies paid to LOG before and during this period were funded by monies paid from LCF, and indeed LOG was the connected borrower which received the largest share of monies originating from LCF.

S9.43 No basis has been suggested on which D8 gave value for his receipts from LOG. Further and in any event he was not a *bona fide* purchaser for value without notice.

Payments from Sands Equity to D8

S9.44 Sands Equity paid a total of £36,000 to D8 between 07.06.17 and 09.08.17.[3323]

S9.45 As explained above in relation to D4, the monies paid to Sands Equity before and during this period were funded by monies paid from LCF, principally through GRP.

S9.46 No basis has been suggested on which D8 gave value for his receipts from Sands Equity. Further and in any event he was not a *bona fide* purchaser for value without notice.

Waterside Escapes Limited

S9.47 Waterside Escapes Limited paid a total of £7,809.99 to D8 between 24.02.17 and 13.04.22.[3324]

S9.48 It is more likely than not that Waterside Escapes Limited was funded throughout by LCF's monies at all material times: (i) Waterside Escapes Limited is a company connected to D2 and D10: D2 was a director between 26.05.15 and 08.06.15, and his wife D10 was a director from 26.05.15 onwards; (ii) D2 received vast sums which

3322 **[A1/6/476] - [A1/6/477]**.

3323 **[A1/6/510]**.

3324 **[K0/25, sheet 2]**.

Source: Mouseinthecourt.co.uk

originated from LCF by 2017, as set out further above, and was on notice that those sums had been paid in breach of fiduciary duty; and (iii) Waterside Escapes Limited was in fact funded by Green Electricity (which was funded by LCF as above) by at least 09.09.19, and from that date until 16.07.20, Green Electricity paid Waterside Escapes Limited the gross sum of £76,018.09. It is therefore likely that, earlier in time by February 2017, Waterside Escapes was also being funded by LCF.

S9.49 No basis has been suggested on which D8 gave value for his receipts from Waterside Escapes Limited. Further, and in any event, he was not a *bona fide* purchaser for value without notice.

Source: Mouseinthecourt.co.uk

T. KNOWING RECEIPT CLAIMS

T1 Introduction

T1.1 As is described in the preceding section, the Claimants assert proprietary claims against each of D5, D6, D7, D8 and D9 in relation to any monies transferred by LCF to those Defendants (or the traceable proceeds thereof) through breaches by D1 and/or D4 of the duties they owed to LCF.

T1.2 To the extent that LCF's property, or the traceable proceeds thereof, is no longer in the hands of any of the Defendants, the Claimants seek equitable compensation for knowing receipt in an amount equal to the value of the dissipated property.

T1.3 In the alternative, the Claimants also assert such claims against D4 in the event that he did not himself owe fiduciary duties to LCF.

T2 Summary of the law

T2.1 The law on knowing receipt is described in the Claimant's written opening submissions on the law at ¶¶119-133.[3325]

T2.2 A person in receipt of a company's property which has been transferred by a director in breach of fiduciary duty holds that property (or its traceable proceeds) on constructive trust for the company unless that person is a *bona fide* purchaser for value without notice.[3326]

T2.3 The company's proprietary interest in the misapplied property (or its traceable proceeds) persists through any number of transfers unless and until that property is acquired by a *bona fide* purchaser for value without notice. Even then, if the ultimate recipient is involved in a fraudulent scheme, then he will still hold the misapplied property on

[3325] **[A2/2/45]**.

[3326] S2.7-S2.8 above.

Source: Mouseinthecourt.co.uk

constructive trust for the company. This is an exception to the rule that the interposition of a *bona fide* purchaser for value without notice overrides the company's proprietary interest in the misapplied property.[3327]

T2.4 Where the misapplied property, or its traceable proceeds, has been dissipated, a recipient with a sufficient degree of knowledge will be personally liable to the company. Traditionally, the degree of knowledge sufficient to fix a recipient with this personal liability was knowledge falling within the first three categories of knowledge described by Peter Gibson J in *Baden v Société Générale pour Favoriser le Développement du Commerce et de l'Industrie en France SA (Note)* [1993] 1 WLR 509 at [247]-[287]:[3328] (i) actual knowledge; (ii) wilfully shutting one's eyes to the obvious; and (iii) wilfully and recklessly failing to make such enquiries as an honest and reasonable man would make. In other terminology: actual knowledge and blind-eye knowledge.

T2.5 In *Bank of Credit and Commerce International (Overseas) Ltd v Akindele* [2001] Ch 437, the Court of Appeal held (at 455[3329]) that there was a single test of knowledge, namely whether it was unconscionable for the recipient to retain the benefit of the receipt.

T2.6 This test has proved difficult to apply in practice and judges at first instance have often reverted to using the *Baden* classifications as a guide to assist in the application of the *Akindele* test.[3330] However, in *Byers v Saudi National Bank* [2024] 2 WLR 237, Lord Briggs criticised the *Akindele* test for knowledge: "*... so flexible a test of the requirement for knowledge wrongly elevates unconscionability from an equitable objective into an unruly and unpredictable test for liability, with unacceptable adverse consequences for certainty…*".[3331] In light of this, it is likely that the application of the *Baden* classifications will be of increased significance in determining whether a recipient has the requisite degree of knowledge.

[3327] S2.12.-S2.15 above.

[3328] **[S2/46/67]**.

[3329] **[S2/66/19]**.

[3330] See, for example, *Brent London Borough Council v Davis* [2018] EWHC 2214 (Ch) **[S2/138/1]**.

[3331] At [82] **[S2/179/26]**.

Source: Mouseinthecourt.co.uk

T3 Liability of D5/D6

T3.1 As set out above at Section S7 above, the Claimants have identified that D5 received a minimum amount of £8,386,806.73 of LCF's monies or their traceable proceeds and that D6 received £61,025,702.18 of LCF's monies or their traceable proceeds.

T3.2 As is set out at Section Q9 above, at all material times, D5 actually knew, or had blind-eye knowledge of matters constituting breaches of the duties owed to LCF by D1 and/or D4, as set out at Sections R4 and R5 above. D5's knowledge is to be attributed to D6.

T3.3 The Claimants therefore seek an order that, following any necessary accounts or enquiries, D5 and D6 shall each pay equitable compensation between the amounts of LCF's monies (or their traceable proceeds) received by them and the amounts of such monies that remain in each of their hands.

T4 Liability of D7/D9

T4.1 As set out above at Section S8 above, the Claimants have identified that D7 received a minimum amount of £2,676,879.81 of LCF's monies or their traceable proceeds and that D9 received £2,325,281.81 of LCF's monies or their traceable proceeds.

T4.2 As is set out at Section Q10 above, at all material times, D7 actually knew, or had blind-eye knowledge of matters constituting breaches of the duties owed to LCF by D1 and/or D4, as set out at Sections R4 and R5 above. D7's knowledge is to be attributed to D9.

T4.3 The Claimants therefore seek an order that, following any necessary accounts or enquiries, D7 and D9 shall each pay equitable compensation between the amounts of LCF's monies (or their traceable proceeds) received by them and the amounts of such monies that remain in each of their hands.

T5 Liability of D8

T5.1 As set out above at Section S9 above, the Claimants have identified that D8 received a minimum amount of £779,634.11 of LCF's monies or their traceable proceeds.

Source: Mouseinthecourt.co.uk

T5.2 As is set out at Section Q11 above, at all material times, D8 actually knew constituting breaches of the duties owed to LCF by D1 and/or D4, as set out at Sections R4 and R5 above.

T5.3 The Claimants therefore seek an order that, following any necessary accounts or enquiries, D8 shall pay equitable compensation between the amounts of LCF's monies (or their traceable proceeds) received by him and the amounts of such monies that remain in his hands.

T6 Liability of D4

T6.1 In the event that the Court finds that D4 did not owe fiduciary duties to LCF, the Claimants assert a claim against him for knowing receipt of monies paid out in breach of duty by D1.

T6.2 As set out above at Section S5 above, the Claimants have identified that D4 received a minimum amount of £43,428,758.50 of LCF's monies or their traceable proceeds.

T6.3 As is set out at Section Q8 above, at all material times, D4 actually knew of matters constituting breaches of the duties owed to LCF by D1 as set out at Section R4 above.

T6.4 The Claimants therefore seek an order that, following any necessary accounts or enquiries, D4 shall pay equitable compensation between the amounts of LCF's monies (or their traceable proceeds) received by him and the amounts of such monies that remain in his hands.

Source: Mouseinthecourt.co.uk

U. DISHONEST ASSISTANCE CLAIMS

U1 Introduction

U1.1 The Claimants assert that D5, D7 and D8 dishonestly assisted D1 and/or D4 in breaching the fiduciary duties they owed to LCF.

U1.2 The Claimants also claim, in the alternative, that if D4 did not owe fiduciary duties to LCF, then he dishonestly assisted D1 in breaching the fiduciary duties D1 owed to LCF.

U2 Summary of the law

U2.1 The law on dishonest assistance is described at ¶¶134-138 of the Claimants' written opening submissions on the law.[3332] The requirements of dishonest assistance are: (i) a breach of fiduciary duty; (ii) assistance in that breach of fiduciary duty; and (iii) dishonesty.[3333]

U2.2 For assistance to be established, it is necessary to demonstrate that: (i) the defendant's conduct assisted in the breach of fiduciary duty; and (ii) the assistance given was more than minimal. While the loss suffered must be caused by the breach of fiduciary duty, it is not necessary to establish a direct link between the assistance and the loss.[3334]

U2.3 Liability for dishonest assistance is not limited to those persons who assist in the original breach of fiduciary duty; it also applies to those who consciously assist in the continuing diversion of property (including by seeking to conceal the original diversion of assets in breach of duty).[3335]

U2.4 The only mental element required to establish liability for dishonest assistance is that of dishonesty. It is not necessary for the defendant to suspect that the transaction amounts

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[3332] **[A2/2/48]**.

[3333] *Royal Brunei Airlines v Tan* [1995] 2 AC 378 at 384-385 **[S2/50/7]**.

[3334] *Group Seven Ltd v Nasir* [2020] Ch 129 at [110] **[S2/153/49]**.

[3335] *Twinsectra v Yardley* [2002] 2 AC 164 at [107] **S2/72/31]**.

Source: Mouseinthecourt.co.uk

to a breach of trust or fiduciary duty, or to know of the existence of the trust or fiduciary duty.[3336]

U2.5 The question of dishonesty requires ascertaining (i) the actual state of the individual's knowledge or belief as to the facts; and (ii) whether the individual's state of mind is objectively dishonest by the standards of ordinary decent people.[3337]

U2.6 In determining the individual's knowledge, blind-eye knowledge is to be equated with actual knowledge.[3338]

Liability of D5

U2.7 D5 assisted D1 and/or D4 in his breaches of duty by raising monies for LCF through the use of false representations, which monies D1, D4 and others misappropriated. D5's participation in the fraudulent scheme carried on by LCF is described at Section Q9 above.

U2.8 As is described at Section Q9 above, at all material times D5 had actual or blind-eye knowledge of the fraudulent scheme carried on by LCF. His conduct was therefore objectively dishonest.

Liability of D7

U2.9 D7 assisted D1 and/or D4 in his breaches of duty by raising monies for LCF through the use of false representations, which monies D1, D4 and others misappropriated. D7's participation in the fraudulent scheme carried on by LCF is described at Section Q10 above.

[3336] *Madoff Securities International Ltd v Raven* [2013] EWHC 3147 (Comm) at [351] **[S2/118/97]**.

[3337] *Ivey v Genting Casinos UK Ltd* [2018] AC 391 at [74] **[S2/140/26]**.

[3338] *Group Seven Ltd v Nasir* at [59] **[S2/153/31]**.

Source: Mouseinthecourt.co.uk

U2.10 As is described at Section Q10 above, at all material times D7 had actual or blind-eye knowledge of the fraudulent scheme carried on by LCF. His conduct was therefore objectively dishonest.

Liability of D8

U2.11 D8 assisted D1 and/or D4 in their breaches of duty by drafting and, in some cases, backdating documents to conceal the misappropriation of monies by D1, D2, D3 and D4 by LCF. D8's participation in the fraudulent scheme carried on by LCF is described at Section Q11 above.

U2.12 As is described at Section Q11 above, at all material times D8 had actual knowledge of the fraudulent scheme carried on by LCF. His conduct was therefore objectively dishonest.

Liability of D4

U2.13 In the event that the Court finds that D4 did not owe fiduciary duties to LCF, the Claimants assert a claim against him in dishonest assistance in D1's breaches of duty.

U2.14 D4's participation in the fraudulent scheme carried on by LCF is described at Section Q8 above. D4 was the ultimate architect of the scheme and provided assistance in numerous ways, including engaging D6 and causing companies which D4 beneficially owned and controlled via D3 to be used to facilitate and conceal the misappropriation of monies by himself, D1, D2, D3 and others.

U2.15 As is described at Section Q8 above, at all material times D4 had actual knowledge of the fraudulent scheme carried on by LCF. His conduct was therefore objectively dishonest.

Source: Mouseinthecourt.co.uk

V. QUANTUM

V1 Introduction

V1.1 This section sets out the quantum claimed by the Claimants from the Defendants in relation to each of the personal claims.

V2 LCF's net deficit

V2.1 LCF's net deficit is the amount required to pay all outstanding sums due to its creditors. It comprises the costs and expenses of the administration, which are payable before any sums due to creditors, principal due to creditors and interest due to creditors.

V2.2 LCF's creditors comprise its bondholders and the FSCS, to which certain of the bondholder claims are subrogated by reason of the FSCS having paid compensation to those bondholders in a sum of c.£172 million[3339]. All of the bondholder claims are secured claims by virtue of the security LCF granted over the entirety of its assets.[3340]

V2.3 Ms Lloyd filed a witness statement dated 05.03.24 setting out LCF's net deficit[3341], further expenses have been incurred. Ms Lloyd has filed a further witness statement dated 23.05.24 to provide an updated figure.[3342]

V2.4 The net deficit in LCF's administration estate stood at £379,424,529 as at 22.05.24.[3343]

V3 Relevance of arguments on mitigation

V3.1 In their opening submissions, D2/D10 appeared to suggest that C2 and C4 had breached their duties in disposing of certain assets and that shortfalls in the realisations of assets arising from any alleged breaches of duty should not be recoverable from the

3339 **[H1/10/10]**.

3340 **[H1/1/10]**.

3341 [**C1/9/1]**.

3342 **[C1/11/1]**.

3343 **[C1/11.1/2]**.

Source: Mouseinthecourt.co.uk

Defendants. Although D2/D10 have settled the claims made against them, the Claimants address this argument briefly here in case it is adopted by any of the remaining Defendants.

V3.2 The concept of mitigation is irrelevant to proprietary claims. Given that almost all of the remaining assets will be recoverable on a proprietary basis if the Claimants' proprietary claims succeed, any arguments raised by any Defendant regarding mitigation may have very limited (if any) economic impact even if they were to be accepted.

V3.3 Further, as is set out in the Claimants' written opening submission on the law,[3344] insofar as the Claimants' claims are for equitable compensation, then the Claimants are not under any duty to mitigate their losses. It is only where losses arise from clearly unreasonable behaviour that they will not be recoverable because such behaviour is treated as breaking the chain of causation between the defendant's breach of duty and the loss suffered.

V3.4 The argument previously advanced on behalf of D2/D10 (and since seemingly suggested by D1) involves the contention that the administrators of C1 and C3 acted in breach of their duties to those companies. This makes it necessary to consider administrators' duties. An administrator is under a duty to act in the interests of a company's creditors as a whole.[3345] It is also the case that administrators are required to exercise reasonable skill and care in the conduct of the administration (*Re Charnley Davies Ltd (No 2)* [1990] BCC 605, per Millett J at 618[3346]). In the context of assets sales, this duty is "*not an absolute duty to obtain the best price that circumstances permit, but only to take reasonable care to do so; and in my judgment that means the best price that the circumstances as he reasonably perceives them to be permit. He is not to be made liable because his perception is wrong unless it is unreasonable*."[3347]

V3.5 Often administrators will have to balance competing considerations, such as deciding whether to provide further support to a trading business in the hope that this will result

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[3344] At ¶113 **[A2/2/43]**.

[3345] See para 3(2) of Schedule B1 to the Insolvency Act 1986.

[3346] **[S2/42/14-15]**.

[3347] Re Charnley Davies at 618 **[S2/42/14]**.

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in higher realisations in the event of a sale. As a result, it cannot be said that administrators are under a strict obligation to obtain the highest possible price for an asset, because, for example, pursuing a higher price could result in higher costs and so a lower net realisation for creditors. Rather, they are required to take reasonable care to obtain the best obtainable price in the circumstance as they reasonably perceive them to be and to act in the best interests of creditors.

V3.6 The threshold of "unreasonableness" may vary depending on the context: cf the fact that a negligent director may nevertheless be relieved from liability under section 1157 of the Companies Act 2006, which requires the director to demonstrate that he was acting reasonably: see, for example, *Re D'Jan of London* [1994] 1 BCLC 561, per Hoffmann LJ (sitting as a High Court judge) at 564.[3348] A distinction can therefore be drawn between: (i) clearly unreasonable behaviour that breaks the chain of causation between a defendant's wrongdoing and the loss suffered by the claimant; and (ii) a situation where, on close examination, it appears that an administrator has breached his duty to exercise reasonable skill and care in the sale of an asset.

V3.7 A decision that an insolvency practitioner has acted in breach of duty should never be made lightly. It should not be, and is not, the case that in assessing the quantum of loss a trial judge should have to conduct a trial of breach of duty claims. The need to conduct a detailed investigation would contradict the stipulation that conduct required to break the causal chain between behaviour and loss for which equitable compensation is sought must be *clearly* unreasonable. It is necessary for the unreasonableness to be clear without any detailed investigation.

V3.8 That said, there is no evidence whatsoever that C2 and C4 have breached their duties as administrators in the present case. It was clear from the Claimants' evidence, that they have taken a great deal of care to obtain the best outcome for the creditors of LCF and LOG.

[3348] **[S2/48/4]**.

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V3.9 It is not known to what extent any of the remaining Defendants will make any factual arguments on mitigation. The Claimants will address any such arguments, if made, in oral closing submissions and/or by way of supplemental written submissions.

V4 Contribution for fraudulent trading

V4.1 Where a person is found liable for fraudulent trading the court may order them to make such contribution to the company's assets as it thinks proper: section 246ZA(2) of the Insolvency Act 1986.[3349]

V4.2 The relevant law is set out in the Claimants' written opening submissions on the law at ¶¶32-35.[3350] There must be a nexus between the loss caused to the company's creditors and by the fraudulent trading and the contribution ordered.[3351] The starting point is that the size of the contribution is the loss caused to the company's creditors i.e. the net deficiency in the company's administration estate.[3352] Where there is more than one defendant, the court may consider each defendant separately or hold them liable on a joint and several basis.[3353]

V4.3 In the present case, each of D1, D4, D5, D6, D7 and D8 played critical roles in the fraudulent scheme carried on by LCF. Their participation in the fraudulent trading is described at Sections Q7 to Q11 above. Without D1 and D4 there would have been no scheme and no misappropriations of monies. Without D5, D6 and D7, LCF would not have raised any monies and so no misappropriations could have occurred. Without D8, the concealment of the fraudulent trading would have been much more difficult or even impossible to implement without discovery.

V4.4 In these circumstances, D1, D4, D5, D6, D7 and D8 should be jointly and severally liable for the entirety of the net deficiency in LCF's administration estate plus interest as it accrues and the Claimants seek a money judgment in this amount. The Claimants

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3349 **[S1/3/1]**.

3350 **[A2/2/12]**.

3351 *Morphitis v Bernasconi* [2003] Ch 552 at [53] **[S2/75/27]**.

3352 *Re Tradestar Limited* [2018] EWHC 3595 (Ch) at [21] **[S2/143/6]**.

3353 *Re Overnight Ltd* [2010] BCC 796 at [30]-[32] **[S2/103/11]**.

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would of course give credit against this sum for: (i) any sums recovered from the Defendants in relation to their proprietary claims; and (ii) any sums arising from realisations of other assets within the administration estate.

V5 Equitable compensation / damages for breach of duty

V5.1 The principles relating to equitable compensation are set out in the Claimants' written opening submissions on the law at ¶¶109-113.[3354]

V5.2 While common law principles of remoteness and causation do not apply to compensation for breach of fiduciary duty, there must be some causal connection between the breach and the loss suffered.[3355]

V5.3 The principles to be applied to the assessment of quantum of equitable compensation were described by Lord Reed in *AIB Group (UK) Plc v Mark Redler* [2015] AC 1503 at [133]-[136].[3356] In summary:

(1) Where the breach concerns the misapplication of trust property, the model of equitable compensation is to require the trustee to restore the fund to the position it would have been in had the trustee performed his obligation.

(2) The measure of compensation should normally be assessed at the date of trial with the benefit of hindsight.

(3) The foreseeability of loss is generally irrelevant but the loss must flow from the breach of trust.

V5.4 In the present case, the breaches of fiduciary duty of D1, described above at Section R4, and D4, described above at Section R5, resulted directly in LCF being unable to pay its creditors. D1 and D4 should therefore be jointly and severally liable to pay equitable

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3354 **[A2/2/41]**.

3355 *Target Holdings v Redfern* [1996] AC 421 at 434 **[S2/54/14]**.

3356 **[S2/125/42]**.

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compensation in an amount equal to the net deficit in the LCF administration estate plus interest as it accrues. The Claimants would give credit against this sum for: (i) any sums recovered from the Defendants in relation to their proprietary claims; and (ii) any sums arising from realisations of other assets within the administration estate.

V6 Equitable compensation for dishonest assistance

V6.1 A person who dishonestly assists in a breach of fiduciary duty will be liable for all losses which flow from the breach of duty in which they assisted.[3357]

V6.2 It follows that each of D5, D6, D7 and D8 and, in the alternative to the primary claim against him, D4 should be made jointly and severally liable to make LCF whole and so should be ordered to pay an amount equal to the net deficit in LCF's estate less interest. As above, the Claimants would give credit against this sum for: (i) any sums recovered from the Defendants in relation to their proprietary claims; and (ii) any sums arising from realisations of other assets within the administration estate.

V7 Alternative claim

V7.1 The net deficit in the administration estate of LOG is £157,115,338 as at 22.05.24. Interest continues to accrue on this sum.[3358]

V7.2 In relation to the Claimants' alternative claim against D1, D4 and D8 for knowingly participating in the fraudulent trading of LOG, the Claimants seek an order that D1, D4 and D8 be jointly and severally liable to make a contribution equal to the net deficit in LOG's administration estate plus interest. The Claimants would give credit against this sum for: (i) any sums recovered from these Defendants in relation to their alternative proprietary claims; and (ii) any sums arising from realisations of other assets within the administration estate of LOG.

[3357] *Grupo Torras SA v Al Sabah* [1999] CLC 1469 at 1667 **[S2/60/11]**.

[3358] **[C1/11.1/2]**.

Source: Mouseinthecourt.co.uk