

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



CLAIM NO: BG-2024-000191

BEFORE:

BETWEEN:

MANOLETE PARTNERS PLC

Claimant

-and-

MSR PARTNERS LLP

Defendant

**CLAIMANT'S RESPONSE TO THE DEFENDANT'S PART 18 REQUEST
DATED 1 OCTOBER 2024**

The Defendant's Request dated 1 October 2024 is responded to by the Claimant voluntarily, in the spirit of cooperation and without prejudice to the Claimant's contention (and any future contentions it may put forward) that the Defendant is not entitled to much of the information requested at this stage.

In many instances the Request seeks to test the evidence base which is not a proper basis for making a Request under CPR Part 18. Further many of the requests are premature and the Claimant is unable to provide this information with "*the particularity to be relied on at trial*" and "*in each and every respect*" pending disclosure (including of the Defendant's audit file) and expert evidence, which will be known to the Defendant. The Defendant is thereby seeking to prematurely limit and restrict the scope of the Claimant's case, which is not acceptable.

The Defendant holds documents which would enable fuller particularisation to be carried out by the Claimant. It has refused to disclose these at this stage. In the circumstances, the extent and timing of many of the Defendant's requests is unreasonable. The Claimant has foreshadowed that it envisages amending its Particulars of Claim following disclosure and expert evidence. The Defendant has sufficient information to enable it to prepare their case or understand the case they have to meet. However, without prejudice to that position and without limitation (and in effort to avoid unnecessary controversy), the Claimant makes this response without prejudice to any future contentions it may put forward.



Under paragraph 22

Of: "... on 11 July 2018 Lendy was granted full authorisation by the FCA to operate a P2P lending platform, the result among other things of Lendy agreeing to a remediation plan ..."

Request 1

1. Please identify with the particularity to be relied upon at trial these *"other things"*.

Response – Request 1

- 1.1 The 'other things' included Lendy apparently satisfying the FCA's Threshold Conditions in order to be granted Part 4A authorisation. This is in any event a matter for evidence.

Under paragraph 26.1

Of: "In fact the FY2016 and FY2017 financial statements were defective ... in that: They did not give a true and fair view of Lendy's affairs and/or profit as at 31 December 2016 and 31 December 2017 respectively"

And under paragraph 26.2

*Of: "In fact the FY2016 and FY2017 financial statements were defective ... in that: They had not been prepared in accordance with applicable UK accounting standards and in particular FRS 102 in material respects as particularised further below and/or UK Generally Accepted Accounting Practice ("**GAAP**")"*

And under paragraph 26.4

Of: "In fact the FY2016 and FY2017 financial statements were defective ... in that: They included material misstatements which could reasonably have been expected to influence the economic decisions of users taken on the basis of them"

And under paragraph 27

Of: the entirety of the paragraph

Request 2

2. Please state with the particularity to be relied upon at trial each and every respect in which the FY2016 and FY2017 financial statements are alleged to have been materially misstated and/or misleading and/or non-compliant. In each instance please identify the quantum of the alleged misstatement and any text that is said to have been misleading.



In particular, please confirm whether the Claimant's case is confined to the matters stated in paragraphs 26.8 to 26.10 and 27 inclusive or whether the Claimant relies upon any further alleged misstatements, misleading contents and/or non-compliance

Response – Request 2

- 2.1 The Request is premature and also excessively onerous, especially since the Claimant has explicitly stated that it anticipates that it will need to amend its case after disclosure and service of expert evidence. The omission from the FY2016 and FY2017 financial statements of significant accounting policies (including as to why the decision was made to treat Model 2 loans as made on a principal not agency basis); key judgements and material uncertainties as stated in paragraph 26 meant that the financial statements were materially misstated and/or misleading. The accounting policies were fundamental to the planning and preparation of the audit. The Claimant (with the Court's permission) will rely on expert evidence as to the full particulars of the misstatements and their materiality following disclosure in due course.
- 2.2 Notwithstanding the above (and by way of further explanation of that already pleaded, and in the spirit of cooperation (albeit the Defendant is fully aware disclosure of its audit files are required to properly answer this Request)), the Claimant provides the following further particulars of misstatements, misleading contents and/or non-compliances on which it relies.
- 2.3 Financial Statements for FY2016 ("FS2016"):
- 2.3.1 There is no disclosure in FS2016 setting out the judgement made in applying Lendy's accounting policies as to whether Model 1 and Model 2 loans were agency or principal arrangements (as a matter of accounting treatment). The Defendant will have appreciated this was fundamental to the presentation of the financial statements, required by FRS 102 paragraph 8.6. FS2016 also fail to include any accounting policy on the accounting treatment applied when acting as principal or when acting as agent. The Defendant will have appreciated this was fundamental for the same reasons, and required by FRS 102 paragraph 8.6. The fundamental significance of both of these cannot be understated.
- 2.3.2 The policy on revenue recognition in relation to loan arrangement fees states *"loan arrangement fees are recognised on the formation and formal acceptance of each loan agreement"*, which appears to indicate a policy to recognise all revenue from loan arrangement fees under each loan in full at the point of acceptance of a loan. Even if a principal (not agency) basis is applied, it is inappropriate (and inconsistent with section 23 FRS 102) to take revenue from arrangement fees (and therefore profit) in full at the point of acceptance of the loan, and therefore before the entity has fulfilled its obligations under the loan agreement, in circumstances where the entity retains significant risks from the transaction. This is a matter for expert evidence, however the impact on net



assets is that they were significantly overstated (even assuming the principal basis was correct). The Claimant notes the equivalent information is not available in FS2017. The Defendant's audit files are required for the Claimant to properly understand the basis on which the Defendant determined the immediate recognition of arrangement fees was appropriate.

- 2.3.3 Further, the FS2016 state that Lendy was obliged to perform certain tasks in exchange for the arrangement fees that it earned. By way of example, as the Defendant was aware, FS2016 note 19b)ii) states Lendy was active *"during the life of each loan"* referring to continuous monitoring and mitigating *"the risks of arrears development"*. Lendy therefore continued to retain significant risks.
- 2.3.4 The Defendant would or should have been aware the assessment of whether a principal or agent arrangement exists is based on the concept of risk. Had Lendy considered that it did not have *"exposure to the significant risks and rewards"* it would have instead accounted for the arrangement as agent. Although the Defendant has admitted the basis of preparation should have been agency (in respect of Model 2 loans), this is a matter for expert evidence. The Defendant's audit files should confirm why MSR concluded the arrangement was one of principal and whether it was justified through an appropriate analysis of the nature of the arrangement, including any examination of sample contracts which the Defendant undertook. This will need to be contrasted against an expert determination of the accounting basis.
- 2.3.5 The accounting treatment adopted by Lendy (which included recognising interest charged on loans to borrowers as revenue) is inconsistent with the narrative in the strategic report where it is stated on page 3 that *"Revenues are derived from loan fees charged to borrowers both on initial grant of the loan and ongoing fees. The company also charges lenders a fee for early exit"*. Either the narrative in the strategic report is misleading or revenue is therefore misstated.
- (i) In contrast to the position reflected in the strategic report and its references (only) to fees, FS2016 set out the accounting policy for revenue, which, in addition to fees, referred explicitly to interest. The accounting policies for turnover (at page 13 of FS2016) stated *"Interest receivable ... is recognised on the profit or loss for all loans on an accrual basis using the effective interest method. ... where the loans become overdue for repayment, interest income continues to be recognised based on the original effective interest rate with an additional default interest rate of interest added in accordance with the loan agreement."* Note 3 of FS2016 included interest within the breakdown as one of three classes of revenue. This inclusion of interest (standard and default) was therefore either a misstatement



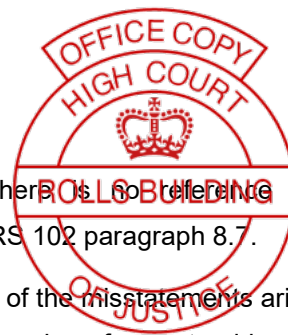
or reflected an inconsistency between the strategic report and the rest of the FS.

- 2.3.6 FS2016 do not include any accounting policy for the stand-alone provision reflected in note 19, which is misleading and a relevant omission. Other than that note, which states *“a provision is made against the potential future default of borrowers”*, there is no reference to any policy setting out when a provision is made, how much is provided, or under what circumstances such a provision is applied or released, which is a misleading omission.
- 2.3.7 FS2016 do not include express reference to and consideration of the nature of Model 1 or Model 2 loans, despite these two types or arrangements forming the business of Lendy and being fundamentally different in nature. Information on whether Model 1 or Model 2 was applying was necessary for a reader to understand the circumstances of Lendy. This was therefore also a misleading omission.
- 2.3.8 The disclosures on related party transactions do not comply with the requirements of section 33 FRS 102 and are misleading in that:
- (a) For the disclosures on both the Wealth Protection International Remuneration Trust (**WPIRT**) and Teal Limited (**Teal**), the information provided is not sufficient to allow a reader to understand *“the potential effect of the relationship on the financial statements”* (paragraph 33.9);
 - (b) The disclosures on WPIRT do not include the amounts outstanding at the year-end (paragraph 33.9);
 - (c) The disclosures on Teal do not include the amounts of the transactions (paragraph 33.9);
 - (d) The disclosed related parties are not complete. By way of example, there is no reference to Lendy Provision Reserve Limited, although the disclosure in note 2 to the cash flow statement confirms that this is a related party.
- 2.3.9 The various disclosures, including the accounting policy, on impairment are inappropriate and contradictory. By way of example:
- (a) *“Lendy Ltd manages the credit risk to its lenders ... In addition a provision fund is maintained to provide lenders with a buffer against credit risk”* (from page 2 of FS2016.) This refers to part (at least) of the risk being borne by the lender, rather than by Lendy. There is no clarification as to how much of any impairment cost would be borne by the lender as opposed to by Lendy. It then refers to a *“provision fund”* (held by a separate legal entity)



but is silent on why Lendy has any liability in the regard or how the amount set aside is calculated.

- (b) *“Determine the provisions for loan losses and/or bad debts. The carrying amount of loans receivable is reduced by an allowance for loan losses which is maintained at a level which, in management’s judgement, is adequate to absorb credit losses inherent in the loan portfolio and in particular to those loans that are in default”* (Page 12, under significant judgements and estimates.) This refers to the carrying amount of the loan being reduced, and is therefore quite separate from (a) above, which refers to a separate “provision fund”. However, it is again silent on how the amount is derived. The inclusion of the phrase *“adequate to absorb credit losses”* is simply not understood by the Claimant.
- (c) *“Basic financial liabilities ... are subsequently carried at amortised cost less any impairment”* (Page 14, under accounting policies.) This refers to “liabilities” and states that the carrying value of liabilities is reduced by impairment. This is again distinct from (a) and (b) above and again it is silent on how the amount of liabilities that should be impaired is derived. It is also unclear why liabilities should ever be impaired.
- (d) *“The directors assess whether there is objective evidence that account receivables have been impaired at each balance sheet date and are required to make best estimates of probable losses with the loan book. The principle (sic) evidence of impairment is arrears on contractual payments. Loans are deemed to be impaired when one of (sic) more contractual monthly payment is in arrears at the month end. Subsequent cash flows are regularly assessed to ensure that the estimates are sufficiently accurate for impairment provision purposes”* (Page 14, under accounting policies.) This only attempts to address when a loan is considered to be impaired and does not address whether, having concluded it is impaired, any impairment provision is required or how much impairment, if any, should be recognised. The accounting policy as phrased therefore only provides information covering when a balance will be “deemed” to be impaired, which has no direct accounting consequence because it provides no information on whether and under what circumstances any impairment provision would be recorded.
- (e) Despite this being an area of significant uncertainty, none of these items provide any information on the circumstances when an impaired provision should be recorded, or how much should be recorded when a loan was considered to be impaired. In fact, it is not disclosed as an area of significant uncertainty in the section dealing with key sources of estimation



uncertainty (page 12), where there is no reference to impairment provisions at all, as required by FRS 102 paragraph 8.7.

2.3.10 It is not possible to quantify the amounts of the misstatements arising from each of the above at this stage and prior to service of expert evidence including as regards the inappropriate accounting policies relating to recognition of revenue from arrangement fees and interest, the classification of the Marshall Islands Payments as expenses of Lendy, and the level of impairment provisions, and without access to MSR's audit files.

2.4 Financial Statements for FY2017 ("FS2017"):

2.4.1 There are many similarities in FS2017 to FS2016. There are also some additional areas, by way of example only at this stage:

- (a) The reclassification of bank balances (page 13) indicates the auditor and Lendy both agreed the treatment in FS2016 was incorrect;
- (b) FS2017 no longer includes reference to Lendy Provision Reserve Limited, which was a disclosure in FS2016;
- (c) In restating the cash position in FS2016, the FS2017 on page 13 refer to *"bank balances of £15,257,036 have been restated for 2016 as client accounts have been removed ..."*, whereas the FS2016 (page 11) refer to *"the cash and cash equivalents held at the year end include a Client Bank Account totalling £14,195,607."* It is not clear why these two amounts should differ by £1million, and at least one appears to have been misstated.
- (d) In other respects, the defects in FS2016 have been repeated in FS2017, however the Claimant reiterates it cannot fully and properly respond to these Requests without disclosure of the Defendant's audit files and prior to service of expert evidence.

2.5 The Claimant notes the request for quantification as to the misstatements but this cannot be answered in advance of expert evidence and in particular is oversimplified. The Defendant will be aware that ISA 320 *"Materiality in planning and performing an audit"* contains various elements of the standard that are relevant to consider, including but not limited to the following, all of which will have to be considered by experts:

- (a) Paragraph 2: *"Judgments about materiality are made in light of surrounding circumstances, and are affected by the size and nature of a misstatement, or a combination of both."*
- (b) Paragraph 2: *"Judgments about matters that are material to users of the financial statements are based on a consideration of the common financial information needs of users as a group. The possible effect of*



misstatements on specific individual users, whose needs may vary widely, is not considered.”

- (c) Paragraph 4: *“the auditor’s determination of materiality is a matter of professional judgment, and is affected by the auditor’s perception of the financial information needs of users of the financial statements.”*
- (d) Paragraph 6: *“The materiality determined when planning the audit does not necessarily establish an amount below which uncorrected misstatements, individually or in the aggregate, will always be evaluated as immaterial. The circumstances related to some misstatements may cause the auditor to evaluate them as material even if they are below materiality.”*

2.6 The level of detail being requested by the Defendant in advance of expert evidence is simply inappropriate and unreasonable. By way of example:

- 2.6.1 The Claimant understands that materiality needs to be assessed both on an item-by-item basis (in other words, a misstatement of a specific transaction or balance could, of itself be material) and in aggregate (in other words, the cumulative effect of various misstatements could be material even when each, individually, was not). This cannot be done effectively prior to disclosure and expert evidence.
- 2.6.2 In addition, it is not just the quantitative aspects of the misstatement that would give rise to it being material. The qualitative aspects, and the nature of the specific misstatement, might also make it so. As an example, a misstatement of the amounts paid to the directors might be material even if significantly below the assessed materiality threshold.
- 2.6.3 Furthermore, narrative disclosures can be material so misstatements or misleading comments can be material even when no amounts are involved directly in the statement (for example, a statement to the effect that there were no issues with going concern).
- 2.6.4 Notwithstanding the above it is apparent that under any reasonable measure of materiality the extent of the misstatements in FS2016 and FS2017 were material. The Claimant’s right to add in any regard to the above at further stages of the litigation are fully reserved and, in any event, following disclosure of the Defendant’s audit files.

Request 3

- 3. Please state with the particularity to be relied upon at trial what the Claimant alleges the financial statements should have reported in relation to each matter identified in answer to Request [2], explaining the basis of the alternative figure / report.

Response – Request 3



- 3.1 The Claimant repeats its Response to Request 2. The request is unreasonable and premature. This is primarily a matter for expert evidence at the appropriate time, including reconstruction of the financial statements for FY2016 and FY2017 on a correct basis.

Under paragraph 26.3

Of: "In fact the FY2016 and FY2017 financial statements were defective ... in that: The information in the Strategic Report and/or the Directors Report was not consistent with the financial statements and/or had not been prepared in accordance with applicable legal standards"

Request 4

4. Please identify with the particularity to be relied upon at trial each respect in which it is alleged that information in the Strategic Report and/or the Directors' Report for FY2016 and FY2017 was not consistent with the financial statements and/or had not been prepared in accordance with applicable legal standards. Please explain in each case (a) the inconsistency alleged, identifying all information in the financial statements and legal standards which is relied upon; and (b) the Claimant's case as to what the Strategic Report and the Directors' Report in each of FY2016 and FY2017 should have reported in order to be consistent with the financial statements and/or comply with applicable legal standards.

Response – Request 4

- 4.1 This calls for evidence. Section 414C of the Companies Act 2006 specifies various requirements, including that the strategic report must contain (a) "a fair review of the company's business" and (b) "a description of the principal risks and uncertainties facing the company". The Claimant's case is that the strategic report within FS2016 did not satisfy either requirement. The Claimant repeats its response to Request 2 in particular and reserves the right to provide further particulars as to the inconsistencies and omissions in the Strategic and Directors' Report following disclosure.

Of: "In fact the FY2016 and FY2017 financial statements were defective ... in that: They included material misstatements which could reasonably have been expected to influence the economic decisions of users taken on the basis of them"

Request 5

5. Please state with the particularity to be relied upon at trial, which "material misstatements" these were.

Response – Request 5



- 5.1 The Request is repetitive and calls for evidence.
- 5.2 Without prejudice to the foregoing the Claimant repeats its Response to Request 2.
- 5.3 The Claimant reserves the right to provide further particulars at the appropriate stage and following disclosure and expert evidence.

Under paragraph 26.5

Of: "In fact the FY2016 and FY2017 financial statements were defective ... in that: They were not in agreement with the relevant accounting records and/or returns and/or full disclosure of directors' remuneration had not been made and/or the Defendant had not in fact received all the information and explanations they required or should have required for their audits in material respects"

Request 6

- 6. Is paragraph 26.5 intended to refer to (a) the allegations in paragraph 27.13 concerning the Marshall Islands Payments; (b) other matters; or (c) both?

Response – Request 6

- 6.1 Both. In relation to the allegation that full disclosure of directors' remuneration had not been made, it is intended to refer to the allegations particularised at sub-paragraphs 27.12 and 27.13.

Request 7

- 7. Please identify with the particularity to be relied upon at trial:
 - a. The accounting records and returns referred to and relied upon.
 - b. The respects in which it is alleged that the financial statements were inconsistent with these records and returns.
 - c. What directors' remuneration is alleged not to have been disclosed.
 - d. How is it alleged that the Defendant should have been aware of this undisclosed remuneration.
 - e. What *"information and explanations"* is it said that the Defendant did not receive that (a) had been required; and/or (b) should have been required?
 - f. To the extent not already explained in answer to Requests **[2 and 3]** above:



- i. All respects (if any) in which it is alleged that the FY2016 and FY2017 financial statements were materially misstated as a result of these matters;
- ii. How it is alleged that the Defendant should have detected these misstatements.

Response – Request 7

7.1 The Defendant is referred to sub-paragraph 18.5 of the Claimant's RDCC in relation to the Marshall Islands Payments. Without prejudice to the foregoing:

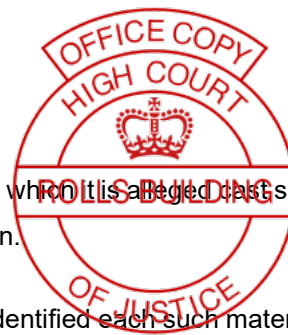
- (a) This is a request for evidence. The Defendant is not entitled at this stage, nor does it require this to understand the case it has to meet;
- (b) This is a request for evidence. The Defendant is not entitled at this stage, nor does it require this to understand the case it has to meet;
- (c) These are already particularised and/or set out in sub-paragraph 18.5 of the RDCC;
- (d) The Defendant is referred to paragraph 27.13.1 of Particulars of Claim. The precise steps which a reasonably competent auditor would have taken, and the likely consequences if those steps had been taken, are a matter for expert evidence at the appropriate time;
- (e) The precise steps which a reasonably competent auditor would have taken, and the likely consequences if those steps had been taken, are a matter for expert evidence at the appropriate time;
- (f) This is a matter for expert evidence. Further Responses 2 and 3 are repeated.

Under paragraph 26.6

Of: "In fact the FY2016 and FY2017 financial statements were defective ... in that: They did not disclose material uncertainties related to events or conditions that in fact cast significant doubt upon Lendy's ability to continue as a going concern for a period of at least 12 months from the date of signature of the FY2016 and/or FY2017 financial statements, and which should have been disclosed"

Request 8

8. Please state with the particularity to be relied upon at trial:
- a. What material uncertainties is it alleged that the financial statements in each of FY2016 and FY2017 should have disclosed, but failed to disclose?



- b. In each case, please identify the event or condition which it is alleged that significant doubt upon Lendy's ability to continue as a going concern.
- c. How is it alleged that the Defendant should have identified each such material uncertainty, and when?

Response – Request 8

- 8.1 This Claimant will adduce expert evidence on these matters at the appropriate stage. However a key material uncertainty was as to whether Lendy would obtain full authorisation from the FCA and/or would continue to have interim permission, and so would be able to continue to trade, as to which the Defendant is referred in particular to paragraphs 11, 19.4, 27.11, 27.12, and 30.2 of the RDCC, and/or made reports under ISA 250B and/or a SAR (as particularised at paragraphs 19.3, of the RDCC) and/or should not have provided an unqualified audit report in respect of either FY2016 or FY2017.

Under paragraph 26.8

Of: "In fact the FY2016 and FY2017 financial statements were defective ... in that: They had not recognised revenue at the fair value of the consideration received."

Request 9

9. Please state with the particularity to be relied upon at trial the respects in which it alleged that revenue was not recognised at the fair value of the consideration received.

Response – Request 9

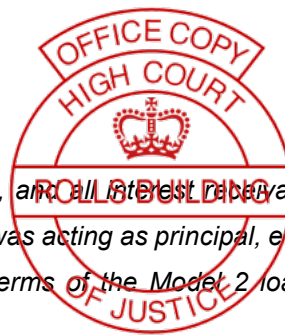
- 9.1 This will be a matter for expert evidence at the appropriate time pending which the Claimant repeats its Response to Request 2.

Under paragraph 27.1

Of: "The accounting policies in the financial statements in FY2016 and FY2017 entirely omitted the key judgment over whether Lendy was acting as principal or an agent in the operation of its business, specifically with regard to its 'Model 1' and 'Model 2' loans"

And under paragraph 27.1.3

Of: "An explicit accounting policy in relation to Model 2 loans in particular was essential, because the Model 2 contractual documents between Lendy and investors, and Lendy and borrowers were all premised on Lendy acting as an agent, with the borrower and the investor as principals. Nevertheless, Lendy's financial statements had been prepared on the basis that all sums received from investors for



the purpose of making loans were treated as Lendy 's assets, and all interest receivable from loans made to borrowers was treated as Lendy's revenue, i.e. as if it was acting as principal, even though this was inconsistent with the FCA's requirements and with the terms of the Model 2 loan agreements themselves."

And under paragraph 27.1.5

Of: "The true position was therefore fundamentally inconsistent and confused, in that Lendy was required by the FCA to act solely as an agent, but its actual conduct of its business was in some ways more characteristic of a principal. This should have been expressly resolved and reflected by the accounting policies directly addressing whether it acted as a principal or agent. Since they failed to do so, the financial statements were highly misleading and could not be approved by the Defendant"

And under paragraph 27.2

Of: "If the assessment was that Lendy was acting as a principal,"

And under paragraph 27.2

Of: the entirety of the paragraph

Request 10

10. Please confirm that it is the Claimant's case that Lendy was acting as agent in respect of the Model 2 loans.

Response – Request 10

- 10.1 The Defendant is referred to the Claimant's RDCC and specifically paragraphs 7 and 18.2.

Request 11

11. Is it the Claimant's case that (i) it was incorrect for Lendy to account for the Model 2 loans on a principal basis and (ii) the Model 2 loans should have been accounted for on an agency basis?

Response – Request 11

- 11.1 The Response to Request 10 is repeated.
- 11.2 If the Defendant is asking the Claimant to specify the basis on which the accounts should have been prepared, that is a matter for expert evidence.
- 11.3 The Claimant notes admissions by the Defendant in its Defence but also notes that the Defendant maintained on at least three occasions the basis of preparation was correct, being



its FY2016 audit (signed 14 February 2018), its FY2017 audit (signed 14 August 2018), and Kelly Sheppard's email to Lendy dated 14 December 2018.

Under paragraph 27.2

Of: "... in Lendy's balance sheets in FY2016 and FY2017 (but not in its income statements), amounts owed by borrowers and amounts invested by investors were netted off, which was characteristic of a relationship of agency, not principal."

Request 12

12. Is it alleged that all amounts owed by Model 2 borrowers and all amounts invested by Model 2 investors were netted off or does the Claimant intend only to refer to some loans? If the Claimant only intends to refer to some loans, please provide full particulars of those loans.

Response – Request 12

- 12.1 By way of correction of paragraph 27.2 of the Particulars of Claim, both the income statement and balance sheet in the FS included the Model 2 loans and interest gross, characteristic of a principal relationship. It is no longer asserted therefore that netting off was part of the accounting treatment.
- 12.2 The appropriate accounting treatment for the Model 2 loans and the disclosures which should have been made in the FS as to the judgments made in determining the accounting treatment will be a matter for expert evidence at the appropriate time.

Request 13

13. Please provide full particulars of (a) the gross sums said to have been netted off; (b) the net balance relating to these amounts; and (c) the dates upon which such netting off is alleged to have occurred.

Response – Request 13

- 13.1 See Response to Request 12 above.

Under paragraph 27.6

Of: "This was not a policy appropriate to a P2P lending platform operator..."

Request 14

14. Please state with the particularity to be relied upon at trial the respects in which it alleged that the policy was inappropriate for a P2P lending platform operator.



Response – Request 14

- 14.1 Paragraph 27.6 is sufficiently pleaded based on the Claimant's understanding that a P2P lending platform operator's revenue does not involve any element of "trade or settlement discount". The Claimant will adduce expert evidence in due course at the appropriate stage if the contention is in issue.

Under paragraph 27.10

Of: "For FY2017 the loan 'provision' at note 13 was £3,715,083, but the basis upon which it was supposedly calculated ... was not logically related to the actual amounts of the liabilities for potential future default of borrowers."

Under paragraph 27.16

Of: "The financial statements failed properly to identify defaulting loans, so there was insufficient doubtful debt provision and material overstatement of revenue."

Request 15

15. Please identify which loans are alleged to have met the FRS102 test of "objective evidence of impairment" as at 3 August 2018.

Response – Request 15

- 15.1 The Request calls for evidence and will be addressed by the Claimant's expert following disclosure of the Defendant's audit files at the appropriate stage and exchange of witness evidence.

Request 16

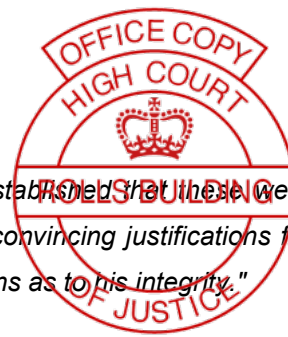
16. For each loan identified in response to the previous Request, please identify what impairment loss should have been recognised in each of Lendy's FY16 and FY17 financial statements, and in respect of any Model 2 loans please explain the basis on which the impairment loss should have been recognised in those financial statements.

Response – Request 16

- 16.1 The Claimant repeats its Response to Request 15 above.

Under paragraph 27.13.2

Of: "... the assertions from Lendy's directors that these entities were not related parties and the relationships were purely commercial were unconvincing and, had appropriate professional scepticism been applied, should have raised questions as to the integrity of the directors. If more searching



enquiries had then been raised, either it would have been established that these were not genuine business transactions, or Mr Brooke would have provided unconvincing justifications for them that in turn would have led to further inquiries and heightened questions as to his integrity."

And under paragraph 27.13.3

Of: "...recording these payments as genuine business expenses gave rise to material misstatements, meant that the financial statements had not been prepared in accordance with FRS 102 and/or that full disclosure of directors' remuneration had not been made and/or that the Defendant had not received all the information and explanations it required for its audits in material respects."

Request 17

17. Please state with the particularity to be relied upon at trial:

- a. To which directors the Claimant is referring.
- b. All respects in which it is alleged that the directors acted without integrity and/or inappropriately both in terms of (i) their actions and the operation of Lendy; and (ii) their statements in the financial statements.
- c. All bases upon which it is alleged that the marketing expenses were not genuine.
- d. In circumstances where the Claimant alleges that Lendy's management relied on the financial statements in relation to the continuation of its business, which of the directors and/or management of Lendy does the Claimant allege were aware of the non-genuine nature of the marketing expenses?

Response – Request 17

17.1 The Defendant is referred to paragraphs 18.5 and 22.2 of the RDCC. In any event, the Request calls for evidence.

17.2 Without prejudice to the foregoing:

- (a) Tim Gordon and Liam Brooke.
- (b) Paragraph 27.13 of the POC to which the Request is directed is only concerned with the Marshall Islands Payments. The apparent breadth of the Request is improper.
- (c) This calls for evidence. Notwithstanding that and without prejudice to paragraph 21.2 of the RDCC, and at a high level:
 - (i) Lendy's peer-to-peer lending platform was hosted via a UK based website. The investments were offered to UK investors in the UK



property bridging and development finance market by an English company;

- (ii) The day before MSR signed off the audit for FY2016, Tim Gordon provided a spreadsheet setting out all of the Offshore Payments made by Lendy over the course of the years 2015, 2016 and 2017. The amounts were disproportionate to Lendy's actual revenues from facilitating loans;
- (iii) There cannot have been any legitimate commercial basis for incurring these significant sums to be paid to an offshore entity based in a known tax haven. It did not require and there was no evidence that it was actually provided with marketing services from a company based in the Marshall Islands (a known tax haven), to a value in excess of £5M over 2 years. It should have been obvious to the Defendant that these were not legitimate business expenses, and they should not have accepted representations from the directors to the contrary and cannot reasonably have relied on such representations in isolation, without any other supporting evidence.
- (d) Tim Gordon and Liam Brooke. Given that the effect of the improper recognition of the Marshall Islands Payments as legitimate business expenses was to reduce the apparent profitability of Lendy, any knowledge by the Directors (or indeed any employee of Lendy) that these were not legitimate business expenses was irrelevant to reliance on either the FS or the Defendant's audit reports. The Defendant is referred to paragraph 22.2 of the RDCC. It will be a matter for expert evidence as to whether the Marshall Islands Payments were made from funds other than client money.

Request 18

18. Please state with the particularity to be relied upon at trial what:

- a. *"more searching enquiries"* and/or *"further inquiries"* that it is alleged that the Defendant should have carried out and in respect of whom such enquiries should have been made.
- b. What additional, reliable information (if any) is it alleged would have been adduced as a result of such enquiries, when and from whom?

Response – Request 18

18.1 Without prejudice to the foregoing:

- (a) The Claimant will adduce expert evidence in due course and at the appropriate stage. For the avoidance of doubt, requesting the Directors to



make representations in the FY2016 and FY2017 Letters of Representation that all relationships with and payments to connected third parties had been disclosed, when the Defendant had the information which it did about the Marshall Islands Payments, which the Defendant knew or should have known had not been disclosed, was not a reasonable or competent means of addressing the patent illegitimacy of these payments.

- (b) Additional enquiries were not made. The Request calls for speculation. In any event, the Claimant's primary case is that the Defendant already had in its possession ample material from which it should have concluded that the Marshall Islands Payments were not legitimate business expenses.

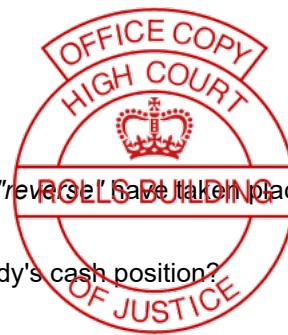
Under paragraph 27.14

Of: "the cash from investors (net £97.8M) was over £10M higher than the cash lent to borrowers (net £87.3M), so that Lendy held over £10M of cash, even though this was in effect "client money", as at 31 December 2016. This falsely presented cash that was held on behalf of investors as if it were Lendy's own cash ... The FY2016 statement of cash flows provided no indication of this mismatch or its consequences. In fact all or a significant part of the apparent rise in cash recorded by Lendy in FY2016 (from £4.5M to £15.3M, or £10.8M) stemmed from this mismatch in client money. Consequently this apparent rise in cash was actually an unsustainable mismatch which would ultimately reverse, especially if business contracted. This should also have been reflected in the going concern assessment, which needed to reflect that at some future point this cash mismatch would reverse".

Request 19

19. Please state with the particularity to be relied upon at trial:

- a. On what basis the cash received from investors, and not included in net loan amounts paid to borrowers, is said to have been all *"in effect 'client money'"*.
- b. Whether the *"mismatch"* alleged is intended to refer to the surplus of investor cash not loaned to borrowers or some other *"mismatch"*? If the Claimant intends to refer to some other *"mismatch"*, please provide full particulars of the same.
- c. How and why it is alleged that any mismatch was *"unsustainable"*.
- d. Why the *"unsustainability"* is said to be consequent on Lendy recording investor money as its own cashflows.
- e. As to the allegation that the mismatch would *"ultimately reverse"*:
 - i. In what respects and sense is this allegation made.



- ii. Why and in what circumstances would this "reverse" have taken place?
- iii. How would the "reverse" have affected Lendy's cash position?
- iv. Why it is alleged that such "reverse" was "inevitable"?
- v. How it is alleged that any such "reverse" would impact on the going concern assessment?

Response – Request 19

19.1 It is unclear why the Defendant raises this Request when it accepted FS2016 required restating to correctly classify the cash position, with FS2017 restating the position wrongly presented in FS2016. The Claimant notes page 11 of FS2016 showed cash and cash equivalents being £15,257,000 as at 31 December 2016. The equivalent position on page 12 FS2017 is £1,061,000, with approximately £14.3m removed, with an explanation given on page 13 that *"bank balances of £15,257,036 have been restated for 2016 as client accounts have been removed from the balances reported. Amounts due to savers have also been restated"*. Consequently, when signing FS2017, MSR agreed that the presentation in FS2016 was wrong, and that these funds were in fact "client monies". Without prejudice to the foregoing and to expert evidence in due course following disclosure:

- (a) Client money refers to money that Lendy held for or received from an Investor, pending payment for something on behalf of that Investor (including advances to a Borrower and retained interest), as opposed to for its own benefit.
- (b) The mismatch refers to any cash balances received from Investors for lending purposes which had not been fully lent on to Borrowers or taken as fees charged by Lendy. This included not only funds received from Investors which had not yet been placed with a Borrower but also the interest netted off from capital sums lent to Borrowers and retained by Lendy to pay interest falling due to Investors over the term of the loans.
- (c) The Particulars of Claim do not state the mismatch itself was unsustainable. They state that *"the apparent rise in cash"* of over £10m was *"actually an unsustainable mismatch"*. The increase to the cash position misleadingly presented in the cash flow statement of over £10m was largely attributable to this mismatch, and it was not plausible that a similar increase to the cash position could be sustained each year.
- (d) The point made in the Particulars of Claim is that the presentation was false and misleading, in that it gave the impression that Lendy held £10M more of cash for its own benefit than was in fact the case.

- (e) As the mismatch reversed the cash flow would be significant in the context of the going concern assessment. This is a matter properly to be addressed in expert evidence.



Under paragraph 27.15

Of: "The presentation of cash inflows and outflows in the cash flow statement also masked the significant outgoings which Lendy was suffering in setting up each loan"

Request 20

20. Please identify with the particularity to be relied upon at trial these "*significant outgoings*" and how it is said that they were masked by the treatment of investor cash as if it were Lendy's cash? Is it alleged that these "*significant outgoings*" were not included in cashflows?

Response – Request 20

- 20.1 The Claimant will adduce expert evidence in due course and at the appropriate stage. However, without prejudice to this, Lendy needed to meet its overheads, running costs and up-front costs in setting up each of the loans, the costs of which were masked by Lendy presenting as its own cash balances which represented sums paid by Investors but not yet lent to Borrowers.

Under paragraph 28.3

Of: "...given Lendy's non-compliance with its permissions to operate from the FCA..."

Request 21

21. Please state with the particularity to be relied upon at trial, in what respects is it alleged that Lendy had not complied with its FCA permissions, and when? Is this an intended reference to the breaches in terms of treatment of interest identified in the 8 September 2017 CASS report or any further breaches? Insofar as the Claimant intends to refer to any further breaches, please provide full particulars of the same.

Response – Request 21

- 21.1 The Claimant relies on all the respects identified in the 8 September 2017 CASS Report. In any event, Lendy had been operating as principal (in respect of M1 Loans) until the FCA pointed out that that was not permitted under an interim permission to operate a P2P lending platform. Further particulars are a matter for expert evidence, and it is unreasonable to request the particularity to be relied on at trial at this stage.



Under paragraph 29

Of: "...the Defendant should have made a report to the FCA under paragraph 12 of ISA 250B, further to its statutory duty to the FCA."

Requests 22

22. Precisely what is it alleged that the Defendant should have reported to the FCA, and when?

Response – Request 22

22.1 The Defendant is referred to paragraph 21 of the RDCC. The Claimant will adduce expert evidence in due course.

Request 23

23. Under which statutory provision is it alleged that the Defendant was required to report to the FCA? How is it alleged that that statutory provision was triggered?

Response – Request 23

23.1 The Defendant is referred to paragraph 29 of Particulars of Claim and paragraphs 5.3 and 21 of the RDCC. Subject to expert evidence, the current Particulars refer to the Marshall Islands Payments. The Defendant should also have been aware that additional duties were imposed on auditors of FCA regulated entities by The Financial Services and Markets Act 2000 (Communications by Auditors) Regulations 2001.

Under paragraph 28.8

Of: "Causing or permitting Lendy to pay unlawful dividends"

And under paragraph 30

Of: "Lendy and/or its management relied on those unqualified financial statements for FY2016 and/or FY2017 in continuing to offer a P2P lending platform, accept sums from investors and make loans to borrowers, and/or in pursuing their application for full permission including making representations as to the financial position of Lendy to the FCA, and in paying the aforesaid dividends."

Request 24

24. Is the reference to "unqualified financial statements" an error and intended to refer to "unqualified audit opinions"?

Response – Request 24



24.1 Yes, it is confirmed that this should refer to unqualified audit opinions, on the FS.

Request 25

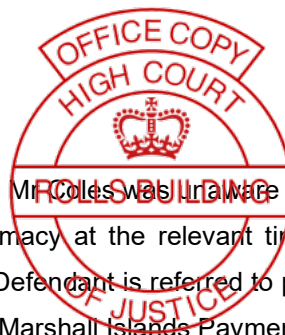
25. Please state with the particularity to be relied upon at trial:

- a. Which individuals are referred to as "*Lendy and/or its management*" and are said to have relied on the unqualified financial statements / audit opinion.
- b. In relation to each individual identified in response to Request (a) above:
 - i. How and when is that individual said to have relied on the audit opinions?
 - ii. Is it alleged that the individual was unaware of the Marshall Islands Payments?
 - iii. Is it alleged that the individual was unaware of Lendy's actual cash outflows and inflows?

Response – Request 25

25.1 The Defendant is referred to paragraph 22.2 of the RDCC, in particular as regards the Directors. Further, but without limitation:

- 25.1.1 Paul Coles, Head of Compliance, relied on the FY2016 audit opinion in pursuing the application to the FCA for full authorisation to operate as an approved P2P lending platform (granted on 11 July 2018), in particular in representing and maintaining to the FCA that Lendy met the Threshold Criteria for full authorisation. He was the conduit of information with the FCA in relation to the key decision which affected Lendy's ability to continue to trade.
- 25.1.2 Mr Coles' role was not to administer the finances of Lendy (which was the responsibility of the finance staff and ultimately the Directors). In any event he had only joined Lendy in October 2017, for the purpose of ensuring that Lendy met regulatory and compliance requirements. As such he was entitled to and did rely on the Defendant signing an unqualified audit opinion on 14 February 2018, which he was being pressed by the FCA to confirm would be provided urgently, and which was a significant concern of FCA in February 2018, as confirming the financial position of Lendy. His role, on receipt of the final audited accounts and audit opinion, was to convey these to the FCA (as part of its oversight and regulatory functions) and as necessary respond to any questions raised by the FCA on the FS or audit. This was significant because the FCA did not itself undertake any audits of the FS of regulated entities but was dependent on the results of audits carried out, in this case re the FS2016 (and subsequently FS2017) by the Defendant.



- 25.1.3 To the best of the Claimant's knowledge, Mr Coles was unaware of the Marshall Islands Payments and/or of their illegitimacy at the relevant time, which was February to July 2018. In any event the Defendant is referred to paragraph 22.2 of the RDCC as to the irrelevance of the Marshall Islands Payments to reliance.
- 25.1.4 To the best of the Claimant's knowledge, Mr Coles was unaware of Lendy's actual cash outflows and inflows, but in any event, these are not relevant to his reliance on the audit opinions.
- 25.2 Pending disclosure, and for the avoidance of doubt, the Claimant's case is not limited to the Directors' and/ or Mr Coles' reliance on the auditor's opinion(s).

Request 26

26. Which individual or individuals are alleged to have made "*representations as to the financial position of Lendy to the FCA*"? Please state with the particularity to be relied upon at trial the contents of those "*representations*" and provide copies of any written representations and/or records of any oral discussions with the FCA pursuant to CPR r.31.14.

Response – Request 26

- 26.1 This is a call for evidence and premature disclosure.

Request 27

27. Please state with the particularity to be relied upon at trial how it is said that the Defendant "*caused or permitted*" Lendy to pay unlawful dividends.

Response – Request 27

- 27.1 The Defendant signed an audit opinion on FS2016 and/or FS2017 which showed Lendy as being profitable in those years which supported the amount of distributable reserves available in accordance with the requirements of the Companies Act 2006. Had the financial statements been drawn on a correct basis there would have been insufficient profits available for distribution as dividends.

Under paragraph 31

Of: "All or some of the defects in the financial statements for FY2016 and/or FY2017 set out at paragraph 27 above and in particular those relating to Lendy's breaches of FCA permissions, the Marshall Islands Payments and/or the going concern assessment, were not ones which could have been rectified in a way which would have permitted the Defendant to provide an unqualified independent auditor's report for FY2016 or FY2017. If the Defendant had not acted negligently and in breach of contract as set out above, ...then Lendy would have been unable to file financial statements for FY2016 or FY2017 at



Companies House which bore an unqualified auditor's report and also should not have paid the dividends that it did."

Request 28

28. Please state with the particularity to be relied upon at trial:

- a. What defects are alleged to have existed in the financial statements for (a) FY2016 and (b) FY2017 as regards Lendy's alleged "*breaches of FCA permissions*".
- b. The basis upon which it is alleged that Lendy would have been unable to pay dividends.
- c. Which specific defects in the financial statements were capable of rectification.
- d. For those defects which the Claimant alleges were capable of rectification:
 - i. How those defects could have been rectified i.e. what should have been reported instead;
 - ii. What chain of events the Claimant alleges would have led to the identification and correction of such defects.

Response – Request 28

28.1 The Defendant is referred to the RDCC. Otherwise, Response 2 above is repeated. The Defendant continues to prematurely request information on matters which are for expert evidence. Without prejudice to the foregoing:

- (a) See Response 21.
- (b) See Response 27.
- (c) This is a matter for expert evidence.
- (d) This is a matter for expert evidence.

Under paragraph 31

Of: "Lendy would not therefore have incurred additional liabilities in particular to investors from the date on which such enforcement action was taken by the FCA"

And under paragraph 32.1

Of: "From 1 March 2018 until Lendy's administration on 24 May 2019 the additional amounts invested by investors totalled £27,552,398. The loss on these additional sums invested is estimated at



£15,599,571. Further, there is a reasonable chance that additional sums could have been recovered from borrowers if administrators had been appointed sooner."

Request 29

29. Please identify with the particularity to be relied upon at trial:
- What these "additional liabilities" are.
 - How and when they are alleged to have been incurred.
 - Whether Lendy has recognised and/or admitted that such liabilities exist in communications with investors. If so, how and when was such recognition given or admission made and please provide any written record of the same pursuant to CPR r.31.14.

Response – Request 29 (a) to (c)

- 29.1 The Claimant refers to paragraph 29 of its RDCC.
- 29.2 The additional liabilities are the liabilities of Lendy to Investors in respect of losses sustained by them in relation to loans or further advances made through Lendy from 2 March 2018. The formulae for the calculation of investors provable losses as unsecured claims in the administration of Lendy is set out in the Order of HHJ Rawlings dated 20 July 2023 a copy of which has been provided to the Defendant ("the Lendy Cost Protocol").
- 29.3 The Joint Administrators will conduct a proof of debt process once they are satisfied that the realisations process is complete, in accordance with the Lendy Cost Protocol. The losses are currently estimated by the Joint Administrators.

Request 30

30. Please state whether all of "*The loss on these additional sums invested*" that is claimed, which is estimated at £15,599,571, is loss suffered by investors on their investments.

Response – Request 30

- 30.1 The Defendant is referred to the RDCC, in particular paragraph 29 and 30.

Request 31

31. Please state with the particularity to be relied upon at trial how it is alleged that the investors' losses are losses suffered by Lendy.

Response – Request 31

- 31.1 The Defendant is referred to the RDCC, in particular paragraph 29 and 30.



Request 32

32. As to the precise figures claimed:

- a. How have the figures of £27,552,398 invested and £15,599,571 lost been calculated?
- b. Does the £15,599,571 figure take account of recoveries made by Lendy from third parties, other than the borrowers? If so, please state precisely what those recoveries are, whom they were made against, when they were achieved and how they have been allocated as against Lendy's alleged losses?

Response – Request 32

32.1 In respect of each (a) and (b), the Defendant is referred to the Response to Request 29 and to the RDCC, in particular paragraphs 29 and 30.

Request 33

33. Please provide proper particulars and documents in support of the Claimant's loss case in the Particulars of Claim and in the Responses to these Requests. The Defendant considers that the Claimant should provide a schedule identifying (at a minimum):

- a. As regards the figure of £27,552,398 and the additional investments comprised within that figure:
 - i. The dates and amounts of those additional investments;
 - ii. Whether each of the additional investments was a Model 2 loan;
 - iii. The identities of the investors;
 - iv. Any other sums included within that figure.
- b. As regards the figure of £15,599,571 and the loss on additional sums comprised within that figure:
 - i. The dates and amounts of the investments that are subject of the loss claimed (or confirmation that these are all of the investments at a. above);
 - ii. The identities of the investors (if the investments are not the same investments as at a. above);
 - iii. The calculation of loss on each investment;



- iv. Any other sums included within the figure of £15,599,571 and an explanation of how those sums have been calculated.
- c. As regards to the loans to borrowers included in the £15,599,571 figure:
- The amount and date of each loan.
 - The amounts and dates of any recoveries against those loans.
 - The loss on each loan and any other data included in its calculation.
 - The identities of the borrower for each loan.
 - Details of any continuing repayment arrangements with the borrowers.
 - Any security against those loans against which future recoveries may be made and the estimated value of such security and likely recovery that may be made.
 - Insofar as any loan was created by an earlier loan or loans being rolled into it, full particulars of any earlier loan(s) including the date on which it was made, the initial advance sum and the sum which was rolled into the later loan.

Response – Request 33

The Defendant is referred to the RDCC, in particular paragraph 30. Part 18 requests should be strictly confined to matters which are reasonably necessary and proportionate to enable the requesting party to prepare their case or understand the case they have to meet. This question falls outside the parameters of Part 18 and in any event is premature. The Defendant has sufficient information to understand the Claimant's case on loss. The Claimant notes this request appears to be tactical and seeks additional information so the Defendant might speculate as to mitigation or avoidance at the outset of the claim. Notwithstanding, the Claimant confirms each of the loans are Model 2 loans as defined in the Lendy Cost Protocol.

Request 34

34. Please state with the particularity to be relied upon at trial how the appointment of administrators at an earlier stage would have resulted in additional sums being recovered from borrowers.

Response – Request 34

- 34.1 The Defendant is referred to the RDCC, in particular paragraph 30.5.3.

Request 35

35. Please identify:



- i. The borrowers from whom the additional sums in question would have been recovered.
- ii. The additional amounts that would have been recovered on each loan.
- iii. Whether the recovery amount would have been repaid by the borrower, or would have been recovered from collateral or guarantee.
- iv. The value of any collateral or guarantee from which recovery would have been made.
- v. Details of the calculation of the additional amounts that would have been recovered on each loan.
- vi. Whether the loan was made by Lendy as agent or as principal.
- vii. The basis on which any loss is claimed in respect of recoveries that would have been made by Lendy as agent.

Response – Request 35

35.1 The Defendant is aware Part 18 requests should be strictly confined to matters which are reasonably necessary and proportionate to enable the requesting party to prepare their case or understand the case they have to meet. The Claimant foreshadowed that (among other things) it has provided this response in the spirit of cooperation and in effort to avoid unnecessary controversy. However, this question plainly falls outside the parameters of Part 18, is excessively onerous at this stage, and in any event is a premature call for evidence.

Under paragraph 32.2

Of: “Total value of the dividends of £1,937,930...”

Request 36

36. Please state with the particularity to be relied upon at trial the basis upon which the Claimant asserts that it can recover the total value of the dividends paid in circumstances where Lendy has made a claim against its directors and other parties which (a) included (at least) a claim in respect of the £861,930 dividend paid on 6 September 2018 to Lendy Group Limited; and (b) settled for £3,400,000 payable by the end of 2023 (of which, the Defendant understands that £2,027,952 had been received by June 2024 with the balance due by 28 June 2024).

Response – Request 36

36.1 The Defendant is referred to the RDCC, in particular paragraphs 37 and 38. It is accepted that credit should be given for sums recovered from the Directors. The Defendant is referred to the Response to Request 38 below.



Request 37

37. Please provide full details of the claim against the Directors, including the pleadings, any witness statements or expert reports and any documentation supporting the alleged reasonableness of the settlement level.

Response – Request 37

- 37.1 This is a premature request for disclosure.

Request 38

38. As to the remaining £1,372,048 due from the Directors as at June 2024:
- a. Has this been recovered?
 - b. Have the administrators have taken enforcement steps in relation to the same? If so, please provide full details of the same. If not, please explain why such steps have not been taken when the sums were originally due for payment by the end of 2023.

Response – Request 38

- 38.1 In respect of (a), the Claimant understands from the Joint Administrators that the balance is outstanding. In respect of (b), the Defendant is referred to the RDCC, in particular paragraph 37.3.

Under paragraph 32.3.

Of: "Increased costs of the administrators; and interest and penalties charged by HMRC due to delayed payment of the corporation tax liabilities."

Request 39

39. Please provide figures for the costs of the administrators, interest and penalties alleged and supporting documents.

Response – Request 39

- 39.1 The Defendant is referred to the RDCC, in particular paragraph 33. In addition, the Defendant will be aware the administration is an ongoing process. In respect of the latter ("*...and interest and penalties charged by HMRC due to delayed payment of the corporation tax liabilities*"), the Defendant will be aware an expert exercise to properly redraw the accounts must first be conducted.

Request 40

40. Please state with the particularity to be relied upon at trial how the Defendant is alleged to have caused Lendy to incur the sums referred to in paragraph 32.3. In particular:



- a. Is it the Claimant's case that an administration would have been avoided on its counterfactual case? If so, how and why?
- b. Is it the Claimant's case that corporation tax would have been paid on time but for the Defendant's alleged breaches? If so, when and how?

Response – Request 40

40.1 The Defendant is referred to the RDCC. It is not the Claimant's case that an administration would have been avoided on its counterfactual case. In respect of corporation tax specifically, the Defendant is referred to paragraphs 18.6.2, 35.3, and 35.4 of the RDCC.

Statement of truth

The Claimant believes that the facts stated in this Response to the Request for Further Information are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

[Redacted signature block]

Steven Mark Wilson for and on behalf of the Claimant

Dated: 17 January 2025

Served by Gateley Plc t/a Gateley Legal, One Eleven, Edmund Street, Birmingham B3 2HJ, Solicitors for the Claimant