



IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

BUSINESS LIST (ChD)

BETWEEN:-

MANOLETE PARTNERS PLC

Claimant

-and-

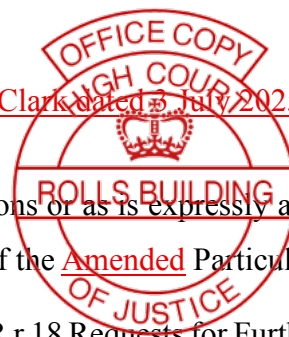
MSR PARTNERS LLP

Defendant

AMENDED DEFENCE AND COUNTERCLAIM

A) INTRODUCTION

1. In this Amended Defence, save where otherwise indicated:
 - 1.1. References to numbered paragraphs are to the paragraphs of the Amended Particulars of Claim dated 12 June 2024 8 July 2025.
 - 1.2. This Amended Defence adopts certain of the definitions and headings utilised in those Amended Particulars of Claim but no admission is made thereby or should be inferred therefrom.
 - 1.3. Where an allegation is “*not admitted*” or the phrase “*no admissions*” is used, it means that the Defendant is unable to admit or deny the allegation and the Claimant is put to proof of the same in accordance with CPR r.16.5(1)(b).
 - 1.4. Documents referred to herein will be relied upon for their full meaning and effect as necessary in the course of these proceedings.



- 1.5. Save insofar as the same consists of admissions or as is expressly admitted herein, the Defendant joins issue with the contents of the Amended Particulars of Claim.
2. On 1 October 2024 the Defendant raised various CPR r.18 Requests for Further Information of the Particulars of Claim (**the Requests**). Responses were provided on 17 January 2025 (the First Responses). The First Responses were inadequate. By application notice dated 14 March 2025, the Defendant applied for various remedies, including strike out and/or reverse summary judgment on the claim against it. That application was eventually compromised as recorded in a consent order sealed by Master Clark on 4 July 2025. Alongside the Amended Particulars of Claim, the Claimant served a Response to the Defendant's Part 18 Request dated 20 June 2025 (**the Second Responses**). Notwithstanding the provision of the Amended Particulars of Claim and the First and Second Responses, the Claimant's case is remains vague and embarrassing for want of particularity in key respects and is impossible for the Defendant properly to understand or to plead to. The Defendant reserves the right to amend or supplement this Amended Defence in the event that further and better particulars are provided.

B) SUMMARY OF AMENDED DEFENCE

3. The claim is denied. In summary:
- 3.1. The Defendant admits to breaches of duty on its part in relation to its audit work concerning the treatment of Model 2 loans in the financial statements as if they were loans in which Lendy acted as principal, the value of at least some Model 1 loans, the Marshall Islands Payments and Lendy's FCA authorisation status.
- 3.2. It is denied that these (or any other) breaches of duty caused Lendy to suffer the alleged or any loss in circumstances in which: (i) the directors of Lendy and other senior employees were aware of Lendy's true position in all regards; and (ii) the true position with regard to communications with the FCA immediately prior to signing the FY2016 financial statements was deliberately and dishonestly concealed from the Defendant. The conduct of Lendy was driven by its directors and their conduct was the sole cause of Lendy's actions as a matter of fact and law.
- 3.3. The Claimant's has wholly failed to plead a properly particularised and intelligible case that the Defendants' breaches caused Lendy to suffer loss is denied. In so far



as the Claimant's case is understood: (a) the claim is largely for losses alleged to have been suffered by investors, rather than Lendy, being investors' claims for loss of capital and interest which the administrators of Lendy agreed to admit in full as claims in the administration without any individual adjudication; (b) losses suffered by Lendy's investors were not caused by the Defendant's conduct as a matter of fact or law; (c) any such losses are in any event outside the scope of the Defendant's duty and/or too remote to be recoverable; and (d) such losses should have been mitigated by action against the borrowers and the Directors. The claims for dividends ~~and alleged expenses and tax liabilities are~~ is also denied.

3.4. Alternatively, the Defendant is entitled to relief under section 1157 of the 2006 Act and/or Lendy's directors were contributorily negligent and any damages award to the Claimant falls to be extinguished or reduced to reflect the same.

C) THE PARTIES AND RELEVANT COMPANIES

4. Save that no admission is made as to the validity of the assignment, paragraph 1 is admitted.
5. Paragraph 2 is admitted. Mr Brooke and Mr Gordon are referred to herein as **the Directors**. At all material times (which commenced with the Defendants' appointment as auditors on 28 September 2017) until Mr Gordon's resignation on 26 July 2018, the Directors were the sole directing minds and controlling force behind Lendy. Their acts and omissions are those of Lendy. Moreover, they were the sole beneficial owners of Lendy, via Lendy Group Limited. From 26 July 2018, Mr Brooke was the sole directing mind and sole beneficial owner of Lendy.
6. As to pParagraph 3:
 - 6.1. The first three sentences are ~~is~~ admitted subject to the terms of the FCA's interim and full authorisations from time to time. The Defendant's understanding is that up to about 1 October 2015 Lendy transacted loans using what was later referred to as its Model 1 loan structure, whereby it acted as principal in entering into agreements with both investors (**Investors**) and borrowers. Thereafter, it ceased to transact Model 1 loans and only transacted loans using its Model 2 loan structure whereby Investors and borrowers (**Borrowers**) directly transacted with each other with



Lendy acting as agent. It continued to manage the existing Model 1 loans (until redeemed).

6.2. Save that no admission is made as to the extent of individual investors' investments, the fourth sentence is admitted.

6.3. The final sentence is admitted.

7. The first three sentences of paragraph 4 are admitted. The fourth sentence is admitted as regards the engagement partner (and it is averred that she did possess such experience, skill and competence) but denied as to any holding out as to the knowledge or experience of other members of the audit team.

D) THE DEFENDANT'S DUTIES

8. Paragraph 5 is admitted. The terms of the Engagement Letter governed and defined the scope and content of the Defendant's obligations to Lendy (both in contract and in tort) in relation to its audit of the financial statements. The Engagement Letter was accompanied by and expressly incorporated the Defendant's Terms and Conditions (**T&C**) which were thereby incorporated into the Contract. Extracts of relevant terms from the Engagement Letter and T&C appear in Schedule 1 hereto.

9. The first two sentences of paragraph 6 are admitted but the third and fourth sentences are not admitted.

10. As to paragraph 7:

10.1. It is admitted that by the time of the Engagement Letter, the Defendant was aware of the FCA's letter of 9 August 2017 which set out key areas of non-compliance by Lendy with rules relating to its application for full authorisation under FSMA, including the lack of any CASS report from an auditor.

10.2. It is admitted that on 8 September 2017 the Defendant completed and submitted a CASS Report (**the CASS Report**) which identified certain non-compliances with the client money rules as at 31 December 2016. This report also identified various changes which had been made subsequently by Lendy so as to achieve compliance.



- 10.3. Following the CASS Report, Lendy commissioned Duff & Phelps Limited (**Duff & Phelps**) to, inter alia, create a remediation plan (**the Remediation Plan**) in relation to the CASS breaches and to execute a full loan book file review.

10.3A The second sentence is admitted. The agreement of the remediation plan with the FCA involving remediation payments to Investors totalling £1,858,646 (**the FCA Remediation Plan**) post-dated Ms Sheppard's signature of the 2016 Audit Report by approximately three months. The Defendant was not informed of the quantum of FCA Remediation Plan until on or after 10 July 2018.

- 10.4. Lendy took other steps to satisfy the FCA's requirements including (inter alia) the appointment and/or recruitment of (a) Paul Coles as CF10, CF11 and Head of Compliance; and (b) Andrew Wawrzyniak as CF10a and Head of Finance and his approval by the FCA as CF10a.

- 10.5. The Defendant was aware at all material times of the need for FCA permission for Lendy to continue to perform its activities; that there was a risk that its application for full authorisation might be refused if Lendy did not address non-compliances identified by the FCA and/or in the CASS Report; and that, if full authorisation was refused, then Lendy might not be able to continue as a going concern.

- 10.6. Save as aforesaid, paragraph 7 is denied.

10A. Paragraph 7A is not admitted.

11. As to paragraph 8, it is admitted that it was an express term of the Contract that the Defendant would perform its audit in accordance with the ISAs in force at the material time. In so far as necessary, the Defendant will rely upon the entirety of the ISAs for their true meaning and effect, in the terms in force at the date of each audit. Sub-paragraphs 8.1 to 8.6 are incomplete summaries of certain ISA provisions. The ISAs as a whole stress that the primary responsibility for the preparation of the financial statements rests with management and those charged with governance. In particular, "*primary responsibility for the prevention and detection of fraud rests with both those charged with governance of the entity and management*" (ISA 240 paragraph 5).

12. Paragraph 9 is admitted.

13. It is admitted that the Defendant agreed in the Contract to report on the matters set out in paragraph 10 in its audit report to Lendy's members as a body.

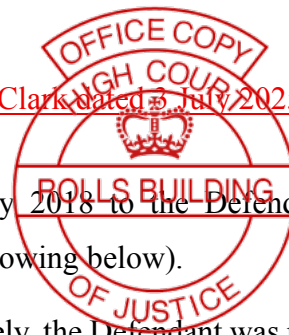


14. As to paragraph 11:

- 14.1. It is admitted that it was an express or implied term of the Contract that in issuing its statutory audit report under the 2006 Act to the members as a body, the Defendant would comply with sections 495 and 498 of the 2006 Act.
 - 14.2. It is denied that the matters pleaded in paragraphs 11.2 to 11.4 inclusive were express terms of the Contract. The obligation referred to in paragraphs 11.2 and an obligation to report to Lendy and its members if it concluded in its audit work that there was material uncertainty as to Lendy's ability to continue as a going concern for at least 12 months from the date of its audit report, are, however, admitted as consequences of the Defendant's appointment as auditor. It is denied that the Defendant was under an obligation in the terms set out in paragraph 11.3.
 - 14.3. In relation to paragraph 11.4, it is admitted that it was a term of the Contract, implied by virtue of section 13 of the Supply of Goods and Services Act 1982 that the Defendant would perform its audit with the reasonable care and skill of a reasonably competent auditor with expertise in relation to financial institutions.
 - 14.4. Save as aforesaid, paragraph 11 (and its sub-paragraphs) is denied.
15. As to paragraph 12, it is admitted that the Defendant owed Lendy a duty of care in tort to perform its audit work with the reasonable care and skill of a reasonably competent auditor with expertise in relation to financial institutions. Such duty was coterminous with that owed pursuant to the Contract. Any higher duty is denied.
16. The Defendant's contractual and tortious obligations were owed to Lendy and its members as a body alone (as opposed to any Investors).

E) THE AUDITS

17. Paragraph 13 is admitted. The Defendant did undertake an audit of the FY2016 financial statements, rather than merely purporting to do so.
18. Paragraph 14 is admitted.
19. In taking all the steps which led to (and included) giving the audit opinions, the Defendant relied upon information provided to it by Lendy, including the contents of a representation



letter signed by both Directors dated 13 February 2018 to the Defendant (**the 2016 Representation Letter**) (see paragraphs 63 and following below).

20. Paragraph 15 is admitted. Dishonestly and deliberately, the Defendant was not informed of the FCA's position by Lendy prior to Ms Sheppard's signature of the 2016 Audit Report or at any time prior to Lendy entering into administration. On the contrary, Lendy dishonestly misrepresented to the Defendant that there had been no further correspondence with the FCA. See further below at paragraph 46.1.
21. Paragraph 16 is admitted.
22. Lendy provided the Defendant with its draft financial statements, draft Strategic Report and draft Directors Report on 10 May 2018.
23. Paragraph 17 is noted and the Defendant repeats its responses to those paragraphs in the pleading above mutatis mutandis in respect of the audit of the FY2017 financial statements.
24. Paragraph 18 is admitted. The Defendant did undertake an audit of the FY2017 financial statements, rather than merely purporting to do so.
25. In taking all the steps which led to (and included) giving the FY2017 Audit opinion, the Defendant relied upon information provided to it by Lendy, including information in and the contents of a representation letter signed by Mr Brooke dated 3 August 2018 to the Defendant (**the 2017 Representation Letter**) (see paragraphs 63 and following below).
26. Paragraph 19 is admitted.
27. As to paragraph 20 and the dividend payments generally:
 - 27.1. The payment of the three dividends referred to in paragraph 20 is not admitted. The Defendant pleads further below in relation to the nature and use of these payments if made.
 - 27.2. It is denied that Lendy relied on the FY2016 and FY2017 financial statements as alleged, if and in so far as dividends were paid, let alone the Defendant's audit report. Without prejudice to the generality of this denial:
 - (1) Lendy knew, by its Directors, of its true financial position at all material times.
 - (2) Lendy knew, by its Directors and Mr Coles, that misrepresentations had been made to the Defendant in order to induce it to sign the audit reports, as set out further below.



(3) Such payments as were made were for the Directors' personal gain.

28. Paragraph 21 is admitted.

29. As to paragraph 22:

29.1. It is admitted that on 11 July 2018, Lendy was granted full authorisation by the FCA to operate a P2P lending platform.

29.2. It is admitted that Lendy had prepared a remediation plan but no admissions are made as to its cost or whether it was performed.

29.3. No admissions are made as to the "*other things*" that the FCA allegedly took into consideration.

29.4. The second and third sentences are not admitted.

30. Paragraph 23 is not admitted.

31. As to paragraph 24:

31.1. The Defendant understands that the Voluntary Requirements Notice was agreed by Lendy on 12 November 2018.

31.2. The second and third sentences are not admitted. The conduct alleged is consistent with the pattern of dishonest behaviour pleaded below.

32. As to paragraph 25:

32.1. The first and second sentences are admitted.

32.2. The third and fourth sentences are not admitted.

32.3. The fifth sentence is admitted.

F) ALLEGED MISSTATEMENTS

33. The Defendant admits that the FY2016 financial statements did not give a true and fair view of Lendy's financial position, and had not been prepared in accordance with the applicable accounting standards, in that:

33.1. The Model 2 loans ought to have been accounted for on the basis that Lendy was acting as agent.



- 33.2. The difference in Lendy's role as between Model 1 loans (where Lendy acted as principal) and Model 2 loans (where Lendy acted as agent) ought to have been identified and its consequences explained in the disclosure of significant accounting policies and/or judgments made by management in relation to income recognition.
- 33.3. The FCA's intimation on 13 February 2018 that it was minded to refuse authorisation gave rise to a material uncertainty about Lendy's ability to continue as a going concern. These intimations post-dated the end of the reporting period by some 14 months but it is admitted that they were relevant subsequent events which existed at the time of signing the FY2016 financial statements and audit report.
34. The Defendant admits that the FY2017 financial statements did not give a true and fair view of Lendy's financial position, and had not been prepared in accordance with the applicable accounting standards, in that:
- 34.1. The Model 2 loans ought to have been accounted for on the basis that Lendy was acting as agent.
- 34.2. The difference in Lendy's role as between Model 1 loans (where Lendy acted as principal) and Model 2 loans (where Lendy acted as agent) ought to have been identified and its consequences explained in the disclosure of significant accounting policies and/or judgments made by management in relation to income recognition.
35. No further admissions are made. Without prejudice to the generality of this non-admission:
- 35.1. Paragraph 26 makes sweepingly general allegations. The Defendant understands paragraph 27 to be intended to particularise Lendy's case (though it is itself deficient and fails to provide proper particulars). If and in so far as paragraph 26 is intended to make allegations that the FY2016 and/or FY2017 financial statements contained material misstatements or were otherwise not in compliance with applicable accounting standards for reasons other than those set out in paragraph 27, the additional allegations have not been adequately pleaded and are not understood.
- 35.2. The criticisms of the financial statements made in paragraphs 27.1-27.6 (noting that the allegation in paragraph 27.2 has now been withdrawn), 27.11, 27.14-27.16 and 27.19 are understood by the Defendant to arise from, and in circumstances in which, the Model 2 loans had been accounted for on the basis that Lendy acted as principal. They fall away in circumstances in which the Defendant admits that that treatment



was wrong, so it is common ground that the Model 2 loans ought to have been accounted for on an agency basis.

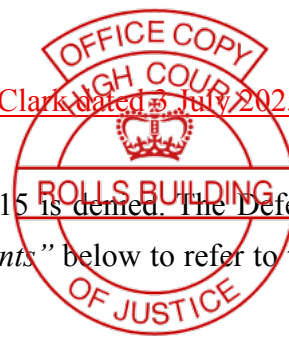
35.3. With regard to the allegations made by paragraphs 27.7-27.10:

- (1) Neither the carrying value of Model 2 loans nor any impairment in respect of them ought to have been included in the balance sheet. If any further, independent allegation is intended as to Model 2 loans which remains relevant in light of the admissions above: (i) it has not been sufficiently pleaded and is not understood; and (ii) any such case will need to explain what figures the Claimant alleges should have been reported, and what disclosure given, in circumstances in which the Model 2 loans were accounted for on an agency basis.
- (2) In relation to the Model 1 loans, the Claimant's pleading criticises the disclosures in notes 13 and 14 but has otherwise failed to explain or advance a case that Lendy's position was materially misstated. It has not set out how it alleges that the Model 1 loans should have been accounted for in the FY2016 and FY2017 financial statements or what disclosure given.

35.4. It is denied that paragraph 27.12 raises any matter which gives rise to a material non-disclosure or misrepresentation. Note 17 disclosed that the Directors were beneficiaries of the contributions to the Wealth Protection International Remuneration Trust (**WPIRT**) and that Lendy had contributed £600,000 to this trust during FY2016. No sums were owed by or to the trust. Note 17 also disclosed the directors' ownership of Teal. If and in so far as it is alleged that there was a material non-disclosure in any regard, that case has not been adequately pleaded.

35.5. In relation to paragraph 27.13:

- (1) If and in so far as the Claimant wishes to allege that the FY2016 and/or FY2017 financial statements were materially misstated because the figures reported included payments to Laurus, Delplane and/or Emporis during the relevant year as expenses, the burden of proof is on it to prove the true nature of these payments. It is not sufficient for it to allege that it was or is "*questionable*" whether any genuine services had been provided. Accordingly, the Amended Particulars of Claim do not plead a proper case that the FY2016 and/or FY2017 financial statements were materially misstated on this ground.



- (2) The relevance of payments made in 2015 is denied. The Defendant uses the definition "*the Marshall Islands Payments*" below to refer to those payments made during each financial year only.
- (3) It is denied that the payments apparently made to Laurus, Deplane and Emporis totalled £6.894m. The source of this figure is not explained in paragraph 27.13 and is not understood.
- (4) In the circumstances, the final two sentences of paragraph 27.13.3 are not admitted. The Claimant's own case appears to be that the payments were improper and liable to be recouped. On that case, they were not directors' remuneration and no question of tax thereon would arise.

35.5A As to paragraph 27.16:

- (1) Paragraphs 35.2 and 35.3 above are repeated regarding the accounting treatment.
- (2) Save that it is denied that the Defendant (as opposed to Lendy) adopted any presentation of the accounts, the second sentence is admitted.
- (3) As to the third and fourth sentences:
 - (a) Lendy acted consistently as if it was agent in respect of the Model 2 loans and it is denied that Lendy took principal risk (rather than voluntarily assuming the same).
 - (b) It is admitted that the state of the loan book affected the risk of adverse claims by investors and/or action by the FCA.
 - (c) Otherwise, it is not admitted that the state of the loan book affected the matters pleaded therein. The Claimant is required to prove the alleged effect and extent thereof including where it is alleged that the alleged effect would have appeared in Lendy's accounts so as to have the alleged effects.
- (4) The fifth sentence is admitted as a generality. This sentence is so vague as to be irrelevant to the issues in this litigation.

35.6. In relation to paragraphs 27.17 and 27.18:

- (1) It is admitted that the FY2016 financial statements were significantly late and did not account for interest and/or penalties arising from the delayed payment of corporation tax.



- (2) It is admitted that the FY2017 financial statements disclosed that the 2016 corporation tax return had still not been submitted and that no tax had been paid in 2017.
- (3) The burden of proof is on the Claimant to quantify the figures for corporation tax, interest and penalties which, on its case, should have been accounted for within the reported figures for FY2016 and FY2017. It is not sufficient for the Claimant to say that these sums were “*probably*” material. Lendy must plead and prove whether penalties had in fact been imposed by HMRC and, if so, when and in what amount; and it must prove how much was due by way of interest as at each year end.

35.7 As to paragraph 27.20:

- (1) It is denied that the Defendant (as opposed to Lendy) approved the presentation of the accounts on a going concern basis.
- (2) As to sub-paragraph 27.20.1, paragraph 35.5 above is repeated. Further and in any event, it is denied that any integrity questions relating to the Directors necessarily impacted upon whether Lendy could properly present its accounts on a going concern basis.
- (3) As to sub-paragraph 27.20.2, paragraph 35.5 above is repeated. Accordingly, it is denied that the Marshall Islands Payments created likely tax consequences which would have rendered Lendy insolvent.
- (4) As to sub-paragraph 27.20.3:
 - (a) The pleading does not distinguish between the allegations of knowledge as at the time of the Defendant’s signature of the FY 2016 and FY 2017 Audit Reports.
 - (b) As at the time of the Defendant’s signature of the FY 2016 Audit Report, it is denied that the Defendant was or ought to have been aware of: (i) the agreed quantification of payments to be made under the FCA Remediation Plan and/or the fact that payment had not been made by December 2018; (ii) the alleged liability to Simmons & Simmons LLP (which it appears relates to invoices dating (1) only shortly before the end of Lendy’s FY 2017 and (2) in Lendy’s FY 2018, and which were only pursued in earnest



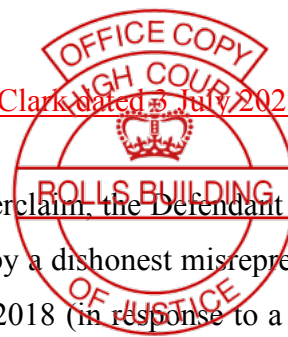
from October 2018 onwards); or (iii) the quantum of the alleged tax liability.

(c) As at the time of the Defendant's signature of the FY 2017 Audit Report, it is denied that the Defendant was or ought to have been aware of (i) the fact that payment had not been made under the remediation plan by December 2018; (ii) the alleged liability to Simmons & Simmons LLP (which it appears relates to invoices dating (1) only shortly before the end of Lendy's FY 2017 and (2) in Lendy's FY 2018, and which were only pursued in earnest from October 2018 onwards); or (iii) the quantum of the alleged tax liability. Furthermore, based on the 12-month cashflow provided to the Defendant on 10 July 2018 it appeared that Lendy could discharge the payments due under the FCA Remediation Plan.

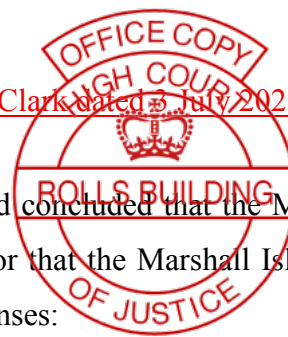
G) ALLEGED BREACHES

36. The Defendant admits that its work in relation to the FY2016 and FY2017 audits was in breach of its contractual and tortious obligations in the following respects, and to the following extent:

- 36.1. Model 2 loans: It is admitted that the Defendant should have identified, but failed to identify, that accounting for the Model 2 loans on the basis that Lendy acted as a principal was inconsistent with the substance of the transaction and, therefore, with FRS 102.
- 36.2. Impairment of Model 1 loans: It is admitted that the Defendant did not obtain sufficient appropriate audit evidence in relation to the value of at least some Model 1 loans and as to whether any impairment was required, and if so in what amount.
- 36.3. Marshall Islands Payments: The Defendant obtained external confirmations (by letters dated 1 and 6 February 2018 from Conduit Asset Management Limited (**Conduit**)) of the sums paid during FY2016 and that the Directors were not beneficial owners and had no control over any of Laurus, Deplane and Emporis. It is admitted, however, that the Defendant failed to obtain sufficient appropriate audit evidence of the purpose of the payments or the services rendered and failed to exercise adequate professional scepticism. For the avoidance of doubt, it is not admitted that the FY2016 or FY2017 financial statements were materially misstated by reason of the Marshall Islands payments: paragraph 35.5 above is repeated.



- 36.4. FCA authorisation: As pleaded in the Counterclaim, the Defendant was induced to sign the FY2016 and FY2017 audit reports by a dishonest misrepresentation made by Mr Gordon by email dated 14 February 2018 (in response to a query from the Defendant seeking an update as to the FCA position), which deliberately and intentionally concealed the FCA's intimation on 13 February 2018 that it was minded to refuse authorisation and led the Defendant to believe that the FCA was likely to grant full authorisation in the near future. It is admitted, however, that (other than in respect of Lendy's compliance with CASS rules) the Defendant failed to obtain sufficient appropriate audit evidence and failed to exercise adequate professional scepticism in that it failed to give adequate consideration during the course of the FY2016 and FY2017 audits to whether regulatory non-compliances identified by the FCA in the course of prior correspondence or by Duff & Phelps in its report on compliance dated 25 January 2018 had been addressed by Lendy.
37. As to paragraph 28.9, it is admitted that the Defendant did not disclose its audit files to Lendy's administrators. It is denied that Lendy's Administrators and/or the Claimant were, or are at the time of pleading, entitled to sight of the Defendant's audit files.
38. If and in so far as Lendy intends to allege breaches which go beyond the admissions made above, it has wholly failed to plead proper particulars of its case.
39. Save as aforesaid, paragraph 28 is denied.
40. Paragraph 29 is denied. Without prejudice to the generality of this denial:
- 40.1. Paragraph 29 alleges that the Defendant should have made "*a report*" to the FCA without identifying what should have been reported.
- 40.2. The Amended Particulars of Claim do not allege that the Marshall Islands Payments were in some way fraudulent or improper, contrary to the assumption that may be implicit in paragraph 29. If Lendy wishes to advance such a case, it must be squarely pleaded and proper particulars given in the Amended Particulars of Claim.
- 40.3. The Defendant denies that it should have uncovered fraud or impropriety relating to these payments if it had conducted proper audit work. If the payments were fraudulent or improper, it is to be inferred that the Directors would have concealed their true nature from the Defendant by whatever means were necessary.



40.4. Further or alternatively, if the Defendant had concluded that the Marshall Islands Entities appeared to be related parties, and/or that the Marshall Islands Payments were not in respect of genuine business expenses:

- (a) The Defendant would have reported its concerns to Mr Coles in the first instance.
- (b) Whether or not the Defendant would subsequently have issued either a qualified or an adverse audit report, or issued a report to the FCA, or resigned, or would have taken another approach, is dependent on: (i) precisely what had been uncovered; and (ii) how events would have subsequently unfolded in that eventuality, including matters relating to continuity of Lendy's management and/or whether Lendy would have revised its draft accounts. The Claimant has failed to explain its case on any of these points.
- (c) The Defendant accordingly does not admit the third sentence in respect of the steps it would have taken.

40.5. Even if the Defendant had uncovered some form of impropriety relating to the Marshall Islands Payments and had reported it to the FCA, it is denied that this would have caused the FCA to "*immediately*" suspend Lendy's business and prevent it from offering further loans.

41. As to paragraph 30:

- 41.1. The financial statements were prepared by Lendy and the Directors were primarily responsible for their contents.
- 41.2. It is denied that Lendy and/or the Directors relied upon the unqualified Audit Reports in continuing to operate Lendy's business:
 - (1) Insofar as there were any misstatements in the financial statements, the Directors were responsible for and aware of the same.
 - (2) Further or alternatively, the Directors would always have tried to continue to operate Lendy's business for as long as they were able including by way of operating the P2P platform, taking investor funds, making loans to Borrowers and pursuing the application for full permissions.



(3) The Defendant pleads further as to the payment of dividends below.

41.3. It is denied that the FCA relied upon the Audit Reports in granting full permission to Lendy. The audit reports were addressed to Lendy's members as a body and the Defendant expressly disclaimed any liability to third parties.

41.4. It is denied that the FCA would not have granted full permission and/or would have required Lendy to cease accepting further investments at an earlier date if the FY2016 financial statements had been prepared non-negligently. The Defendant repeats its pleading to the breach section above.

H) ALLEGED CAUSATION AND LOSS

42. Paragraphs 31-33 are denied. ~~The Claimant has wholly failed to plead a coherent case that the Defendant's alleged breaches caused it to suffer recoverable loss and damage.~~ The pleas below are advanced without prejudice to the generality of this denial to this point.

1) Causation

43. With regard to the accounting for Model 2 loans:

43.1. The Claimant has not pleaded any case in the Amended Particulars of Claim as to what would have happened if the Defendant had identified that the Model 2 loans should be accounted for on an agency basis.

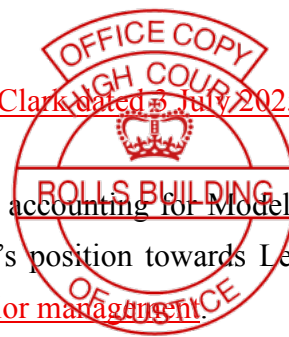
43.2. This accounting issue does not appear to be relied on at all in paragraphs 31 and 31A, and so is irrelevant.

43.3. It is denied, if it is so alleged, that the difference this would have made to the financial statements resulting from this technical accounting issue would have resulted in any difference in the FCA's position towards Lendy and/or the actions of the Directors or Lendy's other senior management.

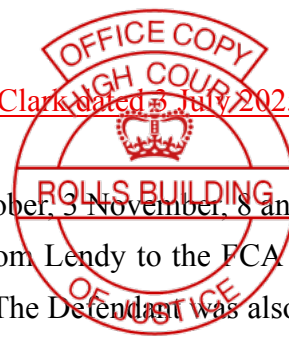
44. With regard to the accounting for Model 1 loans:

44.1. The Claimant has not pleaded any case as to how the Model 1 loans should have been accounted for, including what impairment amounts ought to have been recognised.

44.2. This accounting issue does not appear to be relied on at all in paragraphs 31 and 31A, and so is irrelevant.



- 44.3. It is denied, if it is so alleged, that different accounting for Model 1 loans would have resulted in any difference in the FCA's position towards Lendy and/or the actions of the Directors or Lendy's other senior management.
45. With regard to the Marshall Islands Payments:
- 45.1. Paragraph 40 above is repeated. The Claimant has not advanced a case in the Amended Particulars of Claim that the Marshall Islands Payments actually were improper. In the circumstances, there is no basis for saying that they had any relevant consequences.
- 45.2. The scope of the Defendant's duty with regard to its auditing of these payments was limited to the amount and purpose of the payments. Accordingly, the amount of Lendy's recoverable loss would be limited to any subsequent payments of the same type which could not be recouped. No such loss is claimed.
- 45.3. If the payments were improper (as the Claimant now appears to allege), the directors of Lendy were the sole effective cause of any losses flowing from them. It would follow in these circumstances that the directors made deliberate misrepresentations to the Defendant and procured false audit evidence. On this hypothesis, the Directors' conduct in procuring that Lendy make the Marshall Islands Payments and concealing their true nature from the Defendant was so egregious as to break any chain of causation that would otherwise have arisen.
46. With regards to Lendy's FCA authorisation:
- 46.1. Any and all misstatements in the FY2016 or FY2017 financial statements were wholly caused by Lendy's fraudulent misrepresentations, as a matter of fact or law. The Directors' conduct was so egregious as to break any chain of causation that would otherwise have arisen:
- (1) Throughout the course of the audits, the Defendant requested copies of correspondence between Lendy and the FCA, asked Lendy to keep it informed as to such communications whilst the audit was being performed, and enquired as to progress of communications with the FCA. Accordingly, Lendy was aware that the Defendant should be updated as to its FCA permission status and any relevant developments in relation to the same.
 - (2) During the course of the 2016 audit, the Defendant was provided by Lendy with copies of letters or emails from the FCA to Lendy dated 13 October 2016,



1 June, 9 August, 15 September, 25 October, 3 November, 8 and 21 December 2017; and copies of letters or emails from Lendy to the FCA dated 8 and 14 November 2017, and 12 January 2018. The Defendant was also provided with a copy of a presentation by Duff & Phelps on CASS remediation dated 24 November 2017 and a letter from Duff & Phelps to Lendy dated 22 December 2017.

- (3) Developments in Lendy's discussions with the FCA, and in the remediation work and other actions taken in response to concerns raised by the FCA, and in the work performed by Duff & Phelps, were discussed between the Defendant and Lendy on numerous occasions during the FY2016 audit including (but not limited to) a meeting with Lendy on 16 November 2017 and during a call on 15 December 2017 between Ms Sheppard, Mr Gordon and Mr Bolger at which the current FCA position was discussed. On all occasions, Lendy expressed confidence that it would be granted full authorisation and gave the impression that its discussions with the FCA were progressing well.
- (4) On 15 January 2018 Mr Coles emailed Ms Sheppard explaining:

*"We submitted our latest CASS response to the FCA on Friday 12 Jan 18, in response to their letter of 21 Dec 17. **I am confident that we have effectively dealt with their queries and I expect a positive response in due course.** All the key points are materially covered by the Duff & Phelps Remediation Programme (that ran from the time of the FCA visit (26 Oct 17)), to the 24 November 17. At that time the Lendy CASS Committee fully ratified the findings and adopted all associated policy and process documents into BAU, which we are now proactively embedding..."*

We have engaged Duff and Phelps to execute a full loan book file review to identify if, and where consumer detriment exists as per the FCA's request. We are currently 89% through the 86 open files. To date we have found no systemic or endemic failings and will size any customer detriment (which if it exists we expect to be very small) on a case by case basis." (emphasis added)

- (5) On 6 February 2018 Ms Sheppard emailed Mr Coles requesting an update as to the loan book review and any further correspondence or update that Lendy had had with the FCA. Mr Coles replied that Duff & Phelps had produced a draft report on the loan book that had been sent to the FCA, which report he then forwarded to Ms Sheppard. He stated that Lendy had agreed to remediate a small number of files in partnership with the FCA on a forthcoming site visit and stated "[t]here are no surprises for us here and the remediation will be on a small number of files mostly known to the FCA."



- (6) Ms Sheppard then requested further information and/or confirmation as to the FCA position on 8 and 9 February 2018. On 9 February 2018 Mr Coles emailed Ms Sheppard stating:

“I have worked hard to build a better relationship with the FCA and have regular dialogue with all the relevant teams. While we haven’t had a formal response on CASS since December, their response can now include the Duff and Phelps remediation and hiring of our CF10a (who is just finishing his second week at Lendy). These key actions were just beginning or in the case of Andrew were about to begin so were effectively excluded from the initial December findings. Duff and Phelps also wrote a letter to the FCA re-enforcing the independent and detailed nature of the remediation. I’ve sent both of these documents through to you previously. Based on my conversations I fully expect a positive outcome from the FCA CASS team.

***We have had extremely positive feedback from the Authorisations and Supervision team. There are no open actions for Authorisations** and we have agreed that the FCA will visit us in the coming weeks to agree any remediation on the small number of files that D&P have identified to close the Supervision actions. I sent the report through to you on Wednesday.*

We expect the value of this to be small and very narrow in scope as it will only be for potential lost interest (not capital) on a very small number of files.

***The FCA have fed back that they’re very happy with the methodology and diligence of our approach** and want to work with us to resolve the small number of remediation cases (hence the visit which was their suggestion).*

***I see no material issues with the FCA that would preclude full authorisation in Q2.**” (emphasis added)*

- (7) The Defendant notes and admits the allegation at paragraph 15 that FCA informed Lendy on 13 February 2018 that it was in the process of issuing a MTR letter in respect of the application for full authorisation. At least one of Mr Coles and the Directors must have been privy to this call. It is inferred that they would have informed each other of it immediately afterwards.
- (8) The Defendant was not made aware of the 13 February 2018 phone call or the FCA’s most up to date position at all. To the contrary:
- (a) By email sent at 14:26 on 14 February 2018 the Defendant’ Ms Louis emailed the Directors and other recipients at Lendy requesting confirmation that as at that date:

“- There have been no further updates or changes with regard to the status and recoverability of all overdue and outstanding loans;



- *whether there are any further matters, issues or correspondence with the FCA regarding Lendy's permissions, CASS compliance or any other related matters; and*
- *whether there are any other events or matters occurring up to today's date requiring further consideration of disclosure within the financial statements for the year ended 31 December 2016."*

(b) Mr Gordon replied by email timed at 15:29, copying in Mr Brooke, Mr Bolger and Mr Coles, stating:

"I can confirm that as of today's date:

- 1) There have been no further updates or changes with regard to the status and recoverability of all overdue and outstanding loans;*
- 2) There have not been any further matters, issues or correspondence with the FCA regarding Lendy's permissions, CASS compliance or any other related matters;*
- 3) There have not been any other events or matters occurring up to today's date requiring further consideration or disclosure within the financial statements for the year ended 31 December 2016."*

(9) Mr Gordon's email of 15:29 on 14 February 2018 was a dishonest and deliberate misrepresentation of the state of Lendy's discussions with the FCA. It induced the Defendant to sign the FY2016 audit opinion, as Mr Gordon had intended that it would. Mr Brooke and Mr Coles were also party to this dishonest and deliberate deception of the Defendant.

46.2. It cannot be said that any failing on the Defendant's part caused the Investors to suffer loss in circumstances in which the FCA granted full authorisation to Lendy on 9 July 2018, notwithstanding its earlier reservations. It is to be inferred that any concerns raised at the time of the FY2016 or FY2017 audits would have been assuaged by further discussion with the Directors and/or the FCA. The Defendant understands that, in the event, no Minded to Refuse Letter was ever issued by the FCA.

46A. With regard to the allegations regarding approving the accounts on a going concern basis:

46A.1 As regards the matters alleged in paragraph 27.20, it is denied that these had implications for tax liabilities and/or going concern presentation. Paragraph 35.7 above is repeated.

46A.2 In the circumstances and as set out above, some of the facts and matters relating to Lendy's FCA permissions which the Claimant relies on as the grounds for its



allegation that Lendy's financial position should not have been reported on a going concern basis were deliberately concealed from the Defendant and/or were the subject of misrepresentation.

46A.3 As regards the matters pleaded in paragraphs 7 and 7A of the Amended Particulars of Claim and paragraph 8.1 of the First Responses, it is repeated that (a) some of the matters relied upon were withheld from and/or could not reasonably have been discovered by the Defendant; and (b) it is denied that the Defendant should have made reports under ISA 250B and/or a SAR, such that those steps would not themselves have impacted on whether the accounts could be approved on a going concern basis.#

46A.4 Accordingly, the Directors were the sole effective cause of any losses flowing from the company reporting on a going concern basis.

46B. As regards paragraph 31A:

46B.1 It is specifically denied that the Directors and/or senior management would have taken steps to cease accepting new business and/or paying dividends.

46B.2 At the time of the completion of the FY 2016 audit and thereafter:

- (1) The Directors were already aware of the matters which it is said that the Defendant ought to have (but did not) identify in its Audit Reports.
- (2) Other senior management were aware (at least) that Lendy's business model was failing and the FCA was minded to refuse authorisation.
- (3) Further, the Directors knew that the FY2016 accounts were already 5½ months overdue for filing, the FCA was pressing for them and (on the Claimant's own case) that Lendy was "bust". Other senior management knew at least some of those matters individually and, between them, knew all of those matters.

46B.3 Despite that and the contents of the emails of 6 March 2018, Lendy continued to accept new investments until September 2018 and to make loans after November 2018.

47. For all the reasons set out above, it is denied that any breach of contract or duty on the part of the Defendant caused Lendy to suffer loss as a matter of fact or law. The Amended Particulars of Claim fail to plead an arguable case to contrary effect. The claims fail at this first stage. The remaining points are advanced without prejudice to these overarching points.



2) **The heads of loss are not recoverable**

i) **The Investors' Losses**

48. Paragraphs 32.1.1 to 32.1.6 are not admitted. The alleged losses on sums invested by Investors after 1 March 2018 are losses suffered by the Investors, not Lendy. ~~The Claimant has not identified any basis on which it~~ is denied that the Claimant is entitled to claim compensation from the Defendant for losses suffered by the Investors. ~~It is denied that it is so entitled.~~ In relation to sub-paragraphs 32.1.3 to 32.1.6:

48.1. The Amended Particulars of Claim remain deficient because they do not identify any basis on which Lendy had actual liabilities to the Investors which was caused by the Defendant. It is not sufficient for the Claimant to say that the Administrators were satisfied that the Investors had unsecured claims in the administration.

48.2. If and insofar as Lendy had such liabilities to the Investors, they were wholly caused by Lendy. The Amended Particulars of Claim do not even attempt to establish a chain of causation between the facts and matters said to give rise to liabilities to the Investors and the Audit Reports. At most, the Claimant's case appears to be that the Defendant's conduct created the opportunity for it to incur liabilities to Investors. This is not sufficient as a matter of law.

48.3. Further, the Administrators' decision to admit the claims of the Investors without individual consideration and without requiring any proper particularisation and/or substantiation of the individual Investors' claims (particularly as regards their claims for interest) was unreasonable and broke the chain of causation stemming from any breach on the part of the Defendant.

49. Further or alternatively, such losses fall outside the scope of the Defendant's duty and/or were not caused by the Defendant's breaches as a matter of fact or law. Without prejudice to the generality of these points:

49.1. It is denied that lending would have ceased immediately but for the Defendant's negligence. This case is wholly unrealistic and not properly explained.

49.2. Any losses suffered by the Investors are the consequence of the quality of the lending and/or the acts of the Borrowers. Accordingly (i) such losses were not caused by the Defendant's breaches as a matter of fact or law. At most, the Defendant's conduct gave rise merely to the opportunity for such losses; and (ii) they fall outside the scope of the Defendant's duties (the Defendant pleads further below to paragraph 33 of the Amended Particulars of Claim).



49.2A The Claimant's case is understood (from paragraph 23 of the first statement of Mr Wilson) to be that Lendy was liable to Investors for breach of fiduciary duty, misrepresentations concerning the quality of the loans and related matters. Any such liabilities fall outside the scope of the Defendant's duty because there is no nexus between these matters and the Defendant's audit obligations. It is not alleged that the Defendant was under a duty to detect these breaches and report on them.

49.3. The Claimant's case involves a chance that the FCA would have withdrawn Lendy's authorisation immediately (or in short order) ~~coupled with chances that the loans would otherwise have performed better and/or more sums could have been recovered from Borrowers. This case is wholly speculative.~~ There is no (still less no properly pleaded) basis for giving any substantial value to ~~either~~ that chance.

49.4. The ~~£27,552,395~~ £24,378,606 and ~~£15,599,571~~ £15,687,795 loan figures have ~~not~~ been only partially particularised ~~(and it is noted that the latter is only an estimate).~~ The Claimant should have provided full details of the loans underlying these sums but has not done so. ~~The Claimant has wholly failed to give particulars of its allegation that the loans would have performed better but for the Defendant's negligence. There is no logical reason why this should be true.~~

49.5. ~~The Claimant has not explained how additional sums could have been recovered from Borrowers and in what amounts.~~

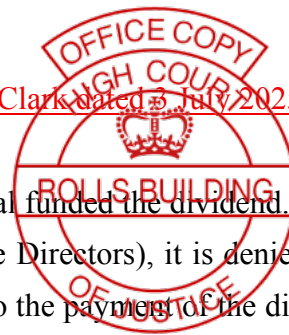
ii) The "Dividends"

50. As to paragraph 32.2 and the claim in relation to dividends:

50.1. Paragraph 27 above is repeated.

50.2. As to the first dividend, the Defendant understands (from emails exchanged with Mr Wawryzniak in March and April 2019) that the dividend of £226,000 was not a cash payment but was rather an equal reduction to each Director's Directors' Loan Account in July 2018 (the time at which Mr Gordon was resigning as director of Lendy). Therefore, it is denied that the payment of the same resulted in any adverse effect to Lendy's overall financial position and/or any loss of £226,000. Further, the allegation assumes that Lendy would otherwise have been able to achieve full recovery from the Directors of the sums in the Directors Loan Account (as well as other sums since recovered from the Directors), which is denied.

50.3. As to the second dividend, the Defendant understands that the (a) dividend was paid to LGL which funded the £850,000 paid by LGL to Mr Gordon to repurchase its



shares from him; and (b) a payment from Teal funded the dividend. Insofar as Teal funded the dividend (via sums owned by the Directors), it is denied that (a) there was any net movement of funds in relation to the payment of the dividend; and (b) Lendy suffered any loss in relation to the same. Further, the allegation assumes that Lendy would otherwise have been able to achieve full recovery from Teal (as well as other sums since recovered from the Directors), which is denied.

- 50.4. As to the third dividend, the Defendant understands (from the FY2017 accounts, specifically, the cashflow statement therein and Lendy's administrators' report dated August 2019) that the dividend funded the purchase of Brankesmere House from Lendy (for a price of £862,000) by another group company, Brankesmere Limited (BL). The Defendant understands that at the same time as this purchase, Mr Brooke loaned approximately £800,000 to Lendy. The administrators have asserted a proprietary claim over Brankesmere House, as explained below. If Lendy retained a proprietary interest in the property, it suffered no loss.
51. Accordingly, it is denied that the alleged dividend payments gave rise to losses suffered by Lendy. If and to the extent that any loss is proved, the Directors' conduct was the sole effective cause of that loss.

51A. As to paragraph 32.3 and the allegations that the dividends were paid unlawfully:

51A.1 As to sub-paragraph 32.3.1, the first two sentences are admitted. The Defendant repeats its previous pleading as to the preparation of the FY 2016 and FY 2017 accounts. Insofar as the accounts for FY 2016 and 2017 were not prepared in accordance with the 2006 Act, it is admitted that the dividends were declared in contravention of the same.

51A.2 Save that the contents of the emails are admitted, sub-paragraph 32.3.2 is not admitted.

~~iii) — Costs and Tax~~

- ~~52. As to paragraph 32.3, the Claimant has not adequately particularised, quantified or even estimated the alleged increased costs of administrators, tax penalties or interest (which would have been invoiced / quantified if incurred).~~
- ~~53. As to the administrators' costs:~~
- ~~53.1. It is denied that any delay in Lendy entering administration increased the costs of that administration. The same costs would have been incurred in any event.~~



- 53.2. ~~The Defendant is not responsible for any costs incurred as a result of any fraud and/or other activity on the part of the Directors necessitating investigation and/or increased costs by the administrators. Such costs were caused by the Directors' conduct, and not by the Defendant's breaches, on any view. Further or alternatively, they would have been incurred in any event.~~
- 53.3. ~~Insofar as the Claimant is claiming losses or costs suffered by other companies within the Lendy group which are subject to administration, (a) it is not assignee of any such claims; and (b) any such losses are irrecoverable against the Defendant.~~
54. ~~As to the claimed for increased interest on tax and/or penalties:~~
- 54.1. ~~When the Defendant was first retained, Lendy's financial statements and corporation tax returns for FY2016 were already overdue.~~
- 54.2. ~~The Defendant understands that there was a miscommunication between Lendy and its accountants, Jelliff Lamprey (JL) which meant that the corporation tax was not calculated and paid until after 2 August 2018. On 2 August 2018 Mr Wawryzniak explained "I thought Jelliff Lamprey had dealt with it, but when speaking with Andrea (the tax partner at Jelliff Lamprey) she said she was awaiting information. There have been no issues with HMRC just a lack of communications from our tax advisors..."~~
- 54.3. ~~On 3 August 2018 the Defendant issued a Management and Governance Report to Mr Gordon explaining that that the corporation tax return and payment were late and that Lendy would face fines and penalties from HMRC. The Defendant recommended that the tax was calculated and paid on time.~~
- 54.4. ~~The Defendant understands that ultimately Lendy entered into a payment plan with HMRC in relation to payment of the corporation tax. The Defendant is not responsible for Lendy's inability to pay the tax upfront. Further, the payment plan was agreed at approximately the same time that Lendy paid significant dividends.~~
- 54.5. ~~For all of the above reasons, the late filing of Lendy's tax returns and its failure to pay tax on time are the sole responsibility of its Directors or Mr Brooke alone after Mr Gordon resigned. Any losses flowing from them were not caused by the Defendant, as a matter of fact or law, and lie outside the scope of its duty.~~
- 54.6. ~~Further or alternatively, insofar as the Claimant's losses depend upon the actions of third parties, including JL and HMRC, they are claims for lost opportunity.~~

3) **Credit for recoveries**



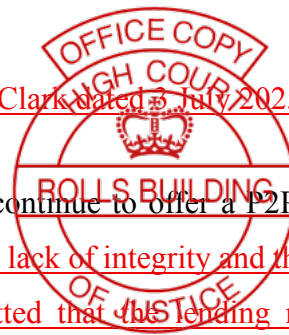
55. The Claimant must give credit for any recoveries against third parties including, without limitation, the Directors. The Defendant understands (from administrators' reports), that: (a) Lendy's administrators pursued proceedings against the Directors (**the Directors Claim**) including (i) a proprietary claim and a claim under section 423 of the Insolvency Act 1986 in relation to the Marshall Islands Payments; and (ii) a proprietary claim in relation to the third dividend against BL in which Lendy alleged that the dividend payment to LGL was lent on via another company to BL to purchase Brankesmere House from Lendy; and (b) the Directors Claim was subsequently settled for £3,400,000 but that the full proceeds had not been received by Lendy by June 2024.

4) Mitigation

56. The Claimant is put to strict proof that Lendy (and its officeholders) have taken reasonable steps in mitigation of the alleged losses. In particular, the Claimant must prove that it and Lendy have taken reasonable steps to mitigate the alleged loss, including by: (a) pursuing Borrowers for unpaid loans, including (i) enforcement steps against relevant security and (ii) pursuit of relevant third party claims; (b) its pursuit and enforcement of the Directors Claim; (c) ~~the ongoing administration of Lendy (and expense of the same); and (d) seeking to reduce any penalties and interest imposed by HMRC. the agreements that it reached to admit the claims for capital and interest of individual Investors into the administration of Lendy without any opposition or individual assessment.~~

5) Scope of Duty

57. As already set out above, it is denied that the aforesaid losses fell within the scope of the Defendant's duty to Lendy. The Defendant pleads further to paragraph 33 of the Amended Particulars of Claim as follows:
- 57.1. As to paragraph 33.1, it is denied that the Defendant owed a duty in relation to all the matters set out in paragraph 27. The purpose of the Defendant's audit was to provide reasonable assurance to the members of Lendy as a body that the financial statements were free from material misstatement due to fraud or error.
- 57.2. Paragraph 33.2 is denied. The Defendant was required to express an opinion on the accounts, not provide a guarantee as to their accuracy and/or as to Lendy's future



trading prospects and/or whether it should continue to offer a P2P platform. The previous pleading as to the Directors' alleged lack of integrity and the other matters alleged therein is repeated. It is not admitted that the lending model was not financially sustainable or that there was insufficient cash flow. The reference to Lendy not being "properly considered a going concern" is not understood. The Defendant will plead further as to the same upon proper particulars of by whom it is alleged that Lendy should not have been so considered. It is specifically denied that (a) the purpose of the Defendant's duty was to protect Lendy as to the potential financial risks of continuing to operate in business; and (b) the Defendant had any obligation to Lendy in terms of its alleged liabilities to Investors and/or the risks of default on individual loans; and

57.2A. Paragraphs 33.3 and 33.5 are denied and paragraph 33.4 is not admitted. (e)+ The dividends paid reflected the Defendant's approval of the stated amount of profits. The alleged dividends significantly exceeded Lendy's forecast available cash. It is denied that the Directors' decision to declare the dividends represented a continuum of the Marshall Islands Payments.

57.3. Save as aforesaid, paragraph 33 is denied.

6) Set off

58. Further or alternatively, Lendy is liable to the Defendant for the reasons pleaded below in the Defendant's Counterclaim. The Defendant relies on the defence of set-off, to the extent necessary.

7) Interest

59. The claim for interest is noted and disputed.

I) STATUTORY RELIEF UNDER SECTION 1157 OF THE 2006 ACT

60. In all the circumstances, for the reasons pleaded above, the Defendant acted honestly and reasonably such that it ought fairly to be excused from any liability.



J) CONTRIBUTORY NEGLIGENCE / CONTRIBUTORY FAULT

61. Further or alternatively, Lendy has caused and/or contributed to its alleged loss by its and/or its directors and/or employees' own lack of care in:

PARTICULARS OF CONTRIBUTORY NEGLIGENCE

i) FCA permission

- (a) Having informed the Defendant on 9 February 2018 that the FCA was likely to grant full authorisation in Q2 2018, Lendy's management (including the Directors and its Head of Compliance Paul Coles) dishonestly (alternatively negligently) failed to update the Defendant, prior to the Defendant's issuance of the FY2016 Audit Report, by informing it of the FCA's communication on 13 February 2018 that it was initiating the process of preparing the MTR Letter;
- (b) Mr Gordon dishonestly informed the Defendant on 14 February 2018, before the FY2016 Audit Report was signed, that there was no development as regards Lendy's FCA permissions. This was untrue, and known to him to be untrue, because Lendy had received notification from the FCA that it was initiating the process of preparing the MTR Letter;
- (c) Mr Coles and Mr Brooke, who were copied in on Mr Gordon's email of 14 February 2018 to the Defendant, dishonestly (alternatively negligently) failed to correct Mr Gordon's false statement;
- (d) Failing, adequately or at all, to provide the Defendant with information as to Lendy's compliance with its FCA permissions;
- (e) In the circumstances, and in breach of its Directors' statutory and other obligations, misleading the Defendant as to Lendy's FCA permission position, specifically as to the indications given by the FCA as to the prospects of granting full permission;
- (f) Failing, adequately, to comply with its FCA permissions and/or restrictions on its permissions imposed by the FCA, including in relation to those matters in paragraph 24 of the Amended Particulars of Claim, and to address the FCA's concerns regarding Lendy's CASS breaches; breaches in terms of financial promotions to the public; breaches in the Duff & Phelps report dated 25 January 2018; and/or FCA compliance more generally. These breaches are of particularly strong causative potency because the failure to correct published statements about the loans promoted by Lendy would

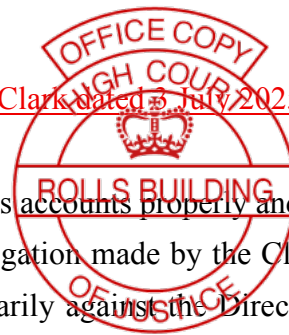


have led directly to continuing investment and, therefore, to the Investors' losses claimed in this action;

ii) Related Parties / Marshall Islands Payments

- (g) Insofar as (which is not admitted), the Marshall Islands Entities were related parties and/or the Marshall Islands Payments were not made in respect of valuable services rendered to Lendy, the Directors in relation to the FY2016 audit and Mr Brooke (and prior to his resignation) Mr Gordon in relation to the FY 2017 audit, acted dishonestly by:
- (i) Falsely informing the Defendant that the Marshall Islands Entities were not related parties;
 - (ii) Providing and/or arranging for third parties to provide false information and/or documentation to the Defendant relating to the Marshall Islands Entities;
 - (iii) Signing representation letters stating that they had disclosed to the Defendant the identity of all related parties and related party relationships / transactions when this was not true;
 - (iv) Signing financial statements which accounted for the Marshall Islands Payments as marketing expenses incurred by Lendy when they knew that this was not true;
- (h) Insofar as (which is not admitted), the Marshall Islands Entities were related parties, management of Lendy other than the Directors, including Mr Neil Hockenhull, acted dishonestly, or alternatively negligently, by failing, adequately or at all: (i) to provide information and/or documentation to the Defendant in relation to the Marshall Islands Entities; and (ii) to detect and/or report the payment of significant sums to related parties in circumstances where (a) as Lendy's Head of Finance and subsequently its Financial Controller, Mr Hockenhull was in a position to have knowledge of the Marshall Islands Payments and the fact that they were unusual and/or outside the ordinary course of business (b) Mr Hockenhull was aware of the Defendant's repeated enquiries relating to the Marshall Islands Payments (having been copied in to and participating in many of the relevant exchanges by email and in meetings); and (iii) Mr Hockenhull corresponded directly with the Defendant on 31 January 2018 to seek the text for the relevant confirmation letters;

iii) Preparation and verification of financial statements



- (i) Failing, adequately or at all, to prepare Lendy's accounts properly and in accordance with UK GAAP and the 2006 Act. Every allegation made by the Claimant that the financial statements were defective lies primarily against the Directors. It is to be inferred that other employees of Lendy assisted in preparing the draft financial statements;
- (j) Signing financial statements which the Directors knew to be defective and/or misleading in various respects including, insofar as the Claimant succeeds in its case, in the ways alleged in paragraphs 26 and 27 of the Amended Particulars of Claim;
- (k) Insofar as Lendy's ability to continue as a going concern was subject to material uncertainty, providing a misleading statement in the financial statements that Lendy was able to continue as a going concern and omitting to disclose the existence and nature of material uncertainty;
- (l) The matters referred to under this heading are of very strong causative potency because primary responsibility for the financial statements rested at all times with the Directors, as the 2006 Act, the terms of the audit report and the terms of the Contract all made clear.

~~iv) Corporation tax payment~~

- ~~(m) Failing, adequately or at all, to prepare, amend and/or file corporation tax returns in a timely manner;~~
- ~~(n) Failing, adequately or at all, to liaise with JL regarding the submission of Lendy's corporation tax return;~~
- ~~(o) Failing to pay Lendy's corporation tax on time (whether deliberately or at all) and/or failing to ensure sufficient cash was available to be able to pay such sums when due;~~
- ~~(p) Wrongly ignoring advice from the Defendant relating to the risks of late payment of the corporation tax;~~

v) Representations / instructions / access to the Defendant

- (q) Failing, adequately or at all, to provide the Defendant with information and/or documentation in a timely manner to enable finalisation of the audit opinion;
- (r) Signing and thereby giving the representations in the Representation Letters which were false and/or misleading in the ways set out in the Counterclaim below);

vi) Dividends



- (s) Authorising the payment of dividends (or any of them) in circumstances where the Directors were aware of defects in the financial statements and where the sums ordered by way of dividend (i) exceeded sums that Lendy was able to afford to pay (according to the cashflow forecast for 12 months from 1 July 2018 provided to the Defendant on 10 July 2018) and (ii) was contrary to the expectations indicated in Lendy's forecast cashflow;
- (t) Authorising the payment of dividends where Lendy had significant, overdue tax liabilities;
- (u) Wrongly permitting the Directors to reduce their liabilities to and/or illegitimately extract sums from Lendy via the payment of dividends.

vii) Ongoing business operations

- (v) Continuing to accept investments and/or to make loans to Borrowers in the knowledge (on the Claimant's amended case) that (i) Lendy was insolvent; (ii) Lendy was (or was likely to be) unable to finance to completion developments to which it had committed and/or was committing Investors' loans thus jeopardising the recoverability of sums loaned; (iii) Lendy was receiving declining levels of investment; and/or (iv) Lendy's model was not sustainable.

62. In the premises, it is denied that the Claimant is entitled to the relief claimed, or any relief.

COUNTERCLAIM

- 63. The Amended Defence is repeated.
- 64. The 2016 Representation Letter confirmed that Lendy had passed a directors' resolution affirming that (inter alia):
 - 64.1. The Directors had provided the Defendant with access to (a) all information of which they were aware that was relevant to the preparation of the financial statements; and (b) additional information that the Defendant had requested;
 - 64.2. The Directors had disclosed to the Defendant (a) all known instances of non-compliance or suspected non-compliance with laws and regulations whose effects should be considered when preparing the financial statements; and (b) the identity of Lendy's related parties and all related party relationships / transactions of which they were aware. Further, related party relationships / transactions had been



appropriately accounted for and disclosed. In particular, no officers had any indebtedness, agreement concerning indebtedness or disclosable interest in a transaction with Lendy at any time during the year;

- 64.3. All events subsequent to the date of the financial statements and for which FRS 102 required adjustment or disclosure had been adjusted or disclosed;
- 64.4. The financial statements were free of material misstatements, including omissions.
65. The 2017 Representation Letter confirmed that Lendy had passed a directors' resolution covering (inter alia) the matters pleaded in the preceding paragraph.
66. The Defendant will rely upon the full effect of the Representation Letters. By issuing the same, Lendy represented to the Defendant that the matters contained in the letters were true, including (inter alia) that:
- 66.1. Lendy had complied with its FCA permissions and was likely to obtain full authorisations or, at least, retain its interim permissions.
- 66.2. The information provided regarding related parties was accurate and complete.
- 66.3. That there had been no inappropriate extraction of funds from Lendy and all transactions had been accounted for in accordance with applicable accounting standards, to the best of their knowledge and belief.
- 66.4. The Defendant had been given full access to relevant documents and information, including in relation to FCA permissions and the Marshall Islands Entities.
67. Paragraph 46.1 above is repeated as to fraudulent representations made as to Lendy's FCA permissions.
68. Further, the Directors represented to the Defendant that the Marshall Islands Entities were not related parties of Lendy as follows:
- 68.1. On 11 December 2017 by email timed at 11:16 Mr Gordon informed the Defendant that (i) the relationship between the Marshall Islands Entities and Lendy, Lendy's associated companies and the Directors (and any parties associated with the Directors) was a "*purely business relationship*"; (ii) the Marshall Islands Entities were not related parties; and (iii) any transactions with the Marshall Islands Entities had been undertaken at arm's length.



- 68.2. At a face-to-face meeting between representatives of the Defendant, Mr Brooke and other representatives of Lendy on 31 January 2018 Mr Brooke orally confirmed that the Marshall Islands Entities were not related to him.
69. Lendy is vicariously liable for representations made by the Directors and the employees referred to in this Amended Defence and Counterclaim.
70. The representations in paragraphs 63-68 above were (a) untrue and known by Lendy and/or its Directors to be untrue; (b) made dishonestly by the Directors; and/or (c) in breach of Lendy's duty of care and/or obligations to the Defendant under the Contract, specifically clauses 2-5 of the Engagement Letter and clauses 15-18 and 20 of the T&C.
71. The Defendant reasonably relied upon the aforesaid representations (as Lendy and/or the Directors had intended it to do) and was induced by the same to sign the unqualified FY2016 and FY2017 Audit Reports.
72. Accordingly, (if the Claimant's case is successful (which is denied for the reasons pleaded in the Amended Defence above)), Lendy's own misrepresentations were causative of any alleged liability incurred by the Defendant to Lendy.
73. Accordingly, (a) the claim fails for circuitry of action; and/or (b) the Defendant is entitled to damages to the same extent as it is held liable to Lendy.
74. And the Defendant counterclaims:
- (1) Damages in the same amount as any liability it may have to the Claimant;
 - (2) Such further or other relief as the Court sees fit; and
 - (3) Costs.

REBECCA SABBEN-CLARE KC

PIPPA MANBY

REBECCA SABBEN-CLARE KC

PIPPA MANBY

STATEMENT OF TRUTH

I believe that the facts stated in this Defence and Counterclaim are true.

I have been duly authorised to sign this Statement of Truth on behalf of the Defendant.

Amended pursuant to paragraph 4 of the Order of Master Clark dated 3 July 2025.



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.

Signed:

Name in capitals:

Position:

Dated this 30th day of October 2024

Served on this 31st day of October 2024 by Clyde & Co LLP, solicitors for the Defendant

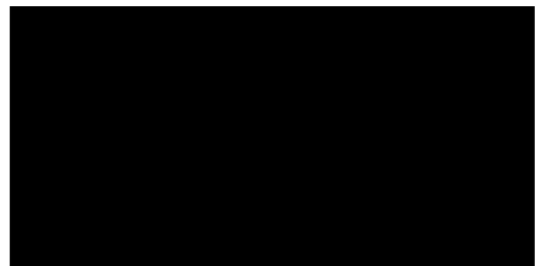
STATEMENT OF TRUTH

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Signed:



Name in capitals:

Jonathan Andrew Randall

Position:

Partner

Dated this 29th day of July 2025

Amended pursuant to paragraph 4 of the Order of Master Clark dated 3 July 2025.

Served on this 31st day of July 2025 by Clyde & Co LLP, solicitors for the Defendant

Clyde & Co LLP

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138 Houndsditch

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