



Amended Reply and Defence to Counterclaim served pursuant to the Order of Master Clark dated 03 July 2025

IN THE HIGH COURT OF JUSTICE

Claim No. BL-2024-000191

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

BUSINESS LIST (ChD)

B E T W E E N:

MANOLETE PARTNERS PLC

Claimant

- and -

MSR PARTNERS LLP

Defendant

AMENDED REPLY AND DEFENCE TO COUNTERCLAIM

AMENDED REPLY

1. In this pleading, references to the Particulars of Claim are to the Amended Particulars of Claim dated 8 July 2025 and references to the Defence and to the Counterclaim are to the Amended Defence and Counterclaim dated 31 July 2025. Except so far as the Defence contains admissions, or as is set out below, the Claimant joins issue with the Defendant on its Defence ~~dated 30 October 2024~~. All references to paragraph numbers are to the Defence unless otherwise stated.



2. Abbreviations are as defined in the ~~Amended~~ Particulars of Claim (the ~~Particulars of Claim~~"), save that the Claimant without admission adopts where appropriate the additional abbreviations used in the Defence.
3. Save where otherwise stated, a statement that an allegation in the Defence is not admitted means that the Claimant is unable to admit or deny that allegation and requires the Defendant to prove it. The Claimant will rely at trial on the whole of any written document and the factual matrix in which it was created for its true meaning and effect.
4. As to Paragraph 2, responses to the Defendant's CPR Part 18 requests for further information ~~have been served will be served separately~~ and the Claimant relies further on those responses. It is denied that the Claimant's case is ~~or was~~ vague, embarrassing and/or impossible for the Defendant properly to understand and/or plead to. Insofar as the Claimant has not served additional particulars of breach of duty and/or causation, this has been caused or contributed to by the Defendant's unreasonable refusal to provide disclosure of all or any part of its audit files. It is denied that the Defendant has any right to amend and/or supplement its Defence without the agreement of the Claimant or permission of the Court.
5. Paragraph 3 is denied. The Claimant responds more fully below to the allegations summarised in that paragraph, but in summary:
 - 5.1. Sub-paragraph 3.1 is noted. The Claimant continues to rely upon the wider allegations of breach of duty pleaded in the Particulars of Claim.
 - 5.2. In relation to sub-paragraph 3.2:
 - 5.2.1. It is denied that the ~~Directors of Lendy and/or other~~ senior employees of ~~Lendy~~ were aware at any material time of Lendy's true position in respect of FY2016 and FY2017 in all or all material regards, ~~save as particularised below in relation to the Marshall Islands Payments;~~
 - 5.2.2. It is not admitted that the true position with regard to communications with the FCA immediately prior to signing the FY2016 financial statements was deliberately and/or dishonestly concealed from the Defendant, for the reasons set out further below and in any event it is denied this is legally relevant;
 - 5.2.3. It is denied, insofar as it is alleged, that the conduct of Lendy's Directors was the sole cause of Lendy's losses, whether as a matter of fact or law.



It is further denied that their conduct is to be attributed to Lendy in the respects and for the reasons set out more fully below.

- 5.3. Sub-paragraph 3.3 is denied. As pleaded more fully below, Lendy's losses include the increase in its liabilities to the Investors resulting from the continuation of its trading in the manner in which it did, including increased liabilities to Investors in respect of standard and default interest, for lending or further drawdowns from 1 March 2018. These losses would have been prevented if the Defendant had acted competently, because the Directors of Lendy, who were also its shareholders, would have been forced to stop accepting further investment, abandon Lendy's application to the FCA for full authorisation and cease trading if the Defendant had resigned or provided a suitably qualified opinion or refused to provide any opinion and/or if the Defendant had made a Suspicious Activity Report ("**SAR**") and/or report under paragraphs 12 - 16 of ISA 250B to the FCA, these being the steps a competent auditor would have taken, which would also have led to enforcement action by the FCA as detailed further below. The claims in respect of other heads of loss are made on a similar basis.
 - 5.4. Further Lendy and its administrators have taken reasonable steps to mitigate its loss, including by pursuing Borrowers and its Directors, but in any event any alleged failure to mitigate is for the Defendant to prove.
 - 5.5. The claim for relief under section 1157 of the 2006 Act is denied for similar reasons to those set out in the Particulars of Claim and herein, including the fact that Lendy's creditors (in particular the Investors who invested from 1 March 2018) remain unpaid.
6. As to Paragraph 5:
- 6.1. It is admitted that the Directors controlled Lendy at all material times until Mr Gordon resigned on 26 July 2018 and that thereafter Mr Brooke controlled Lendy. It is denied that the terminology of a "directing mind" is appropriate or applicable given the nature of this claim, for the reasons set out more fully below.
 - 6.2. It is denied that the Directors were the only individuals who acted or could have acted on behalf of Lendy at material times. Others, including Mr Coles, Andrew Wawrzyniak, **Alan Darling** and the legal officer Mehar Patel did and could have done so.



- 6.3. Insofar as it is alleged, it is denied that any fraud alleged by the Defendant against either of the Directors should be attributed to Lendy and it is further denied that any such fraud should prevent the Claimant's claim or ground any counterclaim in deceit, for the reasons set out more fully below.
- 6.4. Save as aforesaid, this paragraph is denied.
7. As to Paragraph 6:
- 7.1. As held by HHJ Brian Rawlings, sitting as a Judge of the High Court, in his judgment of 12 August 2021 in *Webb and others v. Taylor* [2021] EWHC 2285 (Ch) ("*Webb*"):
- 7.1.1. In respect of Model 1 loans, Lendy acted as principal as regarded both Investors and Borrowers (terms which are used herein as applying to both types of loan);
- 7.1.2. In respect of Model 2 loans, Lendy acted as an agent for many purposes but also as a principal for some purposes as regarded Investors and Borrowers.
- 7.2. The change from Model 1 to Model 2 was in about October 2015 and Lendy continued to manage existing Model 1 loans until redeemed.
- 7.3. Paragraph 6 is admitted only insofar as consistent with the above.
8. As to Paragraph 10:
- 8.1. Sub-paragraph 10.1 is noted, although these were not the only areas of non-compliance by Lendy as the Defendant was or should have been aware. At the start of the audit process, representatives of the Defendant had a formal meeting at the Defendant's premises at which, among other things, such areas of non-compliance were discussed. The Defendant has not disclosed its attendance note or records of that or any meeting, including other meetings explicitly referred to in the Defence.
- 8.2. As to sub-paragraph 10.2, non-compliances identified in the CASS Report included (but were not limited to) wrongful or potentially wrongful retention of monies which belonged to Investors including interest.



- 8.3. Sub-paragraph 10.3 is admitted. The Defendant was aware prior to signing the Audit Report of the contents of at least the draft Duff & Phelps report dated 25 January 2018 (which was substantially the same as their final report), which was sent to the Defendant by Mr Coles on 26 January 2018. This and the CASS report should have alerted the Defendant that there was an increased risk of misstatement in the financial statements.

8.3A. As to Paragraph 10.3A of the Defence, no admissions are made as to when the Defendant was informed of the quantum of the FCA remediation plan. Further, and in any event, the Defendant was aware before signing the 2016 Accounts that Lendy was being required by the FCA to make remediation for past breaches. The Defendant was therefore required to obtain sufficient audit evidence as to the quantum of the likely remediation (if it did not know the figure), its potential impact on Lendy's going concern status and the potential need for a provision in the 2016 accounts. The Defendant failed to obtain any such sufficient evidence. Moreover, by the time of signing the 2017 Accounts, the Defendant ought to have investigated how it was that the remediation costs not previously reported or provided for had been quantified at the material amount of £1,856,646.

- 8.4. Sub-paragraphs 10.4 and 10.5 are admitted.

- 8.5. Save as aforesaid, Paragraph 10 is denied.

9. As to Paragraph 11, it is admitted that the quotations from the ISAs are excerpts only, and the Claimant will rely on the full text of relevant ISAs. While it is admitted that under the ISAs, including ISA 240 paragraph 5, primary responsibility for the preparation of the financial statements, including the prevention and detection of fraud, rests with management and those charged with governance, this does not derogate from the auditor's duties and responsibilities. Further the Defendant as auditor cannot rely upon the duties of management or those charged with governance to avoid liability for their own breaches of duty, in particular but not only where detection of actual or potential fraud by management was one of the very things they should have detected and/or warned those charged with governance or other relevant third parties about.

10. As to Paragraph 19:

- 10.1. It is denied that the Defendant relied on the 2016 Representation Letter as alleged, among other things because Ms Sheppard was not in the office on the



day it was returned (14 February 2018), and she appears to have pre-signed the Audit Opinion prior to it being dated on that day.

- 10.2. Further, insofar as the Defendant did rely on any of the contents of that letter, it did so negligently and in breach of duty and cannot assert any such reliance to avoid liability since it knew or ought to have known that the contents of that letter were inaccurate and/or incomplete for the reasons set out further at paragraph 27 below, in the Defence to Counterclaim below and in the Particulars of Claim. Rather than obtaining sufficient audit evidence, it is averred that the Defendant sought to cover off issues where it knew there were difficulties, such as compliance with CASS or disclosure of connected party transactions, by including paragraphs in the 2016 Representation Letter (which the Defendant drafted) by which the Directors represented that there had been full compliance or disclosure, even where the Defendant knew or should have known that the supposed representations were not supportable. This was not a reasonable or competent approach.
- 10.3. Further, the Defendant cannot assert any alleged reliance by it on any other information provided to it by Lendy which the Defendant negligently and/or in breach of duty failed to realise was misleading, inaccurate or incomplete, to avoid liability. Given the Defendant's refusal to date to disclose its audit working files, the Claimant does not know and cannot give any further particulars of the information provided to the Defendant by Lendy (much of which was provided via a Dropbox data room which Lendy's administrators and the Claimant cannot access) or the Defendant's alleged or any reliance, and it reserves the right to amend to provide further particulars after such disclosure.
- 10.4. Further, since any such material misrepresentation was the very thing which the Defendant as auditor was under a duty to detect, it cannot rely on that or any other untrue or allegedly untrue statement by the Directors or other representative of Lendy to avoid liability in any event.
- 10.5. The Claimant further relies on paragraph 4 of ISA 580 which provides that *"Although written representations provide necessary audit evidence, they do not provide sufficient appropriate audit evidence on their own about any of the matters with which they deal."* In asserting such reliance on Lendy's representations, the Defendant is implicitly accepting that it did not obtain sufficient audit evidence itself.



- 10.6. Save as aforesaid, this paragraph is denied.
11. As to Paragraph 20:
- 11.1. No admissions are made as to the Defendant's knowledge of the call from the FCA to Lendy on 13 February 2018. The FCA did not in fact proceed to issue a "Minded to Refuse" letter. In any event it was the Defendant's responsibility, as auditor, to gain an understanding of the position with the FCA, by making its own enquiries, and it should not have been simply waiting for Lendy to inform it about these matters.
- 11.2. It is admitted that by an email timed at 15.29 on 14 February 2018, Mr Gordon stated, in answer to a request from Medette Louis of the Defendant to provide confirmation in these terms: *"There have not been any further matters, issues or correspondence with the FCA regarding Lendy's permissions, CASS compliance or any other related matters."* For the reasons set out at sub-paragraphs 27.10 to 27.13 below it is admitted that this was a misrepresentation. Insofar as the Defendant failed to realise or establish this or any other aspect of the FCA's position and/or failed to detect any such misrepresentation or dishonesty by Lendy's management, then it was negligent and in breach of duty, including in failing to exercise proper professional scepticism, since it was incumbent on the Defendant to understand the status of the FCA's authorisation, and also:
- 11.2.1. Given the information it had or ought to have had in its possession about the FCA's serious concerns about Lendy and its application for authorisation and whether it was suitable to be authorised;
- 11.2.2. Given the information and concerns which Mr Coles and others had shared with the Defendant about the FCA's concerns, as set out in correspondence shared with the Defendant or identified by the Defendant during the audit process or during its preparation of the CASS Report, including from the FCA;
- 11.2.3. Given that it knew that the FY2016 financial statements were materially late and Lendy was already under pressure to file them from Companies House and from the FCA, so there was among other things a high risk of errors, mistakes, misstatements and/or misrepresentations (whether innocent, negligent or fraudulent) by Lendy's Directors and other representatives.



- 11.3. Insofar as any material facts were not disclosed to the Defendant by any agent of Lendy, they were ones which it would have been straightforward for the Defendant to detect if the Defendant had exercised proper professional scepticism as to answers it was given and/or asked questions and/or requested information which a reasonably competent auditor would have requested.
- 11.4. It is denied that any such dishonest statement as the Defendant may prove is properly to be attributed to Lendy in any event, for the reasons particularised further below at paragraphs 44.3 and 47.
- 11.5. Save as aforesaid, Paragraph 20 is denied.
12. As to Paragraph 23, the Claimant repeats its responses above at paragraph 9, *mutatis mutandis*.
13. As to Paragraph 25, the Claimant repeats its response at paragraph 10 above, *mutatis mutandis*. Further, the matters set out at paragraphs 43 to 49 below are repeated.
14. As to Paragraph 27:
- 14.1. It is confirmed that Paragraph 20 of the Particulars of Claim should be read as asserting reliance by Lendy on the Defendant's Audit Report on the FY2016 financial statements, as anticipated by sub-paragraph 27.2.
- 14.2. As to sub-paragraph 27.2(1), ~~save that it is admitted that the Directors knew that given the substantial misstatements in the FY2016 and FY2017 financial statements did not show a true and fair view of Lendy's affairs, no admissions are made it is denied that Lendy, by its Directors or Mr Coles, knew the true financial position of Lendy at all material times.~~
- 14.3. Sub-paragraph 27.2(2) is denied for the reasons set out more fully below.
- 14.4. As to sub-paragraph 27.2(3), it is admitted that the dividends payments made were for the Directors' personal gain, in their capacity as shareholders.
- 14.5. Save as aforesaid, this paragraph is denied.
15. As to Paragraph 31, it is unclear what pattern of dishonest behaviour is alleged as this is not particularised, but save for the Marshall Islands Payments (which are dealt with at paragraphs 18.5.1, 21.2 and 41.3 below), it is denied that any such alleged pattern of dishonest behaviour is relevant to the remaining allegations of dishonesty made by the



Defendant. It is noted that the events referred to significantly post-date the events which are the subject of the claim against the Defendant and so their relevance is denied.

16. The admissions in Paragraph 33 that the FY2016 financial statements did not give a true and fair view of Lendy's financial position and that they had not been prepared in accordance with the applicable accounting standards are noted. The Claimant's position on agency/principal in relation to Model 2 loans is set out below at sub-paragraph 18.2. For the avoidance of doubt, it is denied that these were the only respects in which those audited financial statements did not give a true and fair view of Lendy's financial position and/or in which they had not been prepared in accordance with the applicable accounting standards, as the Defendant ought to have known. In particular, and without prejudice to the generality of the foregoing, it is denied that the matters in sub-paragraph 33.3 were the only or only significant matters which gave rise to a material uncertainty about Lendy's ability to continue as a going concern, as the Defendant ought to have known.
17. The admissions in Paragraph 34 that the FY2017 financial statements did not give a true and fair view of Lendy's financial position and that they had not been prepared in accordance with the applicable accounting standards are noted. The Claimant's position on agency/principal in relation to Model 2 loans is set out below at sub-paragraph 18.2. For the avoidance of doubt, it is denied that these were the only respects in which those audited financial statements did not give a true and fair view of Lendy's financial position and/or that they had not been prepared in accordance with the applicable accounting standards, as the Defendant ought to have known.
18. As to Paragraph 35:
 - 18.1. As to sub-paragraph 35.1, the allegations in Paragraph 26 of the Particulars of Claim are particularised in Paragraph 27 of the Particulars of Claim, as Paragraph 26 thereof expressly states. Further, the Defendant has refused to disclose its audit working papers, and insofar as the Claimant is unable to provide further particulars of breach as a result, it reserves the right to amend the Particulars of Claim following full disclosure of the Defendant's audit working papers.
 - 18.2. As to sub-paragraph 35.2:
 - 18.2.1. The first sentence is a serious over-simplification and is denied. This will be a matter for expert evidence at the appropriate time.



- 18.2.2. While the admission in the second sentence is noted, the conclusion is denied.
- 18.2.3. Lendy acted in some respects as principal and in many respects as an agent in relation to Model 2 loans, and the correct or acceptable treatment of them in the financial statements will be a matter for expert evidence at the appropriate time. The significant point regarding the treatment of Model 2 loans in the financial statements as drawn is that in addition to being drawn on the basis that Lendy was only acting as a principal, the financial statements also misrepresented revenue, understated expenses and grossly overstated profits through a combination of the many points particularised in paragraphs 26 and/or 27 of the Particulars of Claim.
- 18.3. The admissions in sub-paragraph 35.3 are noted. These matters are sufficiently pleaded. It is denied that the first sentence is correct, for the reasons set out at sub-paragraph 18.2 above. The matters in this sub-paragraph 35.3 will be a matter for expert evidence at the appropriate time and following disclosure by the Defendant of its full audit files.
- 18.4. Sub-paragraph 35.4 is denied.
- 18.5. As to sub-paragraph 35.5:
- 18.5.1. Sub-paragraph 27.13 of the Particulars of Claim pleads a positive case that the inclusion of the Marshall Islands Payments (including those paid in 2016 and 2017) as genuine business expenses gave rise to material misstatements and/or amounted to a failure to give full disclosure of the Directors' remuneration and/or that there was thereby a failure to give proper disclosure under "Related Parties Disclosure" in either FY2016 or FY2017. It is properly pleaded. For the avoidance of doubt, it is the Claimant's case that the Marshall Islands Payments (in particular those paid during 2016 and 2017) were not genuine business expenses of Lendy, that the financial statements for each year were thereby misstated, and that on the documents and information available to it (as particularised in the Particulars of Claim) and/or further documents and information which it should have sought and with the application of appropriate professional scepticism, the Defendant should have reached



that conclusion and/or that this should have caused the Defendant to conclude that the Directors were not fit and proper persons for the purposes of the FCA's Threshold Conditions. Further particulars are set out at sub-paragraphs 19.3.1 and 21.3 below. It is not necessary for the Claimant to plead or prove the true nature of the Marshall Islands Payments, but without prejudice to the foregoing, it is admitted and averred, as set out in the Defence to Counterclaim at paragraph 41.3 below, that the Directors' statements that they had no business connections with the entities which received the Marshall Islands Payments and that the payments were in respect of genuine business expenses of Lendy, were deliberately false and dishonest.

18.5.2. Sub-paragraph 35.5(2) is noted.

18.5.3. As to sub-paragraph 35.5(3), reference will be made to the financial records in relation to the payments to these entities. Although the total for these payments provided by Mr Gordon to the Defendant was £5,659,000, the actual total (as claimed by the Administrators against the Directors in proceedings against them) was £6,849,000.

18.6. As to sub-paragraph 35.6:

18.6.1. Sub-paragraphs (1) and (2) are noted.

18.6.2. As to sub-paragraph (3), quantification of the corporation tax, interest and penalties which should have been accounted for if the FY2016 and FY2017 financial statements had been prepared on the correct basis is a matter for expert evidence and will be provided following disclosure and by way of expert evidence at the appropriate time.

18.6.3. As to the cashflow forecast referred to at paragraph 35.7(4)(c) of the Defence, the Defendant was required to exercise appropriate professional scepticism in relation to it, particularly in the light of the £1.86m of remediation costs recognised since the 2016 Accounts. Even a brief examination of the forecast would have revealed serious cause for concern. For example (i) profit before tax for 2017 was reported as £764,000, but the cashflow forecast included £1.68m of remediation payments and therefore assumed an improbable improvement of at least £1m in the performance of the business; (ii) despite reported profits no



corporation tax payments were allowed for, (iii) administration costs were projected to reduce from £6,554,000 in FY 2017 to £4,913,000; (iv) salary costs were projected to reduce from £1,740,000 in FY 2017 to £1,497,000, although there had been recruitment during 2017, so the costs in that year did not reflect full year costs for the existing staff; and (v) default interest (which depended on defaulting debtors from whom default interest could nonetheless be recovered) was projected at an implausible £119,000 per month. Overall, the cashflow forecast should have aggravated rather than assuaged concerns over Lendy's going concern status.

18.7. Save as aforesaid, Paragraph 35 is denied.

19. The admissions of breach of contractual and tortious duty in Paragraph 36 are noted. As to the sub-paragraphs:

19.1. The admission at sub-paragraph 36.1 is noted. Sub-paragraph 18.2.3 above is repeated. The Defendant thereby acted in breach of its tortious and contractual duties.

19.2. The admission at sub-paragraph 36.2 is noted.

19.3. As to sub-paragraph 36.3:

19.3.1. As to the first sentence, the supposed external confirmations from Conduit were wholly unbelievable and unsatisfactory, for the reasons set out at Paragraph 27.13 of the Particulars of Claim. They should have caused the Defendant further to question the nature of the Marshall Islands Payments and thereafter to conclude that they were not genuine business expenses and/or to make a SAR and/or report under paragraphs 12 - 16 of ISA 250B to the FCA. For the avoidance of doubt, it is denied that the Defendant could reasonably have relied on any Representations Letters in respect of payments to a Marshall Islands entity as justifying any such payment as a genuine business expense.

19.3.2. The admission in the second sentence is noted.

19.3.3. As to the third sentence, paragraph 18.5.1 above is repeated.

19.4. As to sub-paragraph 36.4:



19.4.1. The first sentence is denied. In particular it is denied that the Defendant was induced to sign the FY2016 or the FY2017 audit reports by any representation by Mr Gordon in an email of 14 February 2018. Paragraphs 10 and 11 above are repeated. Alternatively, given other information already available to it concerning Lendy's application for authorisation and its correspondence with the FCA, the Defendant should not reasonably have been so induced. The Defendant is grossly exaggerating the significance of that one email in seeking to avoid liability for its own breach of duty in signing the Audit Reports for each of those years when, as it admits in the second sentence, it had failed to obtain sufficient audit evidence and failed to exercise adequate professional scepticism concerning whether regulatory non-compliances identified by the FCA or by Duff & Phelps had been addressed by Lendy. The email of 14 February 2018 was one small part of a body of correspondence, reports and information about the difficulties Lendy was facing with obtaining full authorisation, which had been provided to the Defendant by Lendy's Directors and employees, and which should have caused the Defendant serious doubt as to whether Lendy would be able to address the non-compliances raised and obtain full authorisation. In any event, as set out above, Ms Sheppard was not in the office on 14 February 2018, and appears to have pre-signed the Audit Opinion prior to it being dated on that day.

19.4.2. Further, insofar as the email of 14 February 2018 contained any misrepresentation, the Defendant cannot rely on the same to avoid its liability since any such misrepresentations were the very thing it was engaged to detect and would have detected, alternatively it would have known the true position from its own enquiries, if it had been acted with reasonable competence.

19.5. Save as aforesaid, this paragraph is denied.

20. Paragraph 38 is denied. The Claimant relies on the allegations of breach of duty in the Particulars of Claim to the fullest extent possible, which extends significantly further than the admissions made by the Defendant. The Claimant has provided full particulars in the Particulars of Claim, to the extent it is able to do so without sight of the Defendant's audit working files, which the Defendant has unreasonably refused to disclose. The Claimant reserves the right to plead fuller particulars after sight of those audit files on disclosure.



21. As to Paragraph 40:

- 21.1. Sub-paragraph 40.1 is denied. Paragraph 29 of the Particulars of Claim does not simply allege that the Defendant should have made a report, it specifies that the report should have been under paragraph 12 of ISA 250B (also, as applicable, under paragraphs 13 to 16). This was because, in respect of the Marshall Islands Payments, there was an apparent breach of statutory or regulatory requirements and there was reasonable cause to believe the breach would be of material significance to the regulator, and relevant thresholds for reporting had been met.
- 21.2. As to sub-paragraph 40.2, it is denied that it is necessary for the Claimant to allege that the Marshall Island Payments were fraudulent or improper. What is necessary is to plead that those payments were not genuine business expenses and/or were payments to a connected party and that they involved an apparently material breach of regulatory or statutory requirements, and that the Defendant would have recognised this if it had acted reasonably competently, which the Claimant has done. Nevertheless, it is admitted and averred that the Directors' statements that they had no business connections with the entities which received the Marshall Islands Payments and that the payments were in respect of genuine business expenses of Lendy, were deliberately false and dishonest. Furthermore, the procurement by the Directors of payments from Lendy to their own benefit, under the false guise of business expenses, constituted breaches by the Directors of their fiduciary duties to Lendy, their duties of care and skill to Lendy and their duties to disclose their dealings with Lendy as well as tax evasion. All of this should have been obvious to the Defendant on the information which they had. Sub-paragraph 18.5.1 above is repeated.
- 21.3. Sub-paragraph 40.3 is denied. It was not credible on the face of the documents and answers which the Defendant already had, and the sheer size of the payments for the alleged services (which Mr Gordon told the Defendant on 13 February 2018 had totalled £5,659,000), that the Marshall Islands Payments were genuine business expenses incurred with an independent third party, for the reasons elaborated in the Particulars of Claim. If the Defendant had acted reasonably competently and exercised adequate professional scepticism, it would have readily established that the payments were not genuine business expenses incurred with an independent third party and the Directors would not have been able to conceal their true nature from the Defendant. Further, such



fraud or impropriety was the very thing which the Defendant was under a duty investigate and use reasonable efforts to identify.

21.4. As to sub-paragraph 40.4:

21.4.1. As to sub-paragraph 40.4(a), the Defendant appears to be alleging that it would have made a report to an employee of Lendy which would have risked tipping off. Paragraph 14 of ISA 250B says expressly that an auditor should not do this.

21.4.2. Sub-paragraph 40.4(b) is denied. A reasonably competent auditor would have undertaken further investigations but ultimately would not have been able to obtain sufficient appropriate audit evidence that the payments were genuine, would have concluded that there was a significant risk that fraud had taken place and so would have concluded that a report to the regulator was required. Accordingly, they would have been unable to give an unqualified audit report. Further details are a matter for expert evidence at the appropriate time.

21.5. As to sub-paragraph 40.5, the Claimant relies among other things on the rapid action which the FCA in fact took in April and May 2019 (as set out at paragraph 30.2 below), including stopping Lendy transacting new business (including with existing Borrowers) when it became aware of circumstances suggesting that Mr Brooke might have been guilty of misconduct and/or breach of the duty to act with integrity and/or that he might not be a fit and proper person to perform functions in relation to a regulated activity. The Defendant as auditor had privileged access to Lendy's financial records, correspondence and other records which should have caused it to make a report to the FCA itself.

21.6. Save as aforesaid, this paragraph is denied.

22. As to Paragraph 41:

22.1. As to sub-paragraph 41.1, while it is admitted that the Directors of Lendy were primarily responsible for the preparation of Lendy's financial statements, the Defendant was its appointed auditor. Interrogating Lendy's financial records and draft financial statements with reasonable competence and adequate professional scepticism was the very thing it was engaged to do. As such, it cannot rely on the Directors' responsibility for preparing the financial statements



to avoid the effect of the reliance by the Directors (who were also the shareholders) on the Defendant's Audit Reports on those financial statements.

22.2. As to sub-paragraph 41.2, it is the Claimant's case that Lendy relied on the unqualified Audit Reports on the financial statements for FY2016 and/or FY2017 in continuing to operate its business in the way in which it did, in particular in pursuing the application for authorisation by the FCA. Further:

22.2.1. As to sub-paragraph 41.2(1), the Defendant has admitted that there were extensive misstatements in the financial statements, at Paragraphs 33 and 34 of the Defence. However it was the misstatements concerning the overstatement or misattribution to Lendy of revenue, including of interest payments from Borrowers (both standard and default), and the failure to include all necessary liabilities to Investors, and consequently the overstatement of profit, which the Directors and Mr Coles assumed were correct in continuing to operate Lendy's business in the manner in which they did and in continuing to pursue the application for FCA authorisation and negotiate the Remediation Plan. Further, it is irrelevant that the Directors were responsible for the financial statements to which the Audit Reports related, since confirming whether those financial statements were supportable was the very thing the Defendant was engaged to check.

~~22.2.2. Any misstatements relating to the Marshall Islands Payments did not result in any overstatement of profit, nor did they contribute to the impression that Lendy could continue to trade as a going concern; on the contrary they amounted to an overstatement of expenses.~~

22.2.3. As to sub-paragraph 41.2(2), it is irrelevant whether the Directors would have wanted or tried to continue to operate Lendy's business, because if the Defendant had acted with reasonable competence, it would either have resigned or filed a qualified Audit Report and would have made a SAR and/or report under ISA 250B as particularised above. This would have prevented the Directors from pursuing Lendy's application for full authorisation and would have forced the Directors and/or Mr Coles to tell the FCA that Lendy was unable to file unqualified accounts and it was doubtful whether it could continue to trade as a going concern. This in turn would have led to the FCA taking rapid enforcement action against



Lendy, as set out at paragraphs 30 and 31 of the Particulars of Claim. Lendy was under strong and repeated pressure from the FCA in early 2018 to confirm it had filed its FY2016 financial statements (i.e. including an unqualified audit opinion). Even if they had wanted to, the Directors could not have concealed from the FCA any inability to do so if the Defendant had refused to provide an unqualified audit opinion, as it should have done, especially since a reasonably competent auditor would have been in direct communication with the FCA on these matters.

22.2.4. As to sub-paragraph 41.3, sub-paragraph 22.2.3 is repeated.

22.2.5. Sub-paragraph 41.4 is denied for the reasons set out above.

22.3. Save as aforesaid, Paragraph 41 is denied.

23. Paragraph 42 is denied, for the reasons set out in Paragraphs 30 to 33 of the Particulars of Claim and herein.

24. As to Paragraph 43:

24.1. As set out at paragraph 18.2.3 above, the main problem with the financial statements was not that the Model 2 loans should simply have been accounted for on an agency basis. The Claimant relies on all of the allegations of misstatement and breach in the Particulars of Claim. What the financial statements would have shown if they had been prepared on a reasonably competent basis is a matter for expert evidence at the appropriate time, but in general terms, revenue had been wrongly recognised (including standard and default interest which was collected on behalf of the Investors) or recognised without also including concomitant expenses, expenses had been wrongly excluded or included at the wrong time and profitability had consequently been dramatically overstated, among other things.

24.2. Sub-paragraph 43.2 is denied. These defects are among those relied upon in Paragraph 31 of the Particulars of Claim as causing or contributing to Lendy's losses.

24.3. Sub-paragraph 43.3 is denied, but in any event, as set out above, the problem was not that the Model 2 loans should simply have been accounted for on an agency basis. This was not just a technical accounting issue. This is a matter for expert evidence at the appropriate time.



- 24.4. Save as aforesaid, this paragraph is denied.
25. As to Paragraph 44:
- 25.1. As to sub-paragraph 44.1, this is a matter for expert evidence at the appropriate time and after disclosure.
- 25.2. As to sub-paragraph 44.2, no further Model 1 loans were made after October 2015, so the relevance of Model 1 loans is as to whether liabilities and expenses for these loans were properly accounted for, and the effect of this on revenue and profitability overall and on the going concern issue.
- 25.3. Sub-paragraph 44.3 is denied for the reasons set out above.
- 25.4. Save as aforesaid, this paragraph is denied.
26. As to Paragraph 45:
- 26.1. Sub-paragraph 45.1 is denied. Paragraphs 18.5 and 21 above are repeated.
- 26.2. Sub-paragraph 45.2 is denied.
- 26.3. Sub-paragraph 45.3 is denied. Identification of misrepresentations, including fraudulent misrepresentations, of this type was one of the very things which the Defendant was engaged to identify and detect, and which it could readily have identified and challenged on the material actually available to it, or which would have been available if it had acted with reasonable competence and exercised appropriate professional scepticism. Further a reasonably competent auditor would have been in direct communication with the FCA as set out above. It is accordingly denied that the Defendant can rely on any such misrepresentation to break the chain of causation. Sub-paragraph 18.5.1 above is in any event repeated.
27. As to Paragraph 46:
- 27.1. Sub-paragraph 46.1 is denied. It is denied that the misstatements in the FY2016 and/or FY2017 financial statements were caused by misrepresentations by Lendy (whether fraudulent or not), whether as a matter of fact or law. It is in any event denied that the fraudulent misrepresentations by the Directors in respect of the Marshall Islands Payment and any other fraudulent misrepresentations as may be proved should be attributed to Lendy, for the reasons set out more fully



at paragraphs 43 to 49 below. In all or all material cases, the misstatements were the result of matters of which either the Defendant was aware or it should have been aware if it had asked the questions and requested information or documents that a reasonably competent auditor would have done and exercised adequate professional scepticism. Further it is denied that conduct of the Directors, whether as alleged or otherwise, was so egregious as to break the chain of causation since:

- 27.1.1. Insofar as the Directors made misrepresentations to the Defendant, they are not to be attributed to Lendy and/or should not be treated as having that effect as a matter of law, given the context and purpose of any attribution, in particular the Defendant's role as auditor of Lendy.
- 27.1.2. Identifying and challenging misrepresentations by the Directors and misstatements within the draft financial statements was one of the very things that the Defendant had been engaged to do as part of its work on the audit.
- 27.2. As to sub-paragraph 46.1(1), it is admitted that the Defendant requested copies of the correspondence between Lendy and the FCA and enquired as to the progress of communications with the FCA relating to Lendy's application for full authorisation at intermittent stages during the period of the audit. The second sentence is denied: while Lendy was aware that the Defendant should be informed about developments in relation to its FCA permission status, the Defendant failed to make proper enquiries into that status, either with Lendy or with the FCA.
- 27.3. Sub-paragraph 46.1(2) is admitted and averred. Further the Defendant was provided with the draft Duff & Phelps report dated 25 January 2018 (which was in substantially the same terms as the final version) on 26 January 2018.
- 27.4. Save that the precise dates of meetings is not known and is not admitted and save for the last sentence, sub-paragraph 46.1(3) is admitted. It is admitted that Lendy expressed optimism that it would be granted full authorisation and that the non-compliances which had been identified by the FCA and by Duff & Phelps were ones which could be addressed to the FCA's satisfaction. It is denied that the Defendant was entitled to rely on any such expressions of opinion by Lendy as valid or reliable: it should have approached all such expressions of opinion



with appropriate professional scepticism and sought independent audit evidence to support the same, and it failed to act with reasonable competence in failing to do so.

- 27.5. It is admitted that on 15 January 2018 Mr Coles sent Ms Sheppard an email which included the excerpt quoted in sub-paragraph 46.1(4). The Claimant will rely upon the full contents of the exchanges of emails.
- 27.6. The email exchange at 46.1(5) is admitted, although Ms Sheppard had already been sent a draft of the Duff & Phelps report on 26 January 2018.
- 27.7. As to sub-paragraph 46.1(6), it is admitted that Mr Coles emailed Ms Sheppard in the terms quoted on 9 February 2018. This was part of a longer exchange between them concerning the progress of Lendy's application for full authorisation by the FCA.
- 27.8. The Defendant has omitted from the sequence of emails quoted a more material email, from Ms Sheppard to Mr Brooke on 8 February 2018, in which she said: "*I also need to chat through any update with the FCA. Paul has already provided me with some of the updates, but I would like him on the call so I can confirm everything for our records as part of the conversation*". It appears from this email that Ms Sheppard may then have had a direct conversation with the FCA about the progress of Lendy's application for full authorisation, yet no reference has been made in the Defence to any such conversation. For the avoidance of doubt:
- 27.8.1. If that conversation between Ms Sheppard and the FCA took place on or shortly after 8 February 2018, she had the opportunity to obtain independent audit evidence direct from the FCA as to the progress of Lendy's application for full authorisation, including any concerns which the FCA might have had, non-compliances of which it was aware, and that it was about to warn Lendy that it was minded to refuse Lendy's application for full authorisation. Insofar as Ms Sheppard failed to obtain such information from the FCA, she failed to act as a reasonably competent auditor would have done;
- 27.8.2. Alternatively, if she failed to have that call with the FCA at all, but instead placed reliance solely on statements or expressions of opinion from Mr Coles, the Directors or others at Lendy in signing the Audit Report on 14 February 2018, she failed to act as a reasonably competent auditor



would have done, including by failing to exercise adequate professional scepticism, among other things in failing to ask Lendy to set up such a meeting or to ask the FCA to provide her direct with an update as to their current position but instead placing any reliance on what the Directors and Mr Coles said.

27.9. For the avoidance of doubt, it is denied that these or any such exchanges between Mr Coles or the Directors and Ms Sheppard could or should have been relied upon by the Defendant as sufficient or appropriate audit evidence as to the progress or prospects of full authorisation of Lendy by the FCA.

27.10. As to sub-paragraph 46.1(7):

27.10.1. It is admitted that Mr Coles took the call from the FCA on 13 February 2018 believing that it was a simple update, that Mr Gordon was also on all or part of that call and that Mr Coles informed Mr Brooke (who was on holiday) about its contents afterwards. In an email on that day and timed at 19.05, Mr Coles told Mr Brooke (copied to Mr Gordon and others) among other things that in his opinion much of what was discussed was legacy issues; that there was nothing of major concern in the Duff & Phelps report, and that the other concerns raised by the FCA were (1) whether Lendy was appropriately resourced (in particular as to appointing persons to the roles of CF10, CF10A and CF11); (2) wording on the Lendy website; (3) *“2016 Accounts submission. This has clearly caused them major concern. I have kept them fully updated and advised that we would almost certainly be receiving Moore Stephens sign off today (It happened during the FCA call, which we advised them)”* and (4) *“Remediation. We shared the remediation plan and sub-level filter detail with them as agreed...”* Mr Coles said that they would continue to work proactively through the file remediation plan, that as soon as they could assess compensation for affected investors they would and that Mr Gordon had stressed to the FCA how seriously they were taking this and that they would keep working with the FCA to resolve it quickly. Mr Coles also said *“Ironically the CASS Team came back with an extremely positive response just ahead of the call. Forwarded for your information.”*

27.10.2. Mr Brooke replied to Mr Coles at 18.26, *“So it sounds like they are panicking and we are on top of things. Carry on.”*



27.10.3. Accordingly, it is to be inferred that Mr Coles and the Directors considered that they had addressed or were addressing the concerns raised by the FCA and that since the CASS team at the FCA had just come back very positively, there had been a misunderstanding which could be resolved through further engagement. However the delay in submitting the FY2016 audited accounts was one of the greatest concerns to the FCA, and that during the call Mr Coles had received confirmation from the Defendant, which he had communicated to the FCA, that the Defendant was ready to sign off the FY2016 financial statements.

27.11. As to sub-paragraph 46.1(8):

27.11.1. Insofar as the Defendant was not aware of the 13 February 2018 call between Mr Coles and the FCA or its contents, which is not admitted, that lack of knowledge was the result of the Defendant's own failings in:

27.11.1.1. Failing to speak to the FCA directly and/or failing to make any or any sufficient enquiry during any such call with the FCA as to its intentions and position as regarded Lendy's application for authorisation.

27.11.1.2. Failing to exercise adequate professional scepticism and/or make appropriate enquiries of Lendy.

27.11.1.3. Failing to obtain sufficient appropriate audit evidence as to the progress of Lendy's application for authorisation.

27.11.1.4. Allowing itself to be overly influenced by the time pressure from Lendy and/or the FCA to sign off the FY2016 financial statements.

27.11.2. Further the alleged significance of the call on 13 February 2018 is denied.

27.11.3. The sending and content of the emails quoted in part at sub-paragraphs (a) and (b) are admitted, but are selective and any inferences intended are denied. The Claimant will rely on the full exchange of correspondence, in context.



27.11.4. On the same day, 13 February 2018, Mr Gordon also emailed the Defendant with details of amounts of the Marshall Islands Payments made over FY2015, FY2016 and FY2017. The amount stated should have alerted any reasonably competent auditor that these were not genuine business expenses, in any event but in particular given the material provided by Lendy in support of these being expenses of the business, which was not credible and would not have been accepted as sufficient audit evidence by a reasonably competent auditor, as set out at paragraph 27.13 of the Particulars of Claim.

27.12. Sub-paragraph 46.1(9) is denied.

27.12.1. As set out at sub-paragraph 27.10 above, it is to be inferred that the Directors and Mr Coles considered that the warning about a potential “Minded to Refuse” letter was probably the result of a misunderstanding and miscommunication between different parts of the FCA, and that the FCA’s concerns, including the failure of Lendy to file its FY2016 accounts, had been or could be successfully addressed. The allegations of dishonesty and deliberate misrepresentation are accordingly not admitted.

27.12.2. It is admitted that in replying as he did on 14 February 2018, Mr Gordon was intending that the Defendant would then sign the FY2016 Audit Report. Insofar as it did rely on that statement (which is denied), it is denied that that reliance was reasonable or can be advanced by the Defendant as a matter of law, since such an email could not constitute appropriate audit evidence. The Defendant should have satisfied itself of those matters from independent, appropriate audit evidence.

27.12.3. It is further denied that the Defendant relied on any such statement in the email of 14 February 2018 from Mr Gordon, since Ms Sheppard had apparently already signed the Audit Report in advance of that email being sent and was out of the office.

27.12.4. It is further denied that Mr Brooke and/or Mr Coles were party to any dishonest or deliberate deception of the Defendant as alleged. They were copied in on the email but it is denied that this is sufficient to make them party to any dishonest or deliberate deception of the Defendant by



Mr Gordon as alleged by the Defendant. No admissions are made as to whether either of them read or realised what was being said in that email, especially since Mr Brooke was on holiday. To the extent that they did, it is denied that they believed Mr Gordon was acting dishonestly or misleading the Defendant in replying in the terms that he did, for the reasons set out in sub-paragraph 27.10 above.

27.12.5. In any event, the FCA did not pursue any concerns it had by issuing any “Minded to Refuse” letter.

27.12.6. Any misrepresentation was accordingly of no causative significance, and does not break the chain of causation.

27.13. Save that it is admitted that no Minded to Refuse Letter was ever issued by the FCA, sub-paragraph 46.2 is denied. If the Defendant had acted reasonably competently, then it would have:

27.13.1. Advised the Directors that the draft financial statements contained extensive misstatements, for the reasons set out in the Particulars of Claim (and in any event as admitted by the Defendant).

27.13.2. Advised the Directors that revised draft financial statements correcting those misstatements, and the provision of further, more reliable auditable information was required before it could continue with its audit.

27.13.3. Separately and without telling Lendy, informed the FCA, whether in a conversation or otherwise, that it had reasonable cause to believe that there had been a breach of statutory and regulatory requirements and that it had doubts over the integrity of those charged with governance and their competence, pursuant to its obligations under ISA 250B paragraphs 12 - 16, as set out above at paragraphs 5.3 and 21.

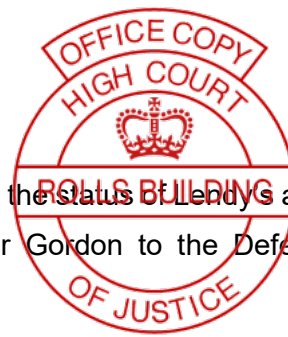
27.14. It is averred that the Directors would not in these circumstances have been able to assuage the FCA's concerns, among other things due to the existence of a report under ISA 250B. In any event, the delay in filing the FY2016 financial statements, with an unqualified audit opinion, was one of the FCA's main concerns preventing it progressing Lendy's application for full authorisation.

28. Paragraph 47 is denied. The Defendant's breach of contract or duty caused Lendy to suffer loss as a matter of fact and law for the reasons set out in the Particulars of Claim



and herein. The Claimant responds to the Defendant's asserted defences to causation in this Reply, as follows:

- 28.1. If the Defendant had acted with reasonable competence, it would not have signed an unqualified Audit Report of the FY2016 financial statements in the form they were drafted, but would have refused to do so and/or resigned and/or issued a heavily qualified audit opinion.
- 28.2. If the financial statements had been drawn on an accurate basis, substantial revenue including in respect of standard and default interest would not have been recognised as Lendy's, far more extensive expenses would have been included, including acknowledging liabilities to Investors for standard and default interest, and the apparent profit would have been extinguished. Exposition of these matters will be a matter for expert evidence, with the benefit of sight of the Defendant's audit records, in due course.
- 28.3. Further, if the Defendant had acted with reasonable competence, in view of the significance of the FCA authorisation to Lendy, the Defendant would have set out to establish the correct position in respect of Lendy's application for FCA authorisation. It would have done so in the first instance by making appropriate inquiries of Lendy, including requesting copies of all relevant correspondence, and then confirmed the position through direct contact with the FCA .
- 28.4. Further, in that event it is unlikely that the Defendant would, on the information then available, have been able to approve the drawing up of the FY2016 financial statements on a going concern basis.
- 28.5. In those circumstances, the Directors would have had no choice but to tell the FCA that Lendy was unable to issue its FY2016 financial statements with an unqualified audit opinion, which would inevitably have led to the FCA taking enforcement action against Lendy, including prohibiting it from accepting new business from 1 March 2018 or shortly thereafter.
- 28.6. If Lendy had not transacted further new business from 1 March 2018 onwards, it would not have incurred losses in the form of liabilities to Investors arising from those additional loans and other losses, as expanded further below.



28.7. Insofar as any misrepresentation concerning the status of Lendy's application for authorisation to the FCA was made by Mr Gordon to the Defendant on 14 February 2018, ~~which is denied~~:

28.7.1. The true position was one which the Defendant could have discovered from information which it had, or which a reasonably competent auditor would have obtained, including by speaking direct to the FCA.

28.7.2. Such misrepresentations are among the very things that an auditor such as the Defendant is engaged to identify, including by exercising adequate professional scepticism and obtaining sufficient audit evidence, which the Defendant failed to do.

28.7.3. Accordingly any false statement by Mr Gordon is not to be attributed to Lendy and/or in all the circumstances should not be treated as breaking the chain of causation from the Defendant's breach of contract or negligence.

28.7.4. Further, since FCA did not in fact issue any "Minded to Refuse" letter, any misrepresentation was of no causative significance, and cannot break the chain of causation.

29. Paragraph 48 is denied. In particular:

29.1. As a result of further Investors investing in new loans or further advances or drawdowns from 1 March 2018 onwards, Lendy has suffered loss in the form of the liabilities which it has to those Investors to pay the amounts of standard and default interest charged to the Borrowers of those loans, and to repay the capital sums they invested, after allowance for any sums paid by or recovered from those Borrowers or in respect of any third party claims directly related to the Model 2 loans.

29.2. Accordingly, the Claimant is not claiming for losses suffered by the Investors; it is claiming for losses suffered by Lendy as a consequence of the increased liabilities which it has to Investors, including for breach of fiduciary duty in its dealings with interest and with monies received from Model 2 Investors (as held by HHJ Rawlings on 12 August 2021: see sub-paragraph 29.3 below). It was foreseeable that if the Defendant signed an unqualified audit report which allowed Lendy to continue to trade in the same manner in which it had been trading, which



audit report the Defendant would not have signed if it had exercised reasonable competence, then this would lead to Lendy incurring new liabilities to Investors on any further lending or drawdowns through continuing to trade in that manner.

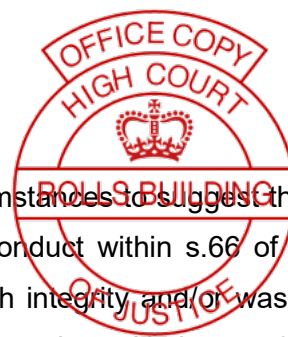
29.3. The order of HHJ Rawlings of 12 August 2021 and the further order made by him on 20 July 2023 (**"the Lendy Cost Protocol"**) quantified the amount of Lendy's liabilities to each of the Model 2 Investors (including those who invested after 1 March 2018), by declaring that each of them should have an unsecured provable claim against Lendy in its administration for a standard amount calculated in summary as the capital and interest which that Investor should have received regarding that loan if the Borrower had repaid all capital and interest (standard and default), less the total of all sums in fact received by that Investor, subject to a right to claim for a greater amount by submitting an individual proof of debt. The Claimant relies on the Lendy Cost Protocol for the precise details of the calculation method. The administrators have not yet carried out those calculations, which are to be done in tranches with the agreement of a committee of Investors. Particulars of the amounts payable to Investors pursuant to the Lendy Cost Protocol will be provided by the Claimant when available to it.

29.4. Accordingly, the Claimant is entitled to and does claim against the Defendant for those losses, in the form of its increased liabilities to the Investors.

30. Paragraph 49 is denied. In particular:

30.1. In considering revenue for the purposes of the FY2016 (and FY2017) financial statements, the Defendant negligently and in breach of duty failed to identify that income from the Model 2 loans, including in particular the Investors' standard and default interest, could not properly be treated as income of Lendy, given the terms of the agreements between Lendy and Model 2 Investors which provided that Lendy was acting as an agent, at least not without also including Lendy's liabilities to the Investors for such interest and any other related liabilities as expenses. There is accordingly a sufficiently close relationship between the Defendant's breaches of duty and the nature of Lendy's losses, and in particular its liabilities to Investors for standard and default interest, that these losses fall within the scope of the Defendant's duty of care.

30.2. As to sub-paragraph 49.1, the rapid actions of the FCA in April and May 2019, in particular in (i) appointing investigators on 17 April 2019 under s.168(5) of the



2000 Act on the basis that there were circumstances to suggest that Mr Brooke (the then sole Director) was guilty of misconduct within s.66 of the 2000 Act and/or was in breach of the duty to act with integrity, and/or was not a fit and proper person; (ii) giving Lendy a First Supervisory Notice on 22 May 2019, requiring it not to facilitate any new agreements with Investors, continue to facilitate its secondary market or accept applications or monies from new Investors, effectively closing Lendy to new business and (iii) giving notice on 22 May 2019 of its application to wind up Lendy on just and equitable grounds; show that once alerted, the FCA was able to and did take rapid action, in particular to prevent Lendy transacting new business pending any investigation. This sub-paragraph is accordingly and in any event denied.

30.3. As to sub-paragraph 49.2, the Claimant is not claiming for losses suffered by the Investors; it is claiming for the increase in Lendy's liabilities to Investors as a consequence of Lendy continuing to transact new loans including new advances, from 1 March 2018. ~~The quality of that lending is therefore irrelevant.~~ Paragraph 29 above is repeated and this sub-paragraph is denied. These losses accordingly fall within the scope of the Defendant's duty of care, for the reasons set out at sub-paragraph 30.1 above. Insofar as recoveries have been or will be made from Borrowers, and insofar as Investors are repaid (now through the mechanism of the Lendy Costs Protocol), this has reduced those liabilities and so the amount of the losses, so credit is or will be given.

30.4. Sub-paragraph 49.3 is denied. Sub-paragraph 30.2 above is repeated.

30.5. As to sub-paragraph 48.4:

30.5.1. The figure of ~~£27,552,395~~ £24,378,606 is the total of the new lending which took place after 1 March 2018, which would not have taken place but for the Defendant's negligence, as sub-paragraph 32.1 expressly states. It is denied that further particularisation is necessary at this stage; full details of the sums invested by individual Investors after that date will be provided upon disclosure and/or through witness or expert evidence.

30.5.2. The figure of ~~£15,599,571~~ £15,687,795 is the administrators' assessment of the amount of Lendy's liabilities to those Investors who paid funds to Lendy after 1 March 2018 (estimated at the date of the Particulars of Claim, but now ~~£15,608,486~~ £15,687,795) calculated and



quantified according to the mechanism in the Lendy Cost Protocol, save that this figure is net of the liabilities to the Investors in respect of default interest, which have not yet been calculated by the administrators but are claimable and claimed in addition. Further details will be provided upon disclosure and/or through witness or expert evidence and when calculated and provided by the administrators. As set out at sub-paragraph 29.3 above, these calculations are to be carried out and approved by the Investors committee set up under the Lendy Cost Protocol.

~~30.5.3. The Claimant does not allege at sub-paragraph 32.1 of the Particulars of Claim that the loans would have performed better but for the Defendant's negligence; it claims that greater sums would probably have been recovered from Borrowers if administrators had been appointed sooner. This is because the administrators would probably have been more effective at making recoveries from Borrowers than Lendy itself, as shown by the steps taken and recoveries made by the administrators since their appointment, and there would have been better prospects of recovery from the Borrowers. It is accepted that this will involve a loss of a chance assessment. Further details are a matter for witness evidence.~~

30.6. As to sub-paragraph 49.5, sub-paragraph 30.5.3 above is repeated.

31. As to Paragraph 50:

31.1. Paragraph 14 above is repeated.

31.2. As to sub-paragraph 50.2, the import of the first sentence is admitted. As to the final sentence, it is admitted and averred that the sums recovered from the Directors by Lendy's administrators were in respect of all claims against the Directors, including on the Directors Loan Accounts ("**DLA**").

31.3. As to sub-paragraph 50.3, the import of the first sentence is admitted.

31.4. As to sub-paragraph 50.4, the import of the first, second and third sentences are admitted. The fourth sentence is denied, no such recovery in respect of Brankesmere House having been made.

31.5. Save as aforesaid, this paragraph is denied.



32. Paragraph 51 is denied for the reasons set out at paragraph 28 above and in any event.

~~33. As to Paragraph 52, particulars of the extent to which tax penalties and/or interest are higher than they would have been if the Defendant had not acted negligently or in breach of duty will be provided as part of expert evidence. Details of the administrators costs and the extent to which they have been increased will be provided through witness evidence.~~

~~34. As to Paragraph 53:~~

~~34.1. Sub-paragraph 53.1 is denied. It is admitted that the findings made by HHJ Rawlings and the Lendy Cost Protocol or its equivalent would have been necessary in any event, but the costs of those matters have been increased by the continuation in lending after 1 March 2018.~~

~~34.2. As to sub-paragraph 53.2, it is confirmed that the Claimant is not claiming for costs of investigations into any actual or alleged misconduct by the Directors which it would have incurred in any event.~~

~~34.3. As to sub-paragraph 53.3, it is confirmed that the Claimant is only claiming for costs and losses sustained by Lendy and not for any other company in the Lendy group which is in administration.~~

~~34.4. Save as aforesaid, this paragraph is denied.~~

~~35. As to Paragraph 54:~~

~~35.1. Sub-paragraph 54.1 is admitted.~~

~~35.2. The contents of the email quoted at paragraph 54.2 is admitted.~~

~~35.3. Sub-paragraphs 54.3 and 54.4 are admitted. However insofar as the FY2016 financial statements would have shown a loss if they had been properly formulated, then no corporation tax would have been payable in any event.~~

~~35.4. Sub-paragraph 54.5 is denied. If the FY2016 financial statements had not been misstated, no corporation tax and so no interest or penalties would have been payable in any event.~~



~~35.5. Sub paragraph 54.6 is in principle admitted but the amounts of interest and penalties which would not have been payable can be calculated so it is denied there would be any discount for the claim being for loss of opportunity.~~

~~35.6. Save as aforesaid, this paragraph is denied.~~

36. As to Paragraph 55, the first sentence and the facts and matters in the second sentence are admitted and averred.

37. As to Paragraph 56:

37.1. The burden of proof in relation to any allegations of failure to mitigate is on the Defendant. It is accordingly denied that any of these matters are ones for the Claimant to prove.

37.2. The Defendant has failed to plead any particulars in respect of any allegation of failure by Lendy (or its officeholders) to mitigate its loss. This paragraph is accordingly defective.

37.3. Without prejudice to the foregoing:

37.3.1. Lendy's administrators have in fact taken reasonable steps to pursue Borrowers, enforce security and pursue relevant third party claims.

37.3.2. Lendy's administrators have in fact taken reasonable steps to pursue and enforce their claims against the Directors. However the settlement agreement with the Directors is not within the possession or control of the Claimant and is believed to be subject to confidentiality provisions.

37.3.3. The expenses of the administration are subject to the control of the creditors or the courts in the usual way.

37.4. Save as aforesaid, this paragraph is denied.

38. As to Paragraph 57:

38.1. Paragraph 30 above is repeated.

38.2. Sub-paragraph 57.1 is denied insofar as it is inconsistent with paragraph 33.1 of the Particulars of Claim.

38.3. As to sub-paragraph 57.2:



38.3.1. The Claimant does not contend that the Defendant was required to provide a guarantee in respect of the accuracy of the accounts or as to Lendy's future trading prospects or as to whether it should continue to offer a P2P platform. Sub-paragraph 33.2 of the Particulars of Claim does not contend any of these matters.

38.3.2. As to the third sentence:

38.3.2.1. Part of the purpose of the Defendant's duty was to advise Lendy whether its financial statements could properly be drawn on a going concern basis;

38.3.2.2. The scope of the Defendant's duty extended to increases in Lendy's liabilities, including to the Investors, which resulted from Lendy continuing to trade in a manner in which it would have ceased to trade if the Defendant had given non-negligent advice, including but not limited to as to treatment of standard and default interest and/or sums received from Investors as being revenue of Lendy (in any event and/or without deduction of equivalent liabilities to the Investors);

38.3.2.3. The scope of the Defendant's duty extends to dividends which were wrongly paid and which would not have been paid but for the Defendant's breach of duty, in any event. The Defendant was obliged (given its obligations under ISA 250A to comply with applicable laws and regulations) in assessing whether distributions which had been made or were proposed were legal, to consider not only whether there was sufficient cash but also whether there were sufficient distributable reserves.

38.3.3. The final sentence is admitted but is irrelevant since the dividends were not paid in the form of cash.

38.4. Save as aforesaid, this paragraph is denied.

39. The defence of set-off in Paragraph 58 is denied for the reasons set out herein.

40. Paragraph 60 is denied, for all the reasons set out in the Particulars of Claim and herein.



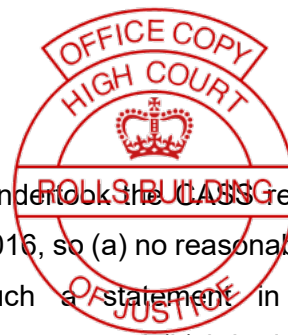
41. The allegations of contributory negligence in Paragraph 61 are denied, save insofar as is set out below. Without prejudice to the generality of the foregoing:
- 41.1. As to (i) concerning the FCA permission, save insofar as sub-paragraphs (a) to (e) are consistent with paragraphs 27 and 28 above, they are not admitted.
- 41.2. As to sub-paragraph (i)(f), it is admitted that Lendy failed to comply with its FCA permissions and restrictions in the manner set out in Paragraph 24 of the Particulars of Claim and that it failed fully or adequately to address the FCA's concerns regarding Lendy's CASS breaches or in terms of financial promotions. It is denied that these breaches are of particularly strong causative potency when compared to the Defendant's breaches of duty.
- 41.3. As to (ii), concerning the Related Parties/Marshall Islands Payments:
- 41.3.1. The allegations of dishonesty are admitted to the extent set out at paragraphs 18.5 and 19 above. Those paragraphs and paragraphs 21, 22.2.2 and 27.11.1.3 above are repeated. Sub-paragraph 61(ii)(g) is admitted insofar as consistent with the same.
- 41.3.2. As to sub-paragraph (h), it is denied that management of Lendy other than the Directors, including but not limited to Mr Hockenhull, acted dishonestly or negligently as alleged or at all. Mr Hockenhull told the Defendant that this was a matter for the Directors to explain, which was reasonable.
- 41.4. Sub-paragraph (iii) is denied, save that (a) the Directors' statutory responsibility for the preparation of the financial statements is admitted and (b) it is admitted that the Directors knew that the accounting in relation to the Marshall Islands Payments was false, for the reasons set out in sub-paragraph 41.3. As to the other matters:
- 41.4.1. The accounting treatment as agent or principal and consequential matters, including revenue recognition in respect of Model 2 loans, interest, the incurring and date of related liabilities, impairment and/or loan provision were not matters which should be treated as being the primary responsibility of Lendy or its officers or employees for the purposes of any assessment of contributory negligence.



- 41.4.2. Sub-paragraph (iii)(k) is denied insofar as this was the result of matters of which the Directors could not reasonably have been aware.
- 41.4.3. Sub-paragraph (iii)(l) is denied. None of these matters should be treated as being of strong causative potency in the context of a claim for breach of duty against the Defendant auditors, these matters being among the very things which they should have identified or assessed as part of the audit process for which they were engaged.
- 41.5. The significance of the matters at sub-paragraph (iv) is denied.
- 41.6. As to sub-paragraph (v):
- 41.6.1. Sub-paragraph (v)(q) is denied.
- 41.6.2. Sub-paragraph (v)(r) is denied for the reasons set out more fully below and in paragraph 27 above.
- 41.7. The matters in sub-paragraph (vi) are admitted, save that it is denied that Directors were aware of all of the defects in the financial statements for the reasons set out above. It is denied that these matters are relevant to any part of the claim save that in respect of the dividends.

DEFENCE TO COUNTERCLAIM

42. The **Amended** Reply is repeated.
43. As to Paragraphs 64 and 65, it is admitted that the 2016 Representation Letter and 2017 Representation Letter each included a statement that by a resolution of Lendy's Board, passed that day, the Directors (or in the case of FY2017, Mr Brooke), were directed to confirm to the Defendant the matters set out therein, which included the matters summarised in sub-paragraphs 64.1 to 64.4.
44. As to Paragraph 66:
- 44.1. It is admitted that the Representation Letters included statements by the Directors (or in the case of FY2017, Mr Brooke) that:
- 44.1.1. They had complied so far as they were aware with all relevant CASS Rules throughout the period and were in compliance with those Rules at the period end. However, this was a statement which the Defendant



knew was not true because they undertook the CASS review in 2017 which related to at least part of FY2016, so (a) no reasonably competent auditor would have included such a statement in a letter of representations presented to the Directors and (b) it is denied that the Defendant can have relied on any such statement alternatively can assert any such reliance as a matter of law.

44.1.2. They had disclosed to the Defendant the identity of Lendy's related parties and all related party relationships and transactions of which they were aware. However, if the Defendant had acted with reasonable competence, they would have known that this statement was not true, by reason of the Marshall Islands Payments. As such (a) no reasonably competent auditor would have included such a statement in a letter of representations presented to the Directors and (b) it is denied that the Defendant can have relied on any such statement alternatively can assert any such reliance as a matter of law.

44.1.3. All transactions had been recorded in the accounting records and were reflected in the financial statements. However, if the Defendant had acted with reasonable competence, they would have known that this statement was inaccurate. As such (a) no reasonably competent auditor would have included such a statement in a letter of representations presented to the Directors and (b) it is denied that the Defendant can assert any such reliance as a matter of law.

44.1.4. They had provided the Defendant with all information that, so far as they were aware, was relevant to the CASS engagement, including any correspondence and notes of meetings with the FCA and access to all information and persons which they believed were relevant to the CASS engagement. However, if the Defendant had acted with reasonable competence, they would have known if this statement was inaccurate (which is not admitted). As such (a) no reasonably competent auditor would then have included such a statement in a letter of representations presented to the Directors and (b) it is denied that the Defendant can assert any such reliance as a matter of law.

44.2. Save as consistent with the aforesaid, or as was included within the express terms of the Representation Letters, the contents of the alleged representations



in sub-paragraphs 66.1 to 66.4 are denied. In any event it is denied that the Defendant was entitled to treat the Representation Letters as any form of sufficient or appropriate audit evidence, so the alleged significance of the Representation Letters and any alleged causation is denied.

- 44.3. It is denied that the statements in the Representation Letters are to be attributed to Lendy, as opposed to being statements made by the Directors (or in the case of FY2017, Mr Brooke) in the particular circumstances of this claim, being a claim for negligence and breach of contract against the Defendant where misrepresentations in the Representation Letters or the substance of any such misrepresentations were among the very things which the Defendant was engaged to identify and/or report on as part of its work on the audit and in respect of which it was negligent.
45. Paragraph 67 is denied for the reasons set out at sub-paragraphs 27.1 to 27.12 above.
46. Paragraph 68 is admitted.
47. Paragraph 69 is denied. For the purposes of a professional negligence claim such as that brought by the Claimant against an auditor such as the Defendant, Lendy is not to be held vicariously liable for any misrepresentation or any fraud or dishonesty of the person making that representation insofar as the Defendant seeks to rely on the same either by way of defence to the Claim or to bring a counterclaim for deceit, as the Defendant is seeking to do. It would be contrary to the purpose of the Defendant's duty of care to Lendy as its auditor, and would ignore the context that the Defendant was acting as auditor, if the Defendant could rely against Lendy on any misrepresentation, dishonesty or fraud of a Director or agent, including insofar as this may be admitted or proved against both Directors, to defeat a claim for professional negligence which includes a claim for failure to identify or report on that misrepresentation, dishonesty or fraud, alternatively where such misrepresentation, dishonesty or fraud is irrelevant or of marginal relevance to the basis of the claim. This is especially so since the Defendant was not entitled to rely on the Representation Letters as any appropriate audit evidence.
48. As to Paragraph 70:
- 48.1. The Defendant has failed to plead any particulars of falsity, or of knowledge, in respect of the numerous alleged representations in Paragraphs 64 - 68 which are asserted in sub-paragraph (a), or of dishonesty asserted in sub-paragraph (b), or of breach of duty of care or of contract asserted in sub-paragraph (c). As such



this paragraph is embarrassing and in breach of PD 16 paragraph 3.2, which by CPR rule 20.3 applies to the Counterclaim.

- 48.2. Paragraph 70 is accordingly and in any event denied save insofar as it is consistent with the facts and matters set out in the Particulars of Claim or herein.
- 48.3. The representations are not to be attributed to Lendy for the reasons set out at paragraphs 44.3 and 47 above and in any event.
49. Paragraph 71 is denied. In particular:
- 49.1. It is denied that the Defendant relied on those representations in any material respect, for the reasons set out at paragraph 10 and 22.1 above. This includes but is not limited to the fact that Ms Sheppard apparently signed the Audit Report on the FY2016 financial statements before the signed FY2016 Representations Letter was received, so she cannot have relied on that letter as a matter of fact.
- 49.2. If which is denied the Defendant did as a matter of fact rely on any of the representations pleaded at Paragraphs 64 - 68, its reliance was unreasonable because it was the consequence of its own negligence in failing to identify that those statements were untrue or in failing to exercise adequate professional scepticism and/or in failing to obtain adequate audit evidence and/or in breach of its obligations under ISA 580 paragraph 4. As such it is denied that it is entitled to raise or rely on any such reliance as a matter of law.
- 49.3. The representations are not to be attributed to Lendy for the reasons set out at paragraphs 44.3 and 47 above and in any event.
50. Paragraph 72 is denied. The representations are not to be attributed to Lendy for the reasons set out at paragraphs 44.3 and 47 above and in any event. Further the Defendant is not entitled to rely upon any such misrepresentation by Lendy to avoid its own liability to Lendy because the identification of such misrepresentations and/or the facts or matters which made them untrue were among the very things which the Defendant was engaged to identify alternatively they were insufficiently closely connected to the facts and matters which lead to the Defendant's liability to Lendy and so the Claimant.
51. Paragraph 73 is denied. Paragraphs 47 to 50 above are repeated. Any defence of circuitry of action is wrong as a matter of law on the facts and in the context of this claim.



Any claim by damages to the same extent for which the Defendant is liable is denied for the same reasons.

52. Paragraph 74 is denied for the reasons set out above and in any event.

NICOLA RUSHTON KC

RHODRI DAVIES KC

Statement of truth

The Claimant believes that the facts stated in this Reply and Defence to Counterclaim 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.

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Steven Mark Wilson for and on behalf of the Claimant

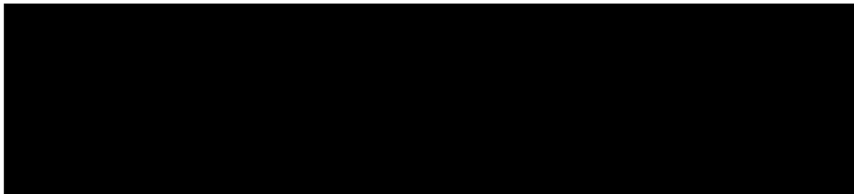
Dated: 20 December 2024

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



Statement of truth

The Claimant believes that the facts stated in this Reply and Defence to Counterclaim 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.



Steven Mark Wilson for and on behalf of the Claimant

Dated: 29 August 2025

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